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**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**

[Rhappy Alamag Talaoc v. State](#), No. F-2021-926 (Okl.Cr., April 4, 2022) (unpublished): **Jurisdiction (Appellate; Death of Appellant)**: This is an Order directing appellate counsel to provide notice to the estate of a client who died during direct appeal. NOTE: The Order incorporates the abatement procedure outlined in [Majors v. State](#), 2020 OK CR 5. This happens sometimes, and be aware that in such a case you as appellate counsel will have to undertake some obligations.

[Wesley Cord Carter v. State](#), No. F-2020-916 (Okl.Cr., March 31, 2022) (unpublished): **Evidence (Hearsay; Child Hearsay)**: Carter was convicted at a bench trial in Hughes County before the Hon. Trisha Smith, of the crime of Lewd

Molestation. The trial court allowed hearsay statements by the complaining witness who was under 12 without holding a reliability hearing first. This was error, but the Court deemed it harmless on plain error review. NOTE: The reliability hearings are useful and we should demand them in the appropriate case. I tend to see such hearings ignored in a lot of appeals and it is clear that the OCCA will not find any reversible error, even in egregious cases. So, utilize this tool pre-trial for your client because a good record could make the difference in the event that an appeal is necessary.

[Jacky Cardale Mayfield v. State](#), No. F-2020-639 (Okl.Cr., March 31, 2022) (unpublished): **Search and Seizure (Cell Phone; Search Warrants (Particularity); Confidential Informants; Shackling**: This is a first degree murder case out of Tulsa County where Mayfield was found guilty at a bench trial (the Hon. Clifford Smith, presiding). The interesting issue is the search warrant for a cell phone which seems to have specific features but also contained a catch-all provision for basically the entire contents of the phone. The trial court denied the motion to suppress, and here the OCCA affirmed that, but applied the doctrine of severability which allows the appellate court to sever the specific parts of the warrant from the general and require suppression only when the items are confiscated under the overbroad provision. The Court also rejected a motion to divulge the identity of a confidential informant and the opinion contains a good discussion of that topic. Finally, Mayfield made a shackling claim but unfortunately this was a bench trial and no jury was present, thus no error.

[United States v. Robert Antonio Woods](#), No. 21-CR-0317-CVE (N.D. Okla., April 6, 2022): **Search and Seizure (Traffic Stops)**: This is an order granting a motion to suppress in a traffic stop case where Judge Eagan rejected the testimony of the arresting officer as not credible on the question of whether the traffic stop for failing to maintain its lane for 100 feet. It was obvious that the officer made a pretext stop because the car was an out of state rental with a police scanner in the windshield. The subjective intent of the officer is not a grounds for a Fourth Amendment violation, but it is if the Court does not believe the testimony of the officer related to the traffic stop. NOTE: John Russell at GABLE GOTWALS in Tulsa sent this to me. I told him it was like spotting a judicial unicorn. I can recall only one or two cases like this where the judge granted a motion to suppress based on the credibility of the testifying officer. The opinion is also very good as a primer on general search and seizure law related to traffic stops.

[United States v. Charles Chavez](#), No. 20-2083 (10<sup>th</sup> Cir., March 29, 2022)  
(Bacharach, Ebel & Eid): **Bank Robbery**: Interesting legal issue: when a person makes another withdraw money from an ATM at gunpoint, is he robbing the bank or does he intend to rob the person once the money is withdrawn? There is a circuit split on this. Here, the district court dismissed the charge reasoning that Chaves intended to rob the person. However, the panel sided with the Seventh Circuit and reversed, holding that this constituted bank robbery.

## 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. Felipe Castelo-Palma](#), No. 21-50524 (5<sup>th</sup> Cir., April 4, 2022):  
**Federal Sentencing Guidelines (Risk of Death)**: The defendant was convicted of smuggling illegals but the sentence was enhanced for substantial risk of death or injury because the vehicle, an Explorer, contained nine people and was rated for only seven. The Court vacated the sentence, finding that this enhancement applies only when the vehicle was carrying substantially more persons than the rated capacity.

[United States v. Mark Douglas Gould](#), No. 20-5284 (6<sup>th</sup> Cir., April 7, 2022):  
**Federal Sentencing Guidelines (FaceTime)**: In this case involving a charge of Enticing a Minor, the panel tackled two legal questions: whether FaceTime calls constitute visual depiction under the Guidelines, and whether responding to a notice or advertisement “involved” “offering or seeking by notice or advertisement.” The district court concluded that the answer was yes to both, and the panel agreed.

