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Category



**OKLAHOMA CRIMINAL DEFENSE WEEKLY**

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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

[Haliburton v. State](#), 2024 OK CR 7 (March 21, 2024): **Preliminary Hearing; Motion to Quash:** Haliburton was convicted by jury in Comanche County (the Hon. Gerald F. Neuwirth, presiding) of Lewd Acts u/16. He raised a single issue of IAC concerning whether the State had failed to establish the elements of the offense at PH and counsel’s failure to file a motion to quash (the State failed to put on evidence that the complaining witness was under 16). The Court affirmed on the theory that the State could still re-file if the motion to quash was granted, thus no prejudice under *Strickland*. NOTE: The Court officially overruled prior precedent that the State must present new evidence prior to re-filing.

## TENTH CIRCUIT

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[United States v. Jamaryus Moore](#), No. 22-3173 (10<sup>th</sup> Cir., March 19, 2024) (Published) (Tymkovich, Murphy & Carson): **Supervised Release; Dicta; Law of the Case**: Odd case where, at a prior sentencing, the district court gave Moore a choice of imprisonment or probation but with a penalty of twice as much prison time if he violated probation. The Court reversed this prior sentence and remanded for resentencing. In this appeal, the panel affirmed the sentence of 80 months, with issues on the mandate rule and what constitutes dicta discussed.

[United States v. Bruce Hay](#), No. 22-3276 (10<sup>th</sup> Cir., March 19, 2024) (Published) (Tymkovich, Murphy & Carson): **Search and Seizure (Pole Cam)**: In this case involving a conviction for fraudulently obtaining VA benefits, the panel phrased the legal issue: Does the Fourth Amendment permit the government to surveil a home for months on end without a warrant? This case involves a “pole cam” placed to view Hay’s home. The panel held that it was reasonable.

## 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. Laura Anne Gallagher](#), No. 22-4128 (4<sup>th</sup> Cir., January 3, 2024): **Sufficiency; Hearsay**: A foreign service officer and a non-citizen were convicted of conspiring to fraudulently obtain U.S. citizenship for the non-citizen. Convictions vacated because the jury was instructed on four lies they allegedly told, but one of these was later found inadequate as a matter of law; thus, because this count was based on an inadequate theory of guilt it is vacated. Also, the

district court erred in disallowing Facebook messages of affection because they were not hearsay (not introduced to prove the truth of the matter asserted).

[United States v. Kenneth Wayne Hart](#), No. 20-4534 (4<sup>th</sup> Cir., January 25, 2024):

**Speedy Trial:** Hart was convicted of multiple offenses, but a conviction for witness-tampering is reversed because of a speedy trial violation.

## **VICTORIES**

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*None noted.*

## **HEARSAY**

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**SMUGGLER**: A Tulsa woman tried to smuggle contraband into OSR.

**TASER GLOVES**: The Oklahoma County Jail has introduced “Taser Gloves” to control inmates.

**DEATH**: An inmate death at Great Plains CC from bacterial meningitis has raised **health concerns**.

**OPEN RECORDS**: The Frontier is suing the Oklahoma County Jail Trust for violating the Open Records Act regarding inmate care.

**NEW ATTORNEY**: The Loftis Law Firm in Ponca City has welcomed a new lawyer who will practice criminal law.

**SECURITY**: The Creek County Bar Association is donating security equipment to the county courthouse.

**RETRO**: Three years after *McGirt*, the Muscogee Nation examined how its officers police the reservation. Also, the **Chickasaw Nation** reflected on the *Bosse* decision.

**OPPOSITION**: Del City has a “full team” working against Oklahoma County selecting for the site of the new county jail.

**ARRESTED**: A correctional officer at Mabel Bassett has been arrested for raping an inmate.

**PLATES**: A state representative says that the use of license plate scanners without a warrant in Oklahoma violates the law.

## **WACKY CRIME**

**COWS**: Cows that fled the scene of a 2022 vehicular crash are still wandering around west Tulsa.

**GEESE**: Someone has dumped bags of dead gees along a highway near Antlers.

**GEESE II**: The Moore Police Department has introduced its feathered squad, named after some favorite TV characters).

**SNAKE**: An Oklahoma County man has robbed another man while armed...with a snake.

**UNFORTUNATE NAME**: A city councilman from the town of Davenport (in Lincoln County) has been arrested for DUI...Mr. Mitchell Booze.

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