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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**

[Rodney Antonio Arnold v. State](#), No. F-2020-699 (Okl.Cr., April 21, 2022) (unpublished): **Evidence (Victim Impact)**: Arnold was convicted by jury in Oklahoma County (the now-fired Timothy Henderson, presiding) of multiple sex offenses against an elderly woman. The State elicited testimony of the woman’s reaction and consequences of being attacked. On appeal, Arnold argued that this was irrelevant victim-impact evidence. The Court rejected this argument on plain error review since there was no objection, noting that this evidence might be relevant concerning the truthfulness of the witness. NOTE: Be aware of this case because the Court seems to be leaning toward allowing a lot of this type of evidence under the umbrella of relevance, so be sure to argue at trial that it is not relevant and be sure to object.

[Joseph Scott Bennett v. State](#), No. F-2020-818 (Okla. Cr., April 28, 2022) (unpublished): **Indians; Jurisdiction**: This is a *McGirt* winner on direct appeal out of Washington County involving LWOP in a child sexual abuse case where the crimes occurred within the Cherokee Reservation.

## TENTH CIRCUIT

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[United States v. Jamaryus Moore](#), No. 20-3171 (10<sup>th</sup> Cir., April 12, 2022) (Published) (Bacharach, Seymour & Phillips): **Federal Sentencing Guidelines (Reasonableness)**: After a lengthy sentencing hearing, the district court gave a choice to Moore: immediate 51 months, or 48 months of probation subject to 84 months for a violation. Sure enough, Moore violated and was sentenced to 84 months as promised. The Court held that this was procedurally unreasonable. NOTE: Judge Bacharach dissented.

[United States v. Antoine Dwayne Frazier](#), No. 20-4131 (10<sup>th</sup> Cir., April 13, 2022) (Published) (Tymkovich, C.J., Seymour & Ebel): **Search and Seizure (Traffic Stops)**: Frazier appealed the denial of his motion to suppress evidence from a traffic stop on the basis that the police illegally extended the stop under **Rodriguez**, and amazingly enough the panel agreed. NOTE: This is a solid winner on the issue of police extending the stop for fishing expeditions, so save this one in your research files.

## 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)*.

[Brown v. Davenport](#), No. 20-826 (U.S., April 21, 2022): **Habeas Corpus (Standard of Review; General)**: The issue in this habeas case is whether the reviewing court must assess harmlessness under *Brecht* and the AEDPA standards, or just *Brecht*. The Court held that the Petitioner must satisfy both standards.

A Bar memorial for Justice John Paul Stevens will be held at the Court and livestreamed on May 2, 2022, at 1:45 p.m. (E.T.)

## **OTHER CASES OF NOTE**

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[In Re: United States](#), No. 21-1318 (6<sup>th</sup> Cir., April 26, 2022): **Guilty Pleas**: This is a mandamus action where the United States sought to force a judge to accept a plea deal. The judge had a long-standing practice of rejecting pleas with certain plea-bargaining terms (appeal waivers). The United States argued that the judge abused his discretion under Rule 11, and in this opinion the panel agreed.

## **VICTORIES**

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[STAN MONROE](#), Tulsa, secured a hung jury for a client accused of child sex abuse. Not exactly a winner, but anytime you walk out of court on a charge like that, it feels like a win and you know that you bloodied the State's nose a little bit. Good job, Stan!

**DAVID MCKENZIE and SHELLEY LEVISAY**, OKC, secured a not guilty verdict in 20 minutes in Cleveland County (Judge Brockman, presiding), in a case where the client was charged with misdemeanor assault and battery. Nice work, David and Shelley!

[MARK HOOVER](#), OIDS, had a nice appellate win on a *McGirt* issue in the *Bennett* case featured above. Give a shout out to Mark for a job well done!

[SCOTT ADAMS](#), OKC, won a not guilty verdict in Logan County for a client charged with a fatality hit-and-run. This is another great win for Scott.

## **HEARSAY**

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**[RUNNING](#)**: Former DOC Executive Director Joe Albaugh is running for County Commissioner in Kay County.

**PRISONERS**: French journalists examine the incarceration of women in our state.

**STRICKEN**: The State Election Board has stricken three candidates from ballots across Oklahoma, including one running for District Judge in Oklahoma County. Also, the **Delaware County Election Board** has removed a name from the county Sheriff race.

**DA**: Sequoyah County District Attorney Jack Thorp has retained his office by not drawing an opponent.

**KILLER**: Lawton radio station Z94 took a look at the killer at the center of the Osage County murders of the last century.

**COURT REPORTER**: The Southwest Ledger examined the story of the Oklahoma Supreme Court revoking the CSR license of Kim Idleman.

**DETENTION**: Big-If-True examined detention prior to initial appearance, including Oklahoma-related coverage of that issue.

**K-9**: The Warner Police Department has a new K-9 officer.

**SCANDAL**: There is apparently a sex scandal in Ottawa County involving Assistant District Attorney Daniel Giraldi allegedly trading legal help for sexual favors.

**REVOKED**: Gov. Stitt has revoked the parole of Tulsa's Crossbow Killer.

**REFLECTION**: An Innocence Project exoneree in Ada reflected upon his circumstances.

**RESIGNATION**: The Alva City Attorney has resigned.

**INVESTIGATION**: A Weatherford Police Department detective has turned himself in for stealing drugs from the evidence room.

**JAIL ALMOST-DEATH**: An employee at the Oklahoma County Jail says that an inmate nearly died after water to his cell was shut off for five days.

**VIDEO**: Gov. Stitt has signed a bill prohibiting public disclosure of body-cam videos of law enforcement officers getting shot.

**ELECTIONS**: Muskogee attorney Chad Locke has filed for the judicial seat vacated by Norman Thyguson. Also, in **Washington and Nowata Counties**, Will

Drake will be the District Attorney because no one else filed, and also unopposed are District Judge Linda Thomas and Associate District Judge Russell Vaclaw.

## **WACKY CRIME**

**TULSA**: A Tulsa woman beat a man's vehicle with a 2x4...then stripped naked for the police.

**TULSA II**: Someone stole a statue from the Tulsa Historical Society.

**MUSKOGEE**: A family love triangle has gone awry in Muskogee.

**PONCA CITY**: A Ponca City man has been charged with stealing...hundreds of steel fence posts across three counties.

**CATOOSA**: A man in Catoosa injured 11 children on a school field trip.

**ENID**: A "Karen" in Enid went crazy on an employee at Little Caesar's...because they ran out of Crazy Bread.

**ROGERS COUNTY**: Two women smuggled contraband into the jail using...denture paste.

**BARTLESVILLE**: A 72-year-old man whipped out a knife at T-Mobile...because his phone bill was \$60 and his service had been shut off.

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