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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**

**APPOINTED**: Gov. Stitt has appointed Tulsa County District Judge William J. Musseman, Jr., to fill the vacant position on the Oklahoma Court of Criminal Appeals.

**Patrick Alexander Busby v. State**, 2022 OK CR 4 (February 17, 2022): **State Appeals; Burglary**: Busby was charged in Cleveland County with First Degree Burglary. The garage door of a house was open, and Busby forcibly entered through the door inside the garage that lead into the house. The PH Magistrate Hon. Lori A. Puckett, granted a demurrer to the evidence at PH on the basis that

the evidence showed forcible entry into a door leading from a garage into a dwelling (not an outer door as required). The Hon. Leah Edwards affirmed. In this State Appeal, the Court reversed, holding that when the garage door is open, the garage is basically a carport and the door leading into the home is an “outer” door. NOTE: Judge Rowland Concurred Specially, noting that prior case law on the topic was not helpful. Judge Hudson Dissented, concluding that the plain language of the statute compels the conclusion that the district court was correct.

[Brian Eugene Beecher v. State](#), 2022 OK CR 6 (February 24, 2022): **Restitution**: Beecher was convicted by jury in Kingfisher County (the Hon. Paul K. Woodward, presiding), of Assault and Battery w/Deadly Weapon. He was sentenced to prison and, inter alia, to pay \$24,005.43 in restitution. On appeal, he contested only the restitution order because it listed Blue Cross (insurance company who treated the person shot) as the victim in the case. The Court held that this was plain error. NOTE: Mark Hoover was the appellate lawyer in this nifty little win on restitution law.

[Joshua Ray Codynah v. State](#), No. C-2019-293 (Okla. Cr., March 3, 2022) (unpublished): **Guilty Pleas; Double Jeopardy**: Codynah pled guilty in a murder case out of Comanche County. He moved to withdraw his plea on the basis of *McGirt*, and also that convictions for both felony-murder and burglary, where burglary is the predicate for the felony-murder charge, violate the Double Jeopardy Clause. The Court rejected his *McGirt* claim on the basis of *Martinez* which held that the Kiowa-Comanche-Apache Reservation had been disestablished by Congress, but granted relief on the Double Jeopardy claim by dismissing the Burglary count.

[Charles Wayne Smith v. State](#), No. F-2019-385 (Okla. Cr., March 3, 2022) (unpublished): **Prosecutorial Misconduct (*Brady* Cases)**: Smith was convicted by jury in Wagoner County of various offenses, and raised several claims on appeal, all of which were rejected. One claim was a *Brady* issue, and I included this opinion because, although not a winner, it does contain a good discussion of the general law and standard of review governing *Brady* claims which would be helpful if you need a good starting point in preparing a motion or brief on this issue.

[United States v. Anthony Cordova](#), No. 20-2007 (10<sup>th</sup> Cir., February 10, 2022) (Published) (Phillips, Baldock & Briscoe): **Motion for New Trial: Evidence (Recordings)**: Convictions of two felonies related to a murder are affirmed over claims related to: 1) denial of motion to exclude a mostly unintelligible one-minute recording with a cooperating witness; and 2) denial of two motions for new trial (one alleging insufficient evidence; the other alleging newly discovered evidence).

[United States v. Twyla Casados](#), No. 20-1006 (10<sup>th</sup> Cir., February 18, 2022) (Published) (Matheson, Murphy & Moritz): **Restitution**: The restitution statute allows restitution for expenses of a victim for attending proceedings, but also says that a representative can “assume the victim’s rights.” The panel held that the district court could not order restitution of travel expenses incurred by representatives, it has to be expenses incurred by the actual victim.

[United States v. Julieann Logsdon](#), No. 19-7055 (10<sup>th</sup> Cir., February 28, 2022) (Published) (McHugh, Ebel & Eid) (E.D. Okla., Hon. Ronald A. White): **Federal Sentencing Guidelines (Arson)**: In this false statement to an investigator case, the investigator was asking questions about an arson and Logsdon lied. The range was enhanced by a cross-reference where “the offense involved arson.” Logsdon objected to this cross-reference, but the panel affirmed.

## **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).*

[Federal Bureau of Investigation, et al. v. Fazaga, et al.](#), No. 20-828 (U.S., March 4, 2022): **FISA; Evidence (Privileges (State Secrets))**: This is a civil case arising out of alleged illegal surveillance of Muslim groups. It involves the interplay between the Foreign Intelligence Surveillance Act and the “state secrets” privilege. The Ninth Circuit held that aspects of FISA had “displaced” the state secrets privilege, but the unanimous Court reversed.

[United States v. Dzhokhar A. Tsarnaev](#), No. 20-443 (U.S., March 4, 2022): **Voir Dire; Death Penalty**: This case involves the capital prosecution of one of the Boston Marathon bombers, who was sentenced to death, but the district court

reversed. Here, the Court again reversed, holding that the trial court did not err in disallowing sentencing phase evidence concerning how Tsarnaev's older brother was the leader and had committed acts of violence; and also no abuse of discretion in denying juror questions about the extent of their consumption of media content of the bombings.

[United States v. Husayn, et al.](#), No. 20-827 (U.S., March 3, 2022): **Evidence (Privileges (State Secrets))**: This is an odd case where 911 detainees filed suit in Poland alleging that they were interrogated there by the CIA after 911. There is a process by which a litigant may obtain discovery here in the United States in such a case, and Husayn tried it here, only to be met with a claim of "state secrets." The Ninth Circuit allowed some discovery on various topics about what had happened in Poland, some of which had become public knowledge at this point, but the Court reversed and essentially upheld the invocation of the "state secrets" privilege of the Government.

