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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**

[Reynolds v. State](#), 2022 OK CR 14 (August 4, 2022): **Interrogations (Fifth Amendment; Foregone Conclusion Doctrine); Self-Defense (Stand Your Ground); Sufficiency; Cumulative Error**: Reynolds was convicted by jury in Oklahoma County (the Hon. Natalie Mai, presiding) of Murder in the First Degree and sentenced to LWOP. Reynolds went to trial on Stand Your Ground/Self-Defense. The Court affirmed over claims relating to: 1) compelled disclosure of his password-protected DVR home surveillance system (the Court applied the “foregone conclusion” doctrine); 2) immunity under Stand Your Ground law (implementing burden of proof to Defendant to show by a preponderance of evidence that use of deadly force was legally justified) no abuse of discretion; 3) denial of requested jury instructions on Stand Your Ground defense (no abuse of

discretion); 4) denial of defense; 5) sufficiency of the evidence; and 6) cumulative error. NOTE: V.P.J. Hudson Specially Concurred to address aspects of the “foregone conclusion” doctrine and the Stand Your Ground law. Judge Lumpkin Specially Concurred to address the same issues. Judge Lewis Specially Concurred. Also note, the Legislature has provided for a stay and appeal proceedings for pre-trial rulings on Stand Your Ground.

[State v. Terry Javon Nepeon King](#), No. PC-2021-1231 (Okl.Cr., August 5, 2022) (unpublished): **State Appeals: Indians**: Orders granting post-conviction relief in misdemeanor revocation cases based on *McGirt* are reversed, based on application of a “procedural bar” because the claim could have been raised in a motion to withdraw plea and subsequent certiorari appeal. NOTE: Judge Lewis dissented.

[Eric Casey Zeiset v. State](#), No. F-2021-636 (Okl.Cr., August 4, 2022) (unpublished): **Jury Instructions (Lack of Instruction)**: Zeiset was convicted in Grady County of multiple criminal offenses involving possession of explosives, possession of stolen vehicle, using security systems in commission of a felony, and possession of firearm AFCF, and his sentences were stacked for a total of 620 years. The Court affirmed for the most part, but reversed Count 6 (Using a Security Camera or System While in the Commission of a Felony) because no instruction was given on the elements of the crime.

## **TENTH CIRCUIT**

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[United States v. Zachary Robert Babcock](#), No. 20-4003 (10<sup>th</sup> Cir., July 21, 2022) (Published) (Hartz, Kelly & Murphy): **IAC**: Denial of 2255 motion based on IAC for failure to object to a sentencing guideline enhancement is affirmed.

## **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. Yonathan Melaku](#), No. 21-6122 (4<sup>th</sup> Cir., July 25, 2022): **Federal Sentencing Guidelines (Crime of Violence)**: The property crime of injuring or committing depredation against government property over \$1,000.00 is not a crime of violence.

[United States v. Shelby Sherrod Petties](#), No. 21-4332 (4<sup>th</sup> Cir., August 1, 2022): **Plea Bargains**: In a plea agreement, the Government promised to dismiss two of the three counts; in exchange Petties agreed to plead guilty to the remaining count, however he reserved the right to appeal on the basis that is crime of kidnapping is not a crime of violence. He appealed, and was correct, resulting in vacatur of that count. The Government then sought to proceed on the other two dismissed counts and the district court allowed it. In this opinion, the panel agreed with Petties that the plea agreement barred prosecution for these two counts.

[United States v. Braylon Ray Coulter](#), No. 20-10999 (5<sup>th</sup> Cir., July 18, 2022): **Interrogations (Fifth Amendment); Traffic Stops (Interrogations)**: A lone police officer performed a traffic stop and had been given reason to believe that Coulter, who was a felon, had a gun, so the officer handcuffed Coulter and asked him where it was. The cuffs were for officer safety and Coulter was informed that he was only being detained. The issue was whether Coulter was in “custody” for *Miranda* purposes. The district court agreed he was, but the panel majority reversed. **NOTE**: I included this case for younger lawyers who are not acquainted with specific judicial BS where during traffic stops an armed police officer placing a motorist in handcuffs is not consider “custody.” Also, Judge Priscilla Richman dissented which gives a good framework on how to attack this issue, but the case law almost universally allows police do to this.

