

**OCDW 06.13.23**

Category



**OKLAHOMA CRIMINAL DEFENSE WEEKLY**

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06.13.23

[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

[Dustin Melvin Davison v. State](#), 2023 OK CR 11 (June 1, 2023): **Habeas Corpus (Post-Conviction)**: In this capital case appeal out of Oklahoma County, the Court denied a second post-conviction application raising a myriad of IAC claims against all previous counsel, and clarified the analysis for such appeals.

[Loyd Samuel Taylor v. State](#), No. F-2022-448 (Okl.Cr., June 1, 2023) (unpublished): **Trespass**: Taylor was convicted by jury in Cotton County of Second Degree Burglary and Trespassing (the Hon. Michael C. Flanagan, presiding). The Court affirmed, but the analysis of the trespass statute is instructive if any of you have such a case.

## TENTH CIRCUIT

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[United States v. Lougary Eddington](#), No. 22-1076 (10<sup>th</sup> Cir., April 24, 2023) (Published) (Moritz, Briscoe & Rossman): **Federal Sentencing Guidelines (Possession of Ammunition)**: In this felon-in-possession of ammunition case, the panel found that Eddington had waived a challenge regarding the consideration by the district court of sentencing disparities, but found merit to a claim related to imposition of a four-level enhancement for possession of ammunition “in connection with another felony offense.”

## 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).*

[Dubin v. United States](#), No. 22-10 (U.S., June 8, 2023): **Identity Theft**: Dubin was convicted of healthcare fraud which involved overbilling Medicaid by using the reimbursement number of patients. The Government argued that this use of “identification” also necessarily satisfied the elements of aggravated identity theft. The Court disagreed and reigned in the Government’s view by construing the statute strictly to apply only when the use of identity in relation to the predicate offense “is at the crux of what makes the conduct criminal.” NOTE: Justice Gorsuch penned an interesting concurrence, as he often does.

## OTHER CASES OF NOTE

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[Range v. Attorney General](#), No. 21-2835 (3<sup>rd</sup> Cir., June 6, 2023) (*en banc*): **Second Amendment**: The *en banc* court held that the Second Amendment applies to a felon-in-possession of a firearm case (in a declaratory judgment action, not a

criminal prosecution). NOTE: This issue has resulted in fractured opinions and a split of authority and seems headed to the Supreme Court at some point.

United States v. Victor Manuel Campos-Ayala, No. 21-50642 (5<sup>th</sup> Cir., June 7, 2023): **Sufficiency**: Drug convictions are reversed for insufficient evidence to convict.

## **VICTORIES**

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LARRY MONARD, OKC, also won an A&B w/Dangerous, Feloniously Pointing a Firearm, Possession of Firearm ACFE, and Obstructing an Officer case to boot.

CHANCE RABON, OIDS Lawton Office, scored a nice win in Comanche County for a client charged with Assault and Battery. Great job, Chance!

SCOTT LOFTIS, OKC, walked a client charged with A&B in a situation involving a jailer who defended himself against an unruly inmate. The first trial ended in a hung jury, but for some reason the State wanted to pursue it. A Kay County Jury did not convict in the first trial, so the case was moved to Noble County and that jury was not having any of it either. Nice job, Scott!

**JEREMY BENNETT**, Miami, won a case involving removal of water from a neighboring pond (a new one for me). The State charged felony larceny and asserted that the water had a trucked-in rate of \$40,000.00, while Jeremy countered that the pond water at issue here was worth about \$150.00. DA refused to settle, case went to trial, and the jury returned a verdict of petty larceny and a \$500.00 fine, which is what the client actually did. Great work, Jeremy!

JOHN ZELBST, Lawton, scored the second jury acquittal by the defense out of Comanche County in a murder case involving a woman who killed her husband. Great work, John!

## **HEARSAY**

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RETIRING: Senior Northern District Judge Terence Kern has announced his retirement.

**PROGRAM**: A Tulsa-based program created by former Tulsa Public Defender David Phillips to keep men out of prison claims a success rate of 96%.

**MINCO**: After mass resignations, the City of Minco has appointed an acting Chief of Police and a new City Attorney.

**RAPE KIT**: Amid the ongoing backlog of rape-kit testing, the OSBI may have solved a sexual assault committed in 2011. Also, **Tulsa PD** has cleared one-third of the backlog since 2017.

**JUVENILES**: Curfews may have unintended consequences on juveniles.

**DOC**: DOC helping “justice-involved individuals” obtain employment.

**RIP**: Theodore “Ted” Kaczynski a/k/a The Unabomber has died in prison at the age of 81.

**CRASH**: A Tulsa County ADA explained the prosecution of a juvenile involved in a fatal crash.

**FENTANYL**: Oklahoma County District Attorney Vicki Behenna has stated that her office will start charging user-to-user fentanyl overdose deaths as Manslaughter cases. **Tulsa County District Attorney Steve Kunzweiler** has a similar idea.

**NEW CHIEF**: The City of Claremore has a new police chief.

**NEW CHIEF II**: The City of Bartlesville has a new police chief.

**NEW CHIEF III**: The City of Chickasha has a new police chief.

**NEW UNIFORMS**: The City of Stillwater has new police uniforms.

**GANGS**: In a story out of Lawton, the report mentions the names of unfamiliar gangs.

**SCHOOLS**: New legislation will require schools to undergo “risk and vulnerability assessment” by July 1, 2026.

**DROPPED**: Murder charges in a 35-year-old case in Muskogee have been dropped after the State’s material witness twice failed to appear.

**CLEMENCY HEARING**: Mark Henricksen, counsel for Jemaine Cannon, advocated for his client at a clemency hearing. Also, attorney **Randy Bauman** comments on the Pardon and Parole Board.

**HONORED**: The Guthrie Chief of Police has been named President of the Oklahoma Association of Police Chiefs.

**CHARGED**: An attorney in Norman has been charged with sexual offenses.

**UPGRADES**: The Alan J. Couch Juvenile Justice Center in Norman has been upgraded.

**AMNESTY**: The City of Tulsa is offering ticket amnesty during the month of June.

### **WACKY CRIME**

**SPEED**: A “Fast and Furious wannabe teen” was clocked driving 103 MPH in Tulsa.

**OOPS**: \$100,000.00--\$200,000.00 is missing from the Seminole County Sheriff’s Office.

**BYE**: Two defendants in Comanche County have flown the coop—including one named Anthony “Tony” Montana (Scarface himself).

**LOVE**: According to the by-line by Mark Hoover: A love triangle went south and a hammer and a jar of mustard were involved.

**LAKE**: A scuba diver at Lake Murray found...a live grenade.

**CLINTON**: A Clinton man stole a pickup...wearing a surgical mask only.

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