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OKLAHOMA CRIMINAL DEFENSE WEEKLY

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[James L. Hankins,](#)
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(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

[Polk v. State](#), 2022 OK CR 24 (September 29, 2022): **Sufficiency**: Polk was convicted by jury in Oklahoma County (the Hon. Ray C. Elliott, presiding) of First Degree Manslaughter (by Misdemeanor) AFCF x 2. Polk drove another person for what was ostensibly a drug deal, but ended up being a gang hit. Polk appealed on the single ground of insufficiency of the evidence. The Court affirmed. NOTE: This case deals with application of misdemeanor manslaughter statutes which garnered Specially Concurring opinions from Judge Lumpkin and Judge Lewis, noting the tension between this opinion and *Simms v. State*, 2021 OK CR 35.

[Coffman v. State](#), 2022 OK CR 23 (September 29, 2022): **Indians; After-Formers (Enhancement)**: Coffman was convicted by jury in McCurtain County

(the Hon. Michael DeBerry, presiding) of First Degree Manslaughter. The Court affirmed over claims relating to *McGirt* (in light of *Castro-Huerta* no relief under *McGirt* because Coffman is not an Indian), and enhancement with priors that were stale (Coffman did not present evidence that the priors were stale).

[State v. K.B.](#), 2022 OK CR 22 (September 22, 2022): **Juveniles and Y.O.**: K.B. was charged with Manslaughter in the First Degree in Oklahoma County as a Youthful Offender. The Hon. Thomas Riesen, Special Judge, denied the State's request for adult certification. The Court affirmed.

[State v. Bryan Bingham](#), No. S-2022-154 (Okl.Cr., September 29, 2022) (unpublished): **Evidence (*Daubert* Challenge; Vehicle Black Box); State Appeals**: State appeal out of Grady County involving a First Degree Manslaughter case where the Hon. Kory Kirkland held that the State had not met its burden under *Daubert* concerning the "Sync 3 Infotainment System" hard drive housed within a 2019 Ford truck when the decedent was struck and killed. The State asserted that the evidence was not new or novel, but did not present any