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Category



**OKLAHOMA CRIMINAL DEFENSE WEEKLY**

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[James L. Hankins,](#)  
Publisher

*(with special thanks to Mark Hoover, OIDS, for contributing regularly)*

“I have lived my life, and I have fought my battles, not against the weak and the poor—anybody can do that—but against power, against injustice, against oppression, and I have asked no odds from them, and I never shall.”---Clarence S. Darrow, *Attorney for the Damned* 491, 497 (Arthur Weinberg ed. 1957).

## OKLAHOMA

[State v. Raby](#), 2022 OK CR 30 (December 15, 2022): **Speedy Trial; State Appeal:** In this case out of Cleveland County involving a count of Attempting to Obtain CDS by Forgery/Fraud, the Hon. Thad Balkman granted a motion to dismiss for failure to timely prosecute. Raby had become the subject of criminal investigation in 2012 and was charged by Information the same year. She was arrested in 2021 during a traffic stop. NOTE: Judge Lumpkin specially concurred.

[Purdum v. State](#), 2022 OK CR 31 (December 22, 2022): **Indians:** This is a *McGirt* case that had been previously reversed, but the Supreme Court granted cert and remanded in light of *Castro-Huerta*. Upon remand, the Court affirmed because the Appellant was not an Indian. NOTE: Judge Musseman concurred

specially, expanding on an issue related to the lack of intent to kill element for assault and battery with a deadly weapon and inviting the Oklahoma Uniform Jury Instruction Committee to review related instructions.

[State v. Joshua Kyle Rhynard](#), No. S-2022-41 (Okla.Cr., December 15, 2022) (unpublished): **State Appeals:** In this State appeal, Judge David R. Bandy in Kay County granted a motion to suppress based on a search warrant in a drug case. The Court dismissed the State's appeal because it failed to address whether the appeal was in the "best interests of justice" which is required in suppression cases (basically the State has to show that the suppressed evidence is necessary to the continued prosecution). The Court also criticized the way in which the Brief was prepared without proper citations to the record in the argument sections. NOTE: Vice Presiding Judge Rowland dissented and would overlook not only the jurisdiction issue where the State failed to address the best interests of justice and the lack of citations to the record, but would have granted relief on the merits of the claims.

[Rommell O'Neal Thomas v. State](#), No. F-2021-738 (Okla.Cr., January 5, 2023) (unpublished): **Confidential Informants:** Thomas was convicted by jury in Oklahoma County (the Hon. Ray C. Elliott, presiding) of multiple Robbery/Assault counts. The Court affirmed, and held that the State did not have to divulge the identity of a confidential informant whose tip started the investigation. NOTE: I have noticed over the years that this is one issue where clients get really upset not only because they want to know who snitched on them, but they always think they have a right to "confront" their accusers. Trying to explain how the law works in this area is sometimes challenging.

[Robert Willie Wilson, Jr., v. State](#), No. F-2021-554 (Okla.Cr., December 15, 2022) (unpublished): **Accomplice Liability; Sufficiency:** In this case out of Okfuskee County, Wilson was convicted by jury of Accessory to Burglary in the Second Degree (the Hon. Lawrence Parish, presiding). The Court reversed on the basis that the evidence was insufficient because it showed at most mere presence and no assistance. NOTE: This is the first case I ever recall seeing from the Court where a conviction was reversed based in insufficient evidence.

[Benjamin Ross Brown v. State](#), No. F-2022-627 (Okla.Cr., December 16, 2022) (unpublished): **Sealed Pleadings:** This is an unpublished Order denying a motion to file a brief under seal. The brief contained the last names of jurors. The Court held that this was something that could be easily redacted and did not require sealing the entire document. NOTE: This occurs frequently in cases involving minors as well as jurors. I usually just use initials in such cases.

