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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

[Nicholas Sean Charles v. State](#), No. M-2022-174 (Okl.Cr., April 27, 2023) (unpublished): **Waiver (Right to Testify); Confrontation/Cross-Examination:** Charles was convicted by jury in Canadian County (the Hon. Charles W. Gass, Special Judge, presiding) of Domestic Abuse—Assault and Battery. The Court affirmed but discussion is relevant to a claim that the district court engaged in a colloquy regarding his right to testify at trial in front of the sitting jury. The Court found error, but not enough to reverse on plain error review. Also, the Court found error in the admission of hearsay statements made to police without the declarant testifying or a showing of unavailability. NOTE: Presiding Judge Rowland concurred in result, stating that the colloquy regarding the accused testifying occurring in front of the jury was a close call.

[Ray Arnold Allen v. State](#), No. F-2022-1024 (Okla.Cr., April 27, 2023)

(unpublished): **Self-Defense**: This is an opinion on an interlocutory order of the denial of a motion to dismiss based on immunity from prosecution under the Stand Your Ground law out of Lincoln County (the Hon. Cynthia Ferrell Ashwood). The Court affirmed the denial of the motion, but the opinion contains a good discussion of the law in this area and the right to appeal an adverse ruling.

[Andrew Dale Brassfield v. State](#), No. 119,998 (Okla. Civ. App., Div. III, April 28, 2023) (Not for Official Publication): **Expungement**: In this expungement appeal out of Rogers County (the Hon. Lara M. Russell), eligibility is limited in some cases where the Petitioner has “pending” criminal charges. This opinion outlines the legal rules of construction concerning when a criminal case is “pending” for purposes of expungements.

TENTH CIRCUIT

[United States v. Eusebio Ike Devargas](#), No. 22-2064 (10th Cir., April 10, 2023)

(Published) (Moritz, Briscoe & Rossman): **Possession (Firearm by Felon); Interrogations (Fifth Amendment); Search and Seizure (Warrants; Good Faith)**: Felon in possession convictions are affirmed over claims relating to: 1) whether completion of suspended sentence reinstates civil rights under New Mexico law (it does not); 2) denial of motion to suppress post-arrest statements (he was in custody, but his assertion of the right to counsel was not unequivocal); and 3) denial of motion to suppress evidence seized from his residence (good faith applies even if warrant deficient).

[United States v. Donald Joe Booker, Jr.](#), No. 22-7000 (10th Cir., March 28, 2023)

(Published) (Moritz, Seymour & Ebel) (E.D. Okla., Hon. John F. Heil, III): **Supervised Release**: The panel held that supervised release may not be revoked based on a need for retribution, that the district court did so, but that no relief was required under plain error review.

[United States v. Dominic Eugene Hunt](#), No. 21-6046 (10th Cir., March 24, 2023)

(Published) (Hartz, Seymour & Moritz) (W.D. Okla., Hon. David L. Russell): **Evidence (Firearms/Tool marks)**: Admission of firearm/tool mark evidence was not error under *Daubert* in this felon-in-possession of ammunition case. NOTE: Judge Moritz concurred, relying on the district court analysis rather than independent 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).

No new cases.

OTHER CASES OF NOTE

[United States v. Christian Ferguson](#), No. 21-3800 (6th Cir., April 20, 2023):

Sufficiency: The panel found insufficient evidence to convict on a charge of Attempted Kidnapping.

[United States v. Eddie Lamont Lipscomb](#), No. 18-11419 (5th Cir., April 28, 2023):

Sentence Modification; Supervised Release: This is an odd case where the defendant was sentenced to 20 years, but the district court reduced it to 10 with supervised release which was revoked twice, but in the meantime the Government appealed the 10 year reduction and won—resulting in the appellate court reinstating the original 20 years sentence. The issue is whether the two revocations are valid. The panel held that they are not because they were part of the original sentence of 10 years which was vacated.

[Scott A. Hardin v. Bureau of Alcohol, Tobacco, Firearms and Explosives](#), No. 20-6380 (6th Cir., April 25, 2023): **CFR:** Hardin challenged ATF regulatory rules regarding “bump stocks” on guns and whether they are machine gun “parts” under federal law. The panel applied the rule of lenity and invalidated the administrative rule in favor of Hardin.

[United States v. Rodney Mondell Coby](#), No. 22-4237 (4th Cir., April 24, 2023):

Federal Sentencing Guidelines (Retroactivity): Sentence is vacated on plain error where the district court enhanced the advisory Guidelines range based on a provision added after he had committed the crimes.

VICTORIES

DAN GOOD, OKC, won a motion to quash a search warrant and suppress evidence in Pawnee County. The case involves an allegation of sexual abuse where police secured a search warrant for journals, but when they got to the house they also seized phones and electronic devices which allegedly contained child porn which generated more charges. Judge Keely ruled that the warrant authorized seizure of the devices but not to extract data from them. Great work, Dan!

DAVID SLANE & JOE GRIFFIN, OKC, secured a not guilty verdict for a client accused of Murder in the First Degree in Oklahoma County. State was represented by Brian King and Sam Chavers, and the case was presided over by Judge Stallings. The defense was self-defense. Nice job, David and Joe!

ROYCE HOBBS, Stillwater, secured an acquittal at a DUI trial in Payne County involving a single car accident where the client apparently urinated on himself on video. The defense was that the client had simply fallen asleep, BAC was 0.054 and Royce attacked the DRE expert and DRE in general as junk science. Great job, Royce!

HEARSAY

TRAVEL: The Tulsa Police Department announced a “Travel with Care” campaign to reduce auto/pedestrian collisions.

STEPPING DOWN: Corbin Brewster is stepping down as Tulsa County Public Defender.

STEPPING DOWN II: The Chief of Police in Bartlesville is stepping down to become Assistant City Manager.

OUTRAGE: Some people are outraged over the early release of the man convicted as an accessory to the Welch girls murder case.

CHARGED: The Fire Chief in a small town near Lawton has been charged with blackmailing a woman.

DECREASE: Article says that gun sales in Oklahoma are decreasing.

MCGIRT: The fallout from Matloff non-retroactivity continues from the OCCA, with another splintered opinion granting relief to the State after relief had been granted to the defendant. Judges Rowland, P.J., and Lumpkin, J., continue to dissent from this madness.

OPEN HOUSE: The Watonga Police Department had an open house to showcase the newly remodeled offices—complete with coffee and doughnuts.

RIP: A Lieutenant at Pottawatomie County passed away, cause of death unstated but apparently not in the line of duty.

INVESTIGATION: A now-retired Lieutenant from the Durant Police Department is under investigation for embezzlement.

DENIED: The Pardon and Parole Board has denied clemency for Richard Glossip. Both **Attorney General Drummond and District Attorney Vicki Behenna** commented.

CENTER: The Creek County Sheriff's Office has purchased a state-of-the-art mobile command center.

DOC: DOC will lease the Great Plains Correctional Facility from the GEO group.

WACKY CRIME

JAY: A bomb threat was called in...at a grocery store in Jay, Oklahoma.

JAY II: A Jay, Oklahoma, man committed sexual abuse by pretending to be a psychic (Mark Hoover wonders what he sees in his future).

TEXAS: A man on a date in Texas gave his keys to a parking attendant—who turned out to be a thief, so the man went out and shot and killed the thief and then apparently went back to his date.

TULSA: A thief in Tulsa has a penchant for...storm drain grates.

ARMOR: Americans are apparently protecting themselves from crime by armoring their personal vehicles.

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