[United States v. Jason R. Williams](#), No. 22-30007 (5<sup>th</sup> Cir., March 29, 2022):

**Evidence (Bad Acts):** In this case involving prosecution of a lawyer and his partner for tax crimes, including failure to report cash over \$10k, the panel granted the Government's appeal of the district court denial of admission of some other crimes evidence. Good discussion of this area of the law in the context of tax prosecution.

## **ABOUT TOWN**

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**SHRED DAY:** OCDLA is sponsoring a shred day on Saturday, June 25, 2022, between 11:00 a.m.—2:00 p.m. at Al Hoch's office near downtown OKC at 803 Robert S. Kerr. You can take your files to be shredded up to five boxes for free and only \$3 each for five additional boxes (10 max). I have been going through old files and have a lot to shred, so this is a nice benefit of membership.

**99 PROBLEMS:** The 90s were kind of a blur for me, but my girlfriend likes music from that era and she played 99 Problems by Jay-Z that has lyrics describing pretty much every traffic stop that we see every day and the delivery in the song of the "cop-voice" asking if he could look around the car a lil' bit is hilarious. Yep, we'll see how smart you are when the K-9 come:

The year's '94 and my trunk is raw  
In my rearview mirror is the motherfuckin' law  
I got two choices y'all, pull over the car or  
Bounce on the devil, put the pedal to the floor  
Now I ain't trying to see no highway chase with Jake  
Plus I got a few dollars I can fight the case  
So I, pull over to the side of the road  
I heard, "Son, do you know why I'm stopping you for?"  
"Cause I'm young and I'm black and my hat's real low"  
Do I look like a mind reader, sir? I don't know  
Am I under arrest or should I guess some more?  
"Well you was doing fifty-five in a fifty-four" (uh huh)  
"License and registration and step out of the car"  
"Are you carrying a weapon on you, I know a lot of you are"  
I ain't stepping out of shit, all my papers legit  
"Well do you mind if I look around the car a little bit?"  
Well my glove compartment is locked, so is the trunk in the back  
And I know my rights so you goin' need a warrant for that  
"Aren't you sharp as a tack? You some type of lawyer or something?"  
"Somebody important or something?"  
Well, I ain't passed the bar, but I know a little bit  
Enough that you won't illegally search my shit  
"Well we'll see how smart you are when the K-9 come"

**APPLE TV:** I do not really like the idea of subscribing to yet another streaming service, but I had some recommendations of shows on AppleTV and two are very good in my opinion.

The first is [SERVANT](#). It is three seasons of slow-burn creepy horror that has good acting, interesting characters, and a still inscrutable plot that I hope will be wrapped up in season four. This series is driven by M. Night Shymalan, whose work I really like for the most part, and he does an excellent job with this one.

The second one that I like is [SEVERANCE](#). It stars Adam Scott as a nondescript office worker in an eccentric office building doing work that is thus far ambiguous. The plot device is that the company offers implants in the brain that can sever memory function between work and private life. The implant is voluntary, and the worker is in a situation where he walks into the elevator and instantly forgets any aspect of his personal life and remembers only aspects of work. It is an interesting concept which basically divides the workers in two discrete persons but in the same body. The workers do not know if they have kids, or a wife, or what they do outside of work.

The new female worker hates the job and is constantly in a state of rebellion. She demands that a request to resign be sent to her outside self (“outies” and “innies” in the show). She sees a video of herself explaining that her request to quit is denied and that she will continue working. It is surreal and leads to an interesting finale, with more seasons to come.

## **VICTORIES**

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**SARAH KENNEDY**, Noble, and OIDS Investigator **SHAUN HITTLE**, won a shaken-baby alleged murder case in Noble County recently. This appears to be a hard-fought win with some sharp lawyering, good investigation and some good practice tips, including exploitation of a document used by all medical examiners titled *A Guide for Manner of Death Classification* published by the National Association of Medical Examiners which breaks down causes of death in terms of probabilities. The defense bar might want to check out this document. Experts by the State were Dr. Ryan Brown and medical examiner Dr. Lisa Barton, and Dr. Andrew Sibley testified for the defense, as well as biomechanical engineer Dr. Ken Monson. The jury rendered a not guilty verdict, thanks in large part to cross-examination of Dr. Barton who testified that she could only be just more than

50% certain of her conclusion that the death was a homicide according to the *Guide*. Terrific work, Sarah and Shaun!

