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Category



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

[Zamarripa v. State](#), 2022 OK CR 10 (June 16, 2022): **Suspended Sentences; IAC; Record on Appeal**: Zamarripa was revoked in full in Tulsa County (the Hon. Clifford Smith, presiding) after confessing the State’s revocation motion “blind.” The Court affirmed over claims relating to an allegation that he pled blind to only some aspects of the revocation motion, and various aspects of IAC in advising a blind plea, failing to make a record of the proceeding, and aspects of revocation appeals vs. certiorari appeals.

[Antonio Coro Acosta v. State](#), No. F-2020-689 (OkI.Cr., June 23, 2022) (unpublished): **Search and Seizure (Search Warrants); Evidence (Text Messages)**: Acosta was convicted by jury in Oklahoma County (the Hon. Susan C.

Stallings, presiding), of Possession of CDS w/Intent. The Court affirmed, but the opinion contains good general law discussions of motions to suppress a search warrant for a residence, as well as the admissibility of text messages.

[Benjamin Lawrence Petty v. State](#), No. RE-2020-805 (Okl.Cr., June 9, 2022) (unpublished): **Suspended Sentences; Evidence (Polygraphs)**: This is a revocation case out of Murray County where the State alleged a violation of sex offender rule special condition “G” which required sex offender counseling or equivalent. The State also admitted evidence of a polygraph result. The Court affirmed, finding no error. NOTE: This is a cautionary tale case for sex offender clients. As to the polygraph, the Court held that it was not admitted as a basis to revoke, only that he continued to assert innocence, which was deemed a “program failure” for counseling purposes and thus a basis to revoke. This is a concern for clients who want to hire counsel for post-conviction purposes but who have to attend these counseling sessions and admit guilt.

## **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).

[Dobbs v. Jackson Women’s Health Organization](#), No. 19-1392 (U.S., June 24, 2022): The Court held that the Constitution confers no right to abortion, overruling *Roe* and *Casey*. NOTE: Everyone has an opinion on this issue and on the interpretation of the Constitution that either supports such a right or rejects it, but I am stunned that the Court actually overruled *Roe*, coupled with the unprecedented leak of the draft opinion. If *stare decisis* would stand for the prospect of leaving intact any opinion, I would have thought it would have been *Roe*, which has been a fixture in America for nearly all of my life. This is quite a change in Court philosophy which likely will lead to other disruptions in the course of the law. For example, I cannot envision a majority of this Court finding any support in the Constitution for *Miranda* warnings.

[Nance v. Ward](#), No. 21-439 (U.S., June 23, 2022): **Death Penalty; Habeas Corpus (Second/Successive)**: In this quirky fact scenario out of Georgia, a death

row prisoner challenged the method of execution (lethal injections) in a 1983 action. He proposed an alternative method of firing squad, which is not authorized under state law. The question was whether this alternative not offered by state law is fatal to his 1983 action, or must it fall under the strict rules of successive habeas corpus petitions under 2254. The Court held that 1983 remains the appropriate legal vehicle for a method-of-execution claim, even where the prisoner proposes an alternative method not authorized under state law.

[Vega v. Tekoh](#), No. 21-499 (U.S., June 23, 2022): **Civil Rights**: The Court held that a violation of *Miranda* rules does not provide a basis for a 1983 claim.

[New York State Rifle & Pistol Association v. Bruen](#), No. 20-843 (U.S., June 23, 2022): **Second Amendment**: New York state criminal statute prohibited possession of a firearm without a license, both inside and outside the home. A citizen must show “proper cause” for such possession. The Court held that the “proper cause” requirement violated the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms in public for self-defense.

[United States v. Taylor](#), No. 20-1459 (U.S., June 21, 2022): **Federal Sentencing Guidelines (Crime of Violence)**: Attempted Hobbs Act robbery does not satisfy the elements clause, therefore is not a “crime of violence” under section 924 (use of a firearm in a “crime of violence”). NOTE: I am aware that this is not a Federal Sentencing Guidelines case, I just label it as such because that is where I store all the “crime of violence” cases because some of the Guidelines have that as well.

[Shoop v. Twyford](#), No. 21-511 (U.S., June 21, 2022): **Habeas Corpus (Writs)**: In this habeas case, a death prisoner sought an order from a federal court to transport him to a medical facility to conduct neurological tests. The Court held that the transportation order is not “necessary or appropriate in aid of” a federal court’s jurisdiction under the All Writs Act when the prisoner has not shown that the evidence would be admissible in connection with a particular claim for relief.

[Denezpi v. United States](#), No. 20-7622 (U.S., June 13, 2022): **Double Jeopardy**: Denezpi was prosecuted in a “CFR” court administered in parts of Indian Country without courts, and also by a federal grand jury in Colorado. The Court held that Double Jeopardy was not violated in a case where successive prosecutions of distinct offenses arose from a single act, even when a single sovereign prosecutes them.

[Kemp v. United States](#), No. 21-5726 (U.S., June 13, 2022): **Habeas Corpus (Second/Successive)**: 2255 motion was deemed untimely, but Kemp pursued Rule

60(b)(1) based on “mistake.” The court held that “mistake” under Rule 60 does include a judge’s errors of law, thus the Rule 60 claim was cognizable, but untimely under Rule 60 one-year limitations period.