[State v. Darrius Lovell Johnson](#), No. S-2022-245 (Okl.Cr., December 15, 2022) (unpublished): **State Appeals; Venue**: In this case out of Tulsa County, Johnson was charged with Human Trafficking. Special Judge Tanya Wilson sustained a demurrer at PH on the basis that the State had failed to prove venue. The Hon. Dawn Moody affirmed. In this State appeal, the Court affirmed because none of the criminal acts occurred in Tulsa County. NOTE: Presiding Judge Rowland Specially Concurred. Vice Presiding Judge Hudson dissented.

[State v. Alan Jeffery Nuzum](#), No. S-2022-412 (Okl.Cr., December 22, 2022) (unpublished): **State Appeals; Search and Seizure (Search Warrants; Neutral Magistrate)**: In this drug case out of Blaine County, the Hon. Allison Lafferty had issued a search warrant. Nuzum was bound over for trial after PH by the Hon. Lance Schneider. The Hon. Paul K. Woodward heard the motion to suppress and made the extraordinary ruling that Judge Lafferty had been acting on the behalf of law enforcement during the warrant process when she helped edit the warrant and was thus not a neutral and detached magistrate; and *Leon* good faith could not save such a warrant. The Court affirmed, and went the extra step to forward the opinion to the Council on Judicial Complaints. NOTE: Presiding Judge Rowland concurred, noting that it is a rare case where suppression is warranted where there is no police misconduct, but this is such a case. Vice Presiding Judge Hudson concurred in results (joined by Presiding Judge Rowland).

## **TENTH CIRCUIT**

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[United States v. Joseph Maldonado-Passage](#), No. 22-6025 (10<sup>th</sup> Cir., December 23, 2022) (Published) (McHugh, Baldock & Murphy) (W.D. Okla., Hon. Scott L. Palk): **Mandate; Indictments & Informations (Multiplicity)**: Murder-for-hire sentences are affirmed after resentencing. The panel held that the district court did not violate the mandate rule by refusing a motion to consider another issue on remand, and that a multiplicity claim fails because the murder-for-hire counts could be separated out into two violations with consecutive sentences

[United States v. David Ashard Samilton](#), No. 21-6149 (10<sup>th</sup> Cir., December 20, 2022) (Published) (Matheson, Carson & Rossman): **Search and Seizure (Warrantless)**: Seizure of firearm from a car is affirmed because initial investigatory detention was extended reasonably.

[United States v. Felipe Nevarez](#), No. 21-1286 (10<sup>th</sup> Cir., December 19, 2022) (Published) (McHugh, Baldock & Murphy): **Speedy Trial; Federal Sentencing**

**Guidelines (Acceptance of Responsibility):** In this drug case, a speedy trial motion was premature, having been made one day prior to the expiration of the speedy trial clock, and was thus deemed waived by the panel even though the Government never asserted this as a basis to deny the claim; and a reduction for acceptance of responsibility was denied.

## UNITED STATES SUPREME COURT

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“Only Supreme Court justices and schoolchildren are expected to and do take the entire summer off.” –*Chief Justice John Roberts* (statement made while he served as a lawyer in the Reagan Administration).

*No new cases.*

## OTHER CASES OF NOTE

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[United States v. Aaron Loines](#), No. 22-3073 (6<sup>th</sup> Cir., October 27, 2022): **Search and Seizure (Plain View; Automobile):** Instructive case where denial of a suppression motion was reversed where a police officer looked into the window of a car and claimed to have seen a “bag of dope.” The panel rejected that this was plain view or subject to the automobile exception to the warrant requirement.

[In Re: Grand Jury Subpoena](#), No. 21-30705 (5<sup>th</sup> Cir., December 14, 2022): **Subpoenas; Grand Jury:** An individual and an advocacy group appeal from the denial of a motion to quash two grand jury subpoenas. The panel dismissed because there is no jurisdiction for challenging such subpoenas unless the appellant has been held in contempt or attorney-client privilege is asserted, neither of which applied here. NOTE: I included this opinion because it is a good starting point on the law in this area.

