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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**

[Kenji Duville Haynes v. State](#), No. F-2020-850 (Okl.Cr., May 12, 2022) (unpublished): **Search and Seizure (Knock and Talk)**: Haynes was convicted by jury in Mayes County (the Hon. Rebecca J. Gore, presiding) of Manufactures CDS AFCFx2. The Court affirmed, but the opinion contains a good discussion of suppression issues involving the sufficiency of a search warrant affidavit, and also the Court appeared to approve of “knock-and-talks” where police knock the door and engage the resident in conversation, although the resident is under no obligation to speak to police or even open the door.

[State v. Michal Whyne Smith](#), No. S-2021-1169 (Okl.Cr., May 5, 2022) (unpublished): **State Appeals; Quash**: In this State appeal, Smith was charged

with Lewd Acts in Garfield County. Judge Paul K. Woodward granted a motion to quash on the basis that the State had failed to offer any evidence of the age of the complaining witness, which is an element of the crime. In this opinion, the Court affirmed. NOTE: Judge Hudson dissented, finding that the system broke down, waiver of the motion to quash because Smith had entered a plea at formal arraignment, and that the trial court abused its discretion in denying the State's effort to remand for further PH. He was also concerned that the State would be precluded from re-filing based upon the Court's precedent that new information is required. Judge Musseman, in what I believe to be his first written opinion as a new Judge, also dissented, expressing a willingness to "revisit" authority that limits the State from re-filing and that the matter is likely moot because the State can simply re-file the case, as well as an abuse of discretion.

## TENTH CIRCUIT

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[United States v. Ira Lee Wilkins](#), No. 19-5114 (10<sup>th</sup> Cir., April 15, 2022) (Published) (Bacharach, Briscoe & Murphy) (N.D. Okla., Hon. John E. Dowdell): **Federal Sentencing Guidelines (Crime of Violence)**: No plain error where the district court concluded that a Texas aggravated robbery statute qualified as a crime of violence. There was some question about it, but it was not "plain" enough.

[United States v. Murry, et al](#), No. 20-1214 (10<sup>th</sup> Cir., April 19, 2022) (Published) (Hartz, Kelly & Carson): **Voir Dire**: This case involved multiple defendants convicted of fake marriage immigration fraud. The panel affirmed over several claims, but the primary issue was denial by the trial court to allow any questioning of the jury panel regarding views on race and illegal immigration—which would appear to be relevant since the case involved alleged illegal immigration by inter-racial defendants, but the panel held otherwise.

## 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. Kenneth Hamann](#), No. 21-50122 (5<sup>th</sup> Cir., May 12, 2022):

**Confrontation and Cross-Examination:** This is a nifty opinion out of the normally staid Fifth Circuit reversing a drug conviction on Confrontation grounds where the district court allowed testimonial hearsay from two non-testifying witnesses concerning prior drug deals. NOTE: The language used by the panel is aggressive toward prosecutors engaging in the usual BS of arguing that such evidence is necessary for “background” or to show why an investigation was launched, which is a common tactic the Government uses (state and federal) to get around hearsay objections. This is a great case on this topic.

[United States v. Micky Rife](#), No. 20-5688 (6<sup>th</sup> Cir., May 5, 2022): **Jurisdiction:** Rife was a Kentucky-born United States citizen who traveled to Cambodia where he sexually assaulted two girls. He entered a plea after he returned to Kentucky. In this case, he argued that Congress lacked power to regulate the conduct for which he was convicted. The panel agreed that Congress lacked such power under the Foreign Commerce Clause, but held that the law was acceptable under the power of Congress to enact legislation implementing treaties.

## **VICTORIES**

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[THOMAS GRIESE DIECK](#), OKC, pulled off a stunner in Kay County in a murder case that had facts as bad as they come: a 911 call by the client who told police that he had just killed his wife, choked the life out of her, the bitch deserved to die and he would do it again. Ugly marital history on both sides, and the State presented prior bad acts and a domestic violence expert. Client charged with Murder I and the State asked for LWOP. The jury convicted of felony murder (domestic violence) and gave him 25 years. A most unexpected result on those facts. Nice job, Thomas!