## **OTHER CASES OF NOTE**

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[United States v. Esteban Ramirez](#), No. 21-40557 (5<sup>th</sup> Cir., June 14, 2022): **Federal Sentencing Guidelines (Risk of Death)**: Enhancement under section 2L1.1(b)(6) (offense involved intentional or reckless creation of a substantial risk of death or serious bodily injury) is vacated on plain error review in a case involving transporting unlawful aliens because that conduct does not apply to conduct during flight from police, which is addressed in a different section of the Guidelines.

[United States v. John Paul Cooper](#), No. 20-10821 (5<sup>th</sup> Cir., June 22, 2022): **Sufficiency**: Evidence to support conviction for paying illegal kickbacks was insufficient.

## **VICTORIES**

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[ERIC BAYAT](#), OKC, won full acquittals for a client charged with five counts of sexual assault against a minor in Lincoln County. The case is State v. Kessler, No. CF-2019-37, before Judge Ashwood and ADAs Jeff Mixon Jaime Ramos. Nice job, Eric!

[TAYLOR STEIN](#), OIDS, secured an acquittal after a week-long trial for a client accused of A&B w/Dangerous in Comanche County. Nice work, Taylor!

**PETITIONS IN ERROR:** Most trial practitioners know that the Notice of Intent to Appeal and Designation of Record is a jurisdictional document that must be filed to preserve appellate rights, but there are actually two such jurisdictional documents, the second one being the Petition in Error. When the State appeals, always make sure that it files the Petition in Error timely. Sometimes State appeals are not handled by the AG which handles appeals all the time, but by county prosecutors who sometimes miss this aspect of appeals. Recently, [NICK LEE](#),

OKC, and [ERIC EDWARDS](#), Enid, got State appeals dismissed on this basis. Great work, Nick and Eric!

## [HEARSAY](#)

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[RIP](#): One of the first 5 female police officers on the Oklahoma City Police Department has died at the age of 94.

[GAG ORDER](#): A gag order has been issued in Custer County.

[McGIRT](#): A retired pastor who claims to be a personal friend of Jimcy McGirt says that Mr. McGirt told him that his lawyers exploited him.

[OJA](#): The “next generation” campus for OJA opens on the old-generation campus of COJC in Tecumseh (this is what juvenile law practitioners refer to as “Kojak”)

[COOL AIR](#): A unit of the James Crabtree Correctional Center has finally got air conditioning.

[MENTAL HEALTH COURT](#): Nice article explaining Mental Health Court in Pittsburg County.

[CHARGED](#): A volunteer firefighter in McClain County volunteers some fire department fuel for his personal vehicle and got charged with embezzlement.

[CHARGED II](#): A Cameron University police officer has been charged with drug trafficking and making an improper turn.

[CHARGED III](#): A man tried to set fire to the FBI building in OKC.

[CHARGED IV](#): The AG has charged two attorneys in Tulsa with running an illegal medical marijuana scheme.

[JAIL DEATH](#): An inmate at the Oklahoma County Jail has committed suicide.

[DNA](#): DNA evidence has solved a gruesome infant death from 1993.

[DOC MONEY](#): Prison labor has generated more than \$6 million for DOC before any questions were asked.

[FEMALE INCARCERATION](#): Interesting story about female incarceration in Oklahoma.

**ALVA**: A “driver assistance” call in Woods County turned into a roadside bust.

**CLERK BLUES**: The Osage County Clerk is concerned that if the District Attorney’s Office moves to the same administrative building, it might expose her office to the criminal element.

**RATE**: The solve-rate for homicides in by the Tulsa PD is above average.

**CAMERAS**: Several neighborhoods in Tulsa have deployed the “Flock Safety” camera system to help track potential criminals, but police say the system just reads license plates.

**PRO BONO**: Crowe & Dunlevy partnered with the OKC municipal court to clear citations and fines of the homeless.

**TOURS**: Public tours of the Oklahoma County Jail have resumed.

**ARRESTED**: A Rogers County Detention Officer has been arrested for...impersonating an officer.

**PHONE**: In Beggs, Oklahoma...some kids found a working pay phone.

**DROPPED**: An OKC PD Sergeant fired for engaging in prostitution had the charges dropped.

**PURSUIT**: The OKC PD added some restrictions to its pursuit policy.

**CHANGES**: Some personnel changes at the LeFlore County Courthouse.

**NAMED**: Rick Lang has been named Undersheriff in Stephens County.

**RESIGNED**: A Tulsa police officer charged with rape has resigned.

**EXECUTIONS**: AG O’Connor has requested 25 execution dates.

**RETIRED**: The Ardmore Chief of Police has announced his retirement.

**HALT**: A Payne County jury trial came to a halt when the defendant admitted to committing the crimes.

## **WACKY CRIME**

**BARTLESVILLE**: A Bartlesville man led Nowata County officers on a chase, then hid...in cow manure.

**OKC:** Bizarre story out of OKC where an elderly man attempted a drive-by on his own family...but they shot back, and it gets even weirder...

**OKC II:** An OKC tried unsuccessfully to rent a hotel room...so he returned with a BB gun to shoot the place up.

**TULSA:** A Tulsa man has been arrested for stealing...50+ kegs of beer.

**ENID:** A female inmate at the Garfield County Jail poisoned the Kool-Aid of another inmate.

**MIDWEST CITY:** A Midwest City man got diagnosed with COVID...so he punched the nurse.

**WWII:** In a history lesson radio station Z94 told the story of how Boise City was bombed accidentally during WWII.

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## **OKLAHOMA CRIMINAL DEFENSE WEEKLY**

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