

## OCDW 09.20.22

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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

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*No new cases.*

### TENTH CIRCUIT

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[United States v. William L. Gladney](#), No. 21-1159 (10<sup>th</sup> Cir., August 15, 2022) (Published) (Tymkovich, C.J., Briscoe & Matheson): **First Step Act**: Gladney was convicted of drug offenses but also RICO and conspiracy offenses for which he was sentenced to life. He filed for a sentence reduction under the First Step Act, arguing that modification of the drug offense covered by the Act would

unbundle the non-covered acts and thus his RICO and other non-covered convictions would be eligible for modification. The panel rejected this analysis and concluded that he lacked standing since any reduction of the covered drug offense would not reduce his overall sentence. NOTE: The panel noted in footnote 5 that there is a circuit split on this issue. So if you have this issue be sure to raise it anyway with an eye toward certiorari or *en banc* review.

[United States v. Guy Coleston McDonald](#), No. 20-7052 (10<sup>th</sup> Cir., August 9, 2022) (Published) (McHugh, Ebel & Eid) (E.D. Okla., Hon. Ronald A. White): **Federal Sentencing Guidelines (PSR; Obstruction of Justice; Use of Force; Aggravated Role; and Drug Quantity)**: Drug sentence is affirmed where the accused objected to the facts in the PSR regarding Obstruction of Justice, Use of Force/Violence, Aggravated Role and the calculation of the drug quantity.

[United States v. Nathaniel Donald Johnson](#), No. 21-2058 (10<sup>th</sup> Cir., August 9, 2022) (Published) (Moritz, Ebel & Kelly): **Search and Seizure (Bus)**: Search of backpack from passenger on a bus was unlawful. Police had PC to arrest Johnson, but the officer reached into the backpack and felt the contents and then searched it again without a warrant at the DEA station without a warrant. The panel rejected the contention by the Government that the searches were a foregone conclusion and plain view.

## **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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[NetChoice v. Paxton](#), No. 21-51178 (5<sup>th</sup> Cir., September 16, 2022): **First Amendment**: This is not a criminal case, but it is an interesting free speech case

involving a Texas law that prohibits social media platforms from censoring speech based on the viewpoint of the speaker. The district court has issued an injunction but in this lengthy and interesting opinion, the panel reversed.

[United States v. Timmy L. Fields](#), No. 20-5521 (6<sup>th</sup> Cir., August 10, 2022):  
**Federal Sentencing Guidelines (Serious Drug Offense):** Sentenced is vacated because one of the prior offenses (meth-precursor) was not a “serious drug felony.”

[United States v. Alfonzo Johnlouis](#), No. 21-30085 (5<sup>th</sup> Cir., August 11, 2022):  
**Search and Seizure (State Actor):** This is a disturbing case involving a search where a letter-carrier’s thumb “slipped through a hole in a package” that revealed drugs. The panel agreed with the district court that the letter-carrier is not a government actor for these purposes. NOTE: The panel employed an analysis that the federal employee had to have some connection to law enforcement in order for the protections of the Fourth Amendment to apply. This seems a radical departure from common sense and a deep dive down a rabbit hole eroding constitutional protections at an even faster pace.

[United States v. Thomas Asa Harbarger](#), No. 21-40332 (5<sup>th</sup> Cir., August 18, 2022):  
**Statutory Construction (Destructive Device):** In this case involving a prosecution for possession of an illegal explosive device, the panel held that the NFA provision was too vague as applied to these facts (bamboo sticks hollowed out with explosives that the accused said was for scaring beavers and destroying their dams).

## **VICTORIES**

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[ERIC JONES](#), Muskogee, secured a not guilty verdict in a Lewd Acts case in Muskogee. Nice work, Eric!

[THOMAS GRIESEDIECK](#), OKC, secured a not guilty verdict for a client accused of Rape and Lewd Acts. The client had been in jail since June, 2021, and the complaining witness made statements to the SANE nurse that the client was one of a couple of people who has raped her while her mother watched it, and the mother pled guilty and testified at trial, during which she admitted that she never actually saw the client to anything but assumed that he was there. There was no corroborating physical evidence and reporting delay of several years. Great job, Thomas!

## **HEARSAY**

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**CHIEF FOR A DAY**: A developmentally disabled citizen got to be “Police Chief for a Day” in Okarche.

**STABBINGS**: Stabbings are on the rise at Davis Correctional Facility.

**DEBATE**: Oklahoma County District Attorney candidates Vicki Behenna and Kevin Calvey have agreed to a one-hour debate.

**PETITION**: Oklahoma death row inmate Benjamin Cole has filed a Petition for clemency.

**JAIL DEATH**: An inmate at the Kay County Jail has died; also, three deaths this year at the **Oklahoma County Jail** have been attributed to fentanyl; also, an inmate has died at the **Federal Transfer Center**.

**FED UP**: Southeast OKC residents are fed up with illegal street racing.

**STAFFED**: The town of Quinton now has a police force.

**PRISON**: The Cherokee Nation says that only inmates with lengthy sentences will be shipped to Texas. **HERE** is an article on the rationale on why they are being sent to Texas.

**DOGS**: Dick Conner CC has a dog rescue prison for inmates; also **HERE** is another story about it.

**CHARGED**: A male inmate at the Oklahoma County Jail has been charged with raping a handcuffed female inmate.

**ALLEGED**: A lawsuit alleges that personnel at the Oklahoma County Jail put the victim of an attack back in the same jail cell of the cellie who had attacked him.

**DOMESTIC**: “Big If True” takes a look at the domestic violence laws in Oklahoma.

**FOURTH**: Oklahoma ranks number four in the nation for drug overdose deaths; and, we are also **number four** for Road Rage incidents.

**SOLVES**: Tulsa police have a better-than-average solve rate for homicides.

**RETIRED**: The woman who created Tulsa’s SANE program is retiring.

**MOVED**: Convicted pharmacist Jerome Ersland has been moved to a medical facility.

**FUNDS**: Oklahoma County officials are looking to federal money to fill the \$40 million gap needed to build a new jail.

**SCAM**: Persons unknown have been trying to scam Oklahoma County by placing orders for goods using the county's name.

**REFORM**: Oklahoma City PD looks to be a model of police reform.

**REEFER**: Oklahoma is prosecuting pregnant women for using medical marijuana.

## WACKY CRIME

**TOYS**: A truckload of toys overturned on I-40 last week in OKC, spilling toys along the highway...adult toys.

**TULSA**: Tulsa police are looking for a man who started a proverbial, and literal, dumpster fire.

**SPEEDING**: Okarche police pulled over a speeder...who was going 122 mph.

**HISTORY**: Interesting news story about how the Kansas City mafia ran rampant in the Mayes/Ottawa/Delaware counties area some 50 years ago.

**LIBEL**: A sex offender in Grove has sued a sheriff in Kansas...for ruining his good reputation.

**HUGO**: A Hugo man has embezzled tens of thousands of dollars...from the library.

**MUSTANG**: A man on a hover board in Mustang has been impersonating a pest control company employee.

**CROOKS**: Some "crawling crooks" have become the bane of Oklahoma City businesses.

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