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OKLAHOMA CRIMINAL DEFENSE WEEKLY

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[James L. Hankins,](#)
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(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

[Jacqueline Marjonnie Mills v. State](#), No. C-2023-538 (Okl.Cr., February 22, 2024) (unpublished): **Guilty Pleas; Deferred Sentences:** Mills pled guilty in Tulsa County before the Hon. Dawn Moody to drug and firearms charges and received a deferred. The deferred sentences were subsequently accelerated and Mills filed a motion to withdraw her pleas, which is what the Rules say to do. Judge Moody held that she was outside the time frame to do this. In this opinion, the Court reversed, holding that the motion to withdraw was filed timely under the Rules, and it was therefore an abuse of discretion to summarily deny the motion without a hearing.

[Jerald Douglas Outlaw v. State](#), No. F-2022-236 (Okla. Cr., February 22, 2024) (unpublished): **Evidence (Civil Lawsuit)**: Outlaw was convicted of Lewd Acts at a bench trial in Cleveland County before the Hon. Thad Balkman. The Court affirmed, but there was an interesting claim regarding evidence that a civil lawsuit resulted in Outlaw's insurance paying "molestation compensation" in a trust for the accuser. This opinion contains a discussion of the law in this area regarding the admissibility of evidence of a settlement of a civil suit in a criminal case.

TENTH CIRCUIT

[United States v. Juanita Viridiana Garcia Rodriguez](#), No. 22-6194 (10th Cir., February 21, 2024) (Published) (Matheson, Bacharach & Moritz) (W.D. Okla., Hon. Stephen Friot): **Search and Seizure (Traffic Stops)**: In this drug case, the panel found the evidence insufficient to convict the passenger where the Government presented no direct evidence of her knowledge of the drugs.

[United States v. Donald Alvin Tolbert](#), No. 22-2085 (10th Cir., February 20, 2024) (Published) (Hartz, Ebel & Carson): **Search and Seizure (Inevitable Discovery)**: AOL account e-mails and images were opened by the National Center for Missing and Exploited Children. Tolbert moved to suppress based on illegal search, but the panel held that the evidence would have been discovered inevitably.

UNITED STATES SUPREME COURT

"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)*.

[McElrath v. Georgia](#), No. 22-721 (U.S., February 21, 2024): **Double Jeopardy**: A prior jury verdict of not guilty of malice murder by reason of insanity constituted an acquittal for Double Jeopardy purposes notwithstanding any inconsistency with the other verdicts of the jury. NOTE: This was a unanimous opinion with Justice Alito penning a concurrence. The Court had watered down Double Jeopardy

protections for years, so it is nice to see a win in this area, even if it was applied to rare facts.

OTHER CASES OF NOTE

[United States v. Amanda Cowette](#), No. 22-1534 (1st Cir., December 12, 2023): **Interrogations (Fifth Amendment)**: Denial of suppression of statements in violation of *Miranda* is reversed because statement “I guess...I’ll wait until I have a lawyer” was an unequivocal invocation of rights.

[United States v. Charles H. Lester, Jr.](#), No. 23-2176 (8th Cir., February 8, 2024): **Supervised Release**: In this drug case, BOP recommended terminating early a term of supervised release, but the district court concluded that it lacked jurisdiction to do so. In this opinion, the panel reversed, concluding that the discretionary authority under 18 U.S.C. 3583(e)(1) survives the amended 21 U.S.C. 841(b)(1)(A) which mandates five years of supervised release.

[United States v. Arthur Miles](#), No. 22-2805 (7th Cir., November 13, 2023): **Indictments & Informations (Multiplicity)**: Sentence of 240 months is vacated because of multiplicitous firearms convictions.

[United States v. Alexander Ivy](#), No. 22-4052 (6th Cir., February 20, 2024): **Federal Sentencing Guidelines (Crime of Violence)**: Prior conviction for Aggravated Robbery under Ohio law is not a “crime of violence” for sentencing purposes.

[United States v. Zachariah Jay Histed](#), No. 22-2080 (6th Cir., February 22, 2024): **Federal Sentencing Guidelines (Drug Quantity)**: Sentence in a drug case is vacated because the district court failed to properly calculate the drug quantity attributable to Histed.

VICTORIES

JACQUI FORD and NIK LEE, OKC, partnered up again in yet another Murder II case charged in the alternative as Manslaughter I (DUI driving/wreck). They got a demurrer granted at PH to Murder II, State appealed and it was reinstated. Not to worry, the same Murder II charge was dismissed on a motion to

quash. So jury trial on the alternative is in the mix for the legal hat trick. Great work, Jacqui and Nik!

HEARSAY

SUPPRESSED: Tulsa County Judge Clifford Smith agreed to suppress statements of Karl Fontenot.

WARRANTS: The City of Tulsa has announced a “Clear Your Warrant” event that will be held at the Tulsa Municipal Court on March 2.

LIDAR: The Ardmore police have new LIDAR speed-detecting devices.

APPOINTED: Gov. Stitt has appointed Dan Jacobsma as DA for District 3 (Greer, Harmon, Jackson, Kiowa & Tillman Counties).

APPOINTED: Gov. Stitt has appointed Nicholas R. Tucker as Associate District Judge in Pushmataha County.

LOBBERS: DOC personnel intercepted the contraband goods of two lobbers and one smuggler destined for Jackie Brannon Correctional Center, Eddie Warrior, and Dick Conner.

CLEMENCY: A.G. Gentner Drummond opposes clemency for Michael Dewayne Smith.

RESIGNED: A member of the Oklahoma County Jail Trust Board has resigned because of inadequate funding for the county jail. Also, it appears that the new jail will abut **Del City**, despite the threats of litigation.

OPEN RECORDS: District Attorney Jason Hicks has won an Open Records case, but not on the merits.

WACKY CRIME

ACORNS: In one of the most weird and viral videos making the rounds on Twitter lately, an deputy in Florida had a suspect handcuffed in his patrol car and was walking toward the car when an acorn fell from a tree onto the car and the deputy thought it was a gunshot. He did a drop and roll maneuver, said he was “hit” and proceed to empty his magazine toward his own car apparently believing

that the suspect was firing at him. No one was injured and the deputy has resigned. The video is incredible.

VANDALS: Someone has vandalized a Bokchito, OK, police car.

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