## **VICTORIES**

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*None noted.*

## **HEARSAY**

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**ARRESTED**: A former County Commissioner of Rogers County has been arrested for drug possession.

**ARRESTED II**: The now-former Chief of Police of Northwestern Oklahoma State University, who had just been hired in May, has been arrested in Kansas for child abuse.

**ARRESTED III**: A former detention officer at the Comanche County Jail has been arrested on rape charges after a female inmate made a complaint.

**CLEMENCY**: The Pardon and Parole Board has recommended clemency for death row inmate James Coddington. Also, **HERE** is another good story about it.

**RETIRING**: The Director of the OSBI will retire on December 1.

**APPROVED**: The Oklahoma Wildlife Conservation Commission has approved the use of air rifles during any open season when rifles are legal.

**APPOINTED**: Cleveland County District Judge Lori Walkley has been appointed to preside over the removal from office proceeding of Lincoln County District Attorney Allen Grubb.

**OPENED**: Two “historical” Lincoln County Jail cells were opened/dedicated to the public with great fanfare.

**APPEAL**: Oklahoma District Attorney David Prater appeals an order quashing a misdemeanor.

**UPDATE**: DOC has released an update on a correctional officer killed at Davis Correctional Center. Also, other **employees at the prison** say that conditions are not good.

**SWORN**: The Chief of Police in Poteau has retired, and a new Chief has been sworn.

**RESCINDED**: The terminations of the Chief of Police of Wister, along with a police officer who was fired last week, have been rescinded because of the terminations being in violation of the Open Meetings law.

**OPINION**: An op-ed in the Norman Transcript questioned the charging decisions and use of power of Cleveland County District Attorney Greg Mashburn.

**DONATIONS**: The LeFlore County Detention Center has a new Administrator, and he is asking/begging for donations.

**SHOOTER**: There was a false alarm report of an active shooter at Quail Springs Mall last week, but this time there really was a shooter.

**ROAD RAGE**: There has been an increase in road rage incidents in the OKC Metro.

**DEGREES**: More than three dozen inmates at Dick Conner CC earned diplomas/certificates from Tulsa Community College.

**WORK**: A non-profit in Tulsa is helping ex-cons become truckers.

**CHARGED**: A Claremore man employed as a private transporter for pre-trial detainees has been charged in federal court with sexually abusing one of them.

**DIVISION**: The “Thin Blue Line” flag flown at the Del City Police Department has resulted in some division.

**ACCUSED**: A vault clerk at the Choctaw Casino has been accused of walking out the door with \$10k.

**CHARGED**: Nine members of the UAB have been charged in a single homicide in Oklahoma City last November.

**FIRED**: The Chief of Police of Earlsboro (south of Shawnee) has been fired by the City Council.

**DECLINED**: Former District Judge Tim Henderson will not be charged for his sexual adventures in Oklahoma County.

**PURSUIT**: Pawnee County Deputies have brushed up on chase protocols after a local hot pursuit.

## **WACKY CRIME**

**PONTOTOC COUNTY**: A deputy in Pontotoc County has arrested...a naked burglar.

**SEQUOYAH COUNTY**: An inmate at the Sequoyah County Jail has been arrested for exposing himself...inside the jail.

**TAHLEQUAH:** A man in Tahlequah, possibly high on fentanyl, threw a rock at a firefighter.

**DUNCAN:** The headline: “Dog Toy Denial Leads to Assault with Machete.”

**PREDICTIONS:** The Farmer’s Almanac says that this winter will be cold, and also predicts snow for the first week of January.

**TULSA:** A man in Tulsa assaulted a police officer...with hot coffee.

**FLETCHER:** The town of Fletcher has a...female peeping Tom (Mark Hoover wonders if the proper title is a Peeping Tommie? Perhaps a Peeping Tomette).

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