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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

[State v. Gail Renee Cato-Strong](#), No. S-2022-387 (Ok1.Cr., February 23, 2023) (unpublished): **QUASH; STATE APPEALS:** Cato-Strong was charged in Oklahoma County with Medicaid Fraud and Identity Theft. For some reason, after the PH had begun, she waived it and was bound over for trial. Judge Cindy H. Truong granted the defendant’s motion to dismiss at a hearing at which the State did not appear. On the State’s appeal, the Court construed the motion as a motion to quash for insufficient evidence. However, the motion referred to evidence not presented at the preliminary hearing and she had waived it in any event; thus the Court reversed. NOTE: I do not read anything into the statutes that require the universe of evidence in support of a motion to quash is limited to the evidence from the PH, but that is the Court’s rule, and it now appears that testimony with a

waiver will doom a motion to quash. Also, it is strange that the accused would waive PH after a day and half of testimony, but there may be some strategy to that to avoid additional charges (this is common in sex offense cases against children).

[Nicholas D. Goosby v. State](#), No. F-2021-1486 (Okl.Cr., February 23, 2023) (unpublished): **JUVENILES & YO**: Goosby entered pleas to First Degree Murder and Robbery counts and was sentenced to LWOP—even though he was just 15-years-old at the time of the crimes. He did not seek to withdraw his pleas. He thereafter sought post-conviction relief based upon SCOTUS precedent preventing this, the State conceded, and the case was remanded for re-sentencing. The Hon. Heather E. Coyle conducted the re-sentencing and again sentenced Goosby to LWOP. The Court affirmed, finding no plain error.

TENTH CIRCUIT

[United States v. Joshua Omar Garcia](#), No. 20-1386 (10th Cir., February 8, 2023) (Published) (McHugh, Murphy & Carson): **Speedy Trial**: Dismissal based on speedy trial is reversed based on the *Barker* factors.

[United States v. Joseph Lee Chatwin](#), No. 21-4003 (10th Cir., February 17, 2023) (Published) (Phillips, Lucero, Sr. Circuit Judge & McHugh): **Waiver (Appeals Waiver)**: Denial of 2255 motion is reversed where Chatwin proceeded pro se and lodged a claim under Johnson stating simply “police chase not a violent crime.” The Government moved to dismiss it as insufficiently pled and waiver. The split panel reversed holding that the waiver applied to challenges to his sentence, not his conviction. NOTE: Judge McHugh dissented on the basis that the COA was improvidently granted and the error fails plain error review.

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).

[John Montenegro Cruz v. Arizona](#), No. 21-846 (U.S., February 22, 2023): **Habeas Corpus (Procedural Default)**: In this capital habeas case, Cruz raised a *Simmons* claim that he should have been allowed to inform the jury that a life sentence in Arizona would be without parole. Although Arizona courts held that *Simmons* did not apply in Arizona, the Supreme Court decided a case that overruled that, and Cruz thereafter filed for post-conviction relief in Arizona, which denied the petition on the basis that the SCOTUS case was not a “significant change in the law.” In this 5-4 opinion, the majority held that it was, and that the treatment of it by the Arizona courts was so wrong as to not provide an adequate and independent state law ground to support a procedural default.

[Bittner v. United States](#), No. 21-1195 (U.S., February 28, 2023): **Bank Secrecy Act**: This Act requires U.S. persons to report holdings in foreign banks and establishes a maximum \$10,000.00 penalty for non-willful violations. Bittner tried to comply when he discovered this obligation, but he had 272 accounts in a foreign bank, so the Government tried to fine him \$2.72 million. He argued that the penalty was per report, not per account. The Court sided with him.

OTHER CASES OF NOTE

[United States v. Quincino Waide](#), No. 21-5827 (6th Cir., February 13, 2023): **Search and Seizure (Search Warrants: Sufficiency; Attenuation; Inevitable Discovery; and Good Faith)**: A shed fire occurred on the property next to Waide’s. He was not suspected of having anything to do with the fire, but officials asked him to turn over his close surveillance video, which he refused. A warrant was issued. A small amount of marijuana was found in Waide’s home during the search. The split panel reversed the denial of his motion to suppress because the affidavit was insufficient and the fruits should be suppressed; the warrant was not saved by the attenuation doctrine, inevitable discovery, or good faith.

[United States v. Jose Villanueva-Cardenas](#), No. 21-40525 (5th Cir., February 13, 2023): **Supervised Release**: Guilty plea to unlawful presence in the U.S. after removal case where a special condition of supervised release required the accused to be surrendered to immigration officials for deportation proceedings after release from confinement, and that if officials decline to take him into custody then he immediately depart the U.S. The panel vacated this “self-report” condition based on recent circuit precedent forbidding it.

VICTORIES

ROBERT V. SEACAT & TADD J. BOGAN, Tulsa, represented a Bartlesville police officer accused of Sexual Battery and Indecent Exposure in Washington County. Nice work, Robert and Tadd!

HEARSAY

TRUANCY: The District Attorney for Pontotoc, Hughes and Seminole Counties has announced a truancy initiative; and the Chickasaw Nation has authorized a truancy court that will open in April.

COCKFIGHTING: A legislative proposal would allow the legality of cockfighting to be determined by the individual counties whether the crime is a felony or a misdemeanor.

MOUNTIES: The mounted police in Broken Arrow have been certified and will be deployed soon.

DRUG BUST: Stillwater police found 20 pounds of meth during a traffic stop.

ARRESTED: A metro attorney has been arrested for allegedly attempting to pay for sex with a minor.

REEFER: OBN has opened investigations into half of the licensed marijuana growers in Oklahoma.

DEPUTIES: Law enforcement officers in Love County have been cross-deputized so that they can investigate federal crimes.

RESIGNED: The Chief of Police in Fletcher, Oklahoma, has resigned.

DISMISSED: A criminal charge of disorderly conduct against a state senator from the Adair County area has been dismissed.

CONSULATE: The Mexican consulate is scheduled to open an office in OKC later this year, but may start accepting appointments as early as May 1.

JURORS: Daily pay for jury duty may increase from \$20 to \$30.

DNA: The OU student newspaper reported that the OSBI retested the DNA in the Anthony Sanchez case and determined that his father was not the source.

INVESTIGATION: A Bartlesville police officer is being investigated for false allegations against a fellow officer.

VERDICT: A Tulsa County jury has awarded a family \$82 million for the death of a loved one in the jail.

INMATE DEATH: An inmate has died at the Oklahoma County Jail; also, an inmate in **Cleveland County** hanged himself.

TULSA COUNTY: Interesting story about the state of the Tulsa County Public Defender's Office.

STABBINGS: Eight (!) persons were stabbed in Bricktown on a recent weekend.

GOOD RESULT: Clay Curtis of the Overman Group obtained a good result in Oklahoma County.

SUSPENDED: The Chief of Police in Geary has been suspended for an inappropriate relationship with a city employee (allegedly he had an affair with the employee, his wife found out, and a brawl ensued in the parking lot at City Hall).

TRIBES: In an interview with Oklahoma Watch, Attorney General Gentner Drummond sounds conciliatory towards the tribes.

ARRESTED: A deputy in Beckham County has been arrested for improper contact with a minor.

SECURITY: Increased security measures are coming to the Creek County Courthouse.

PROSECUTION: Attorney General Drummond will assume the prosecution of a Canadian County attorney accused of facilitating illegal marijuana businesses.

NEW: The Cleveland County Jail has a new Deputy Chief.

RESIGNATIONS: For the third time in 18 months, Fairfield police officers resign.

ESCAPE: A man tried to escape the Pittsburg County Jail by hiding in a laundry cart...he was not successful.

ANTISEMITISM: Antisemitism is on the rise in Oklahoma and the FBI has become involved.

MENTAL HEALTH: The Tulsa City Jail will offer mental health services to inmates.

WACKY CRIME

OKC: A would-be burglar got stuck in the chimney of the home he was intending to rob.

OKC II: An OKC man who tried to steal a catalytic converter was beaten with a crowbar.

TULSA: A home invasion suspect in Tulsa got shot in the face, but managed to drive himself home.

TULSA II: A patron at the Waffle House dined, paid his check, tipped the server...then robbed the place.

BIZARRE: A Tulsa man went to a house to purchase an axe...then proceeded to swing the axe he had just purchased into the head of a person sitting on a couch.

HAZZARD: Someone crashed the General Lee in Missouri.

THE NEED FOR SPEED: A motorcyclist was cited for going over 100 mph...twice on the same day.

THE NEED FOR SPEED II: Tulsa police stopped a car going 67 mph...in a school zone.

THE NEED FOR SPEED III: OHP caught two cars racing at 135 mph in OKC.

HEADLINE: "A man walks into the Oklahoma City Police Department with a gunshot wound."

ALIENS: Oklahoma ranks number eight among the states for being the most alien-obsessed.

TIME: Tulsa police booked a man into jail and found fentanyl...in his watch.

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