## VICTORIES

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**TRAVIS VERNIER & LES BENNETT**, OKC, ended 2022 on a high note in a case out of Tillman County where a client had been charged with Child Abuse. They attacked the investigation by law enforcement and DHS, and eventually persuaded the DA to dismiss the charge as well as the deprivation case with prejudice. Great work, Travis & Les!

## **HEARSAY**

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**LOOKING BACK**: The McClain County Sheriff looks back on his time in office.

**BUST**: A regular den of iniquity (as Mark Hoover described it) was operating on North May in OKC.

**NEW A.G.**: Some news regarding the administration of incoming Attorney General Gentner Drummond. He is also concerned about **domestic violence**. Also, in a similar vein, Tulsa County District Judge Kelly Greenough holds batterers accountable in a “**mentor court**.”

**NEW D.A.**: The new District Attorney for Pontotoc County, Erik Johnson, has been sworn in.

**RESOURCE**: The Cherokee Nation has opened a new domestic violence housing center in Adair County.

**ARRESTED**: The mother of the Uvalde, TX, shooter has been arrested in OKC for making threats and committing an assault.

**ARRESTED II**: Four members of the Noble County School Board have been arrested for violations of the Open Meetings Act.

**NEW APPROACH**: The City of Oklahoma City is trying “housing over criminalizing” when it comes to addressing the homeless.

**SEPARATED**: The City of Chickasha has finalized a separation agreement with the former Chief of Police.

**IMPERSONATION**: A 19-year-old from Tennessee has been arrested for impersonating police in Oklahoma.

**NEW POSITION**: A longtime employee at the Garfield County Courthouse has taken a new position as bailiff for new Special Judge Blake Gibson.

**RETIRED**: Delaware County District Judge Barry Denney has retired.

**RETIRED II**: Long-serving Washington County District Attorney Kevin Buchanan has retired.

**HISTORY**: A spectacular escape in 1947 doomed the old courthouse in Tulsa County.

**SHOOTING**: An officer-involved shootout ended with the death of a suspect...in a Tulsa cemetery.

**SCHOOL**: School Resource Officers in Bartlesville are getting ballistic shields.

**TRAFFIC**: State Senator Nathan Dahm has proposed some interesting traffic-related legislation. He also wants to make Oklahoma a “**sovereign state**.”

**SOLVED**: Police in Tulsa claim that 95% of homicides in 2022 were solved.

**CAMERAS**: Flock cameras have been a success in Tulsa.

**DUI BILL**: A bill is being considered that would force drunk drives to pay child support in the event that parents are killed in crashes.

**CELEBRITIES**: Interesting article about famous people in federal prison.

**FIRING SQUAD**: Interesting article from a prisoner who advocates the return of death by firing squad.

**NOW YOU KNOW**: The Chickasaw Nation has its own Lighthouse Police Department Dive Team.

**RIP**: An OKC PD Detective has passed from natural causes.

## **WACKY CRIME**

**TULSA**: A porch pirate decided to commit his crime wearing an “unusual and questionably effective” mask.

**TULSA II**: Some Tulsans pulled some sexual shenanigans in public for shock value.

**TULSA III:** A Tulsa man shot is roommate...and then beat him with a 1x4 for good measure.

**THE OWNER:** A man claimed to own the Clinton Airport and stole a courtesy car.

**TWINS:** OK County deputies are seeking a **Johnn Depp** lookalike. Not to be outdone by OK County deputies looking for a Johnny Depp doppelganger, police in OKC are looking for Ed Sheeran's twin who stole a guitar from the Guitar Center on May Avenue.

**OKC:** A woman was denied a \$1.25 refund at a Starbucks for her drink...so her husband robbed the place.

**ASSAULT:** An Antlers man in the Push County Jail has been charged with assaulting a jailer...with bleach.

**YUKON BOULDER:** Drivers apparently keep getting stuck on the Yukon Boulder.

**HEAVY:** OHP pulled over a truck that was 40,000 pounds over weight.

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