## **OTHER CASES OF NOTE**

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[United States v. Denzell Russell](#), No. 20-3756 (6<sup>th</sup> Cir., February 16, 2022): **Waiver (Appellate Issues)**: In this felon-in-possession case, Russell was the passenger in a traffic stop and asserted a search and seizure claim. The Government waited until appeal to assert that he did not have standing to assert the Fourth Amendment claim. Russell argued that the Government waived its standing argument. The panel held standing is not jurisdictional and can be forfeited or waived, which meant that here the Government could assert it but had to satisfy the plain-error test, which it did.

[United States v. Anthony R. Buster](#), No. 21-4101 (4<sup>th</sup> Cir., February 22, 2022): **Search and Seizure (Warrantless)**: Search and seizure case involving a bag recently possessed by a person who was—by the time the bag was opened—handcuffed and face-down on the ground. The panel held that under these facts there was no justification for a warrantless *Terry* search of the bag.

[United States v. Michael B. Johnson, II](#), No. 20-6249 (6<sup>th</sup> Cir., February 23, 2022): **First Step Act**: Denial of First Step motion to vacate 300 month sentence for 2006 drug and firearms convictions is reversed as procedurally and substantively unreasonable.

## VICTORIES

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*None noted.*

## HEARSAY

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**SHOT**: An Oklahoma City woman shot at in intruder in her home---but shot her husband twice instead.

**SUICIDE**: A former OHP Trooper, Phillip Olson, apparently shot himself behind the Piedmont Police Department.

**LYFT**: A Lyft passenger in Norman has been caught with five pounds of meth.

**JUDICIAL SEATS**: Orvil Loge, who had been hired as a Special Judge in Muskogee County, has announced his candidacy for Associate District Judge to replace the retiring Norman Thygesen.

**COURT REPORTERS**: A bill would increase the pay for bailiffs and court reporters. This is on the heels of the new rules from the Supreme Court making it easier to obtain a CSR license.

**RESIGNED**: A member of the Pardon and Parole Board has resigned effective immediately.

**JNC**: A bill would abolish the JNC and replace judicial appointments with simple discretion of the Governor.

**TAXATION BY CITATION**: Oklahoma County Public Defender Bob Ravitz explains how this is a real thing that essentially criminalizes poverty.

**JURISDICTION**: The Quapaw Nation is asserting “special” jurisdiction over non-Indians in domestic abuse cases.

**RIP**: A Union City police lieutenant has died of COVID.

**RIP II**: Former Judge of the OCCA Tom Cornish has passed.

**ARRESTED**: A McCurtain County Jailer has been charged with aiding the escape of four inmates as well as bringing contraband into the jail.

**REEFER**: The Tulsa Community College is now offering various cannabis-related courses.

**AUDIT**: District Attorney David Prater has requested a forensic audit of District Attorney Alan Grubb over the use of deferred prison agreements.

**CLEVER**: A woman deliberately tried to get arrested and booked into the Oklahoma County Jail so she could smuggle in contraband. However, deputies were aware that she had tried this before and were alerted.

**GANGS**: A Tulsa news station has taken a close look at local gang activity.

**SURVEILLANCE**: The mayor of Tulsa went to Las Vegas to look at the city's street-monitoring cameras as a form of crime deterring surveillance. Also, so called "**uninsured motorist cameras**" have now been deployed throughout the state.

**RETIRED**: Comanche County District Judge Gerald Neuwirth has retired.

**ADMISSION**: A former state narcotics officer has admitted to falsifying search warrant affidavits.

**MEMORIES**: District Attorney Jack Thorpe recalled some memorable cases in his career.

**REACTION**: Tulsa District Judge Sharon Holmes reacted to the nomination of a black woman to the Supreme Court by President Biden.

**DENIED**: Tulsa attorney Kevin Adams had sought to dismiss a bill of particulars on the basis of low funding for defense counsel, but the motion was denied.

**RETIRED**: The most senior police officer for the City of Lawton has retired.

**DIED**: Another detainee at the Oklahoma County Jail has died.

**ACCUSED**: The mayor of Okmulgee has been accused of embezzlement.

**HATE CRIMES**: Two Oklahoma men have been indicted for hate crimes in federal court for a racially-motivated fight at a bar in Shawnee.

**ENDORSED**: The Oklahoma County Sheriff has endorsed Keven Calvey to replace District Attorney David Prater.

**PAYING THE PRICE**: Harmon County taxpayers will be paying the price for a deputy's misconduct for years to come.

**CRACKDOWN**: Tulsa police are cracking down on the worst of the worst offenders: left-lane drivers.

## **WACKY CRIME**

**CHURCH**: Several guns were stolen from vehicles...parked in the parking lot of a church.

**OOPS**: Two burglars thought they were breaking into a dispensary...but they actually busted a hole in the wall of the Public Service Company (PSO) offices.

**LAWTON**: A woman ran over man in a parking lot...then went and broke into his house.

**LAWTON II**: Lawton once had, and may still have, a serial killer on the loose.

**TULSA**: A thief in Tulsa took the cash register...and 30 bags of chips.

**STILLWATER**: Police in Stillwater saved a man's life...then arrested him for trafficking.

**NORMAN**: A Norman woman tried to kill her boyfriend...with a rolling pin.

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## **OKLAHOMA CRIMINAL DEFENSE WEEKLY**

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