**JAYE MENDROS**, OKC, scored a *McGirt* victory in a case out of Garvin County where the State tried to vacate a final judgment in a post-conviction case where relief has been granted under *McGirt* and the State had not appealed. Tulsa County has issued orders vacating grants of relief in these cases, but Special District Judge Trisha Misak disagreed. Good work, Jaye!

**JOHN RUSSELL**, GABLE GOTWALS, Tulsa, won the suppression motion in federal court, featured above, by convincing Judge Eagan that the officer was a liar. That is an impressive feat. Great work, John!

**OIDS UNPUBLISHED CASES**: This is a shout-out to OIDS for maintaining the database of unpublished decisions from the OCCA that are helpful to the defense. It is my understanding that Allen Smith started it back in 1999, but he left OIDS to work at the OCCA (he is currently on the staff of Justice Kuehn at the Supreme Court). Cindy Danner and staff manage and update it now, and it is an extremely helpful resource that many young lawyers may not know about, and even some experienced lawyers may overlook. The OCCA deals with the bulk of its case load in unpublished summary opinions which often have fact patterns relevant to legal issues that published opinions do not. It is acceptable to cite to unpublished opinions under the Court's Rules (Rule 3.5(C)(3)) provided that you state that no published opinion is as relevant to the issue and you attach a copy for the Court and opposing counsel. I noticed that the State has started to attach unpublished opinions to its briefs as well in the OCCA, so do not forget that this resource is there for free on-line. Thanks OIDS!

## **HEARSAY**

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**ADDICTION**: A former state senator explains his gambling addiction.

**NEW**: Jack Blair is the new City Attorney for Tulsa.

**DOC**: DOC has suspended some inmate job programs, apparently in response to a local Fox News report.

**CAPITAL TRIALS**: Retired Tulsa County judge Bill Kellough explained capital cases.

**JAIL**: County voters will decide on June 28 whether a new county jail will be built. Also, another **inmate has died** in the Oklahoma County Jail.

**JAIL II**: The Choctaw County Jail offers inmates rehabilitation.

**HARD TIMES**: The Harper County Courthouse is suffering because of the county's low revenue, and the courthouse is down to just two employees.

**CHARGED**: A former Woodward police officer is charged with Breaking and Entering.

**BUST**: A police officer in Roland has made a large fentanyl bust.

**ROBOT**: The Broken Arrow Police Department has introduced its first robot police officer "BART."

**INQUIRY**: The OSBI is looking into the State's sweetheart deal with Swadley's BBQ to renovate and operate restaurants in some state parks.

**PROGRAM**: Meridian Technology Center is adding a criminal justice program.

**McGIRT**: Gov. Stitt has criticized the *McGirt* case on the Tucker Carlson show.

**CONTEMPT**: A now-retired court reporter in Muskogee has been held in contempt.

**BOARD**: Gov. Stitt has appointed career prosecutor Cathy Stocker to the Pardon and Parole Board.

**NEW LAW**: Gov. Stitt has signed into law an odd bill that creates a new crime, but possibly some problems.

**BILL**: District Attorney Carol Iski has filed a bill of particulars against Keegan Harroz and Barry Titus.

**RUNNING**: Vicki Behenna has joined the field of candidates for Oklahoma County District Attorney.

**RUNNING II**: Comanche County Special Judge Grand Sheperd is running for the district judge position vacated by Judge Neuwirth.

**JAILS**: Of the 122 jails inspected in 2020, 51 were not in compliance with health department rules.

## WACKY CRIME

**TULSA**: A Tulsa man was caught red-handed...stealing hot sauce from a restaurant. (Get it? Red-handed...Mark Hoover is to blame for this one)

**TULSA II**: A Tulsa man tried to steal a catalytic converter and resisted arrest...then police beat him with that catalytic converter.

**SCAM**: The Oklahoma City Housing Authority has been scammed for \$96,000.00 and is asking for the money to be returned.

**NOTE TO SELF**: Never keep a journal titled "Things I Regret" in which you detail a robbery where you killed someone.

**MARRIED**: Inmate Richard Glossip has gotten married behind bars...for the second time.

**OKC**: An OKC man vandalized a police patrol car with an axe...while a police officer was still inside.

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## **OKLAHOMA CRIMINAL DEFENSE WEEKLY**

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