[TOMMY ADLER](#), OKC, heard the two-word verdict in a child sex abuse case in Carter County. Tragic case involving three accusers. DA Craig Ladd and First

Assistant Melissa Handke represented the state, and the trial judge was Hon. Thomas Baldwin. Punishment range was 25 to life, which Tommy thought might have contributed to the jury being concerned about a wrongful conviction. The trial court disallowed evidence of a prior false allegation by one of the complaining witnesses, and the client took the stand which the jury liked. After three hours of deliberations, the jury asked to see the videos of all three forensic interviews, which was handled with the usual response, and five minutes later the client heard the not guilty verdict. Great job, Tommy!

## HEARSAY

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**COURT CLERKS**: The Tahlequah Daily Press reported that Court Clerks go back as far as 1789.

**SHOTS**: A man shot at the Oklahoma City PD helicopter.

**ARRESTED**: The Chief of Police in the town of Calvin (Hughes County) has been arrested in a meth investigation.

**ARRESTED II**: A security guard at Crest Foods in south OKC has been charged with beating up and tasing a customer.

**ARRESTED III**: Yet another employee at the Oklahoma County Jail has been arrested for smuggling in contraband.

**CHARGED**: Two now-former Lawton police officers have been charged with Manslaughter.

**CHARGED II**: The former Delaware County Sheriff has been charged with embezzlement in tribal court.

**LEAVE**: A Norman police officer is on leave after his arrest for DUI.

**TOLLS**: The Turnpike Authority says that thefts from tollbooths cost taxpayers thousands (I did not know this was a thing).

**VIOLENCE**: Family members of inmates incarcerated at Lawton Correctional Facility are worried about the outbreak of violence there. Also, two **correctional officers** have been stabbed by an inmate at LCF.

**OMMA**: The Oklahoma Medical Marijuana Authority will become a stand-alone agency on November 1.

**McGIRT**: Patrick Murphy, the death row prisoner whose case triggered the *McGirt* decision, has been sentenced to life imprisonment in the federal system. Also, the smallest of the tribes affected by *McGirt*, the **Quapaw Nation**, is taking full advantage of the opportunities presented.

**DISTRACTION**: Tulsa DUI attorney Sabah Khalaf says that the finding of cannabis in the bloodstream of the girl driving the car in Tishomingo where six girls were killed is a distraction.

**GUNS**: A convicted felon in Tulsa has been found with 126 guns.

**DNA**: Recent DNA tests show that Gene Leroy Hart was, in fact, the infamous Girl Scout Killer.

**CAUSATION**: Police say that a man died from a shooting...that occurred in 2007.

**RETIRING**: The Chief of Police in Harrah is retiring.

**ACQUITTED**: Celebrity Chef Mario Batali has been acquitted of sexual assault in Boston at a bench trial.

**TIES**: There is apparently an Oklahoma connection to the Black Widow of Dallas.

**VETO**: Gov. Stitt has vetoed a bill that have helped coordination between tribal judicial systems and the state judicial system.

**RESIGNED**: Federal Public Defender Dale Baich has resigned.

**NEW CHIEF**: Northwestern Oklahoma State University has a new Police Chief.

**CANDIDATE**: Matthew Sheets has announced his candidacy for District Attorney of Pittsburg & Haskell Counties. Also, 22 of 27 (82%) races for District Attorney have already been decided because the **incumbent did not draw an opponent**.

**INTERCEPTION**: A Blaine County Deputy intercepted a load of contraband headed for the prison in Helena.

**WACKY CRIME**

**ESCAPE:** An inmate at the Washington County Jail made some home-made hooch...then tried to escape.

**SOUTH CAROLINA:** A man in South Carolina strangled his girlfriend to death, then tried to conceal the crime by burying her body in his backyard...only to have a fatal heart attack while digging.

**HE CAN'T DRIVE 55:** A driver was given a \$500 speeding ticket for driving 165mph on the turnpike.

**MOORE:** Thieves in Moore have stolen...drones.

**OKC:** An OKC food delivery driver delivered food to an apartment complex...and then stole an Amazon package.

**TULSA:** As Mark Hoover put it: A Tulsa tenant short on cash got a brass-knuckle sandwich.

**JUSTICE:** An attempt to frame a man for possession of child porn during a child-custody case has backfired...and the perpetrators will be charged with the crime for which they attempted to blame the target.

**STATUE:** The statue that was stolen from a museum in Tulsa has been disassembled and sold as scrap metal...for \$266.

**CANADA:** Canada is ready to prosecute crimes...committed on the moon.

**SHATTERED:** A commode shattered after being hit by lightning.

**HEADLINE:** "Nowata County Man Karate Chopped for Committing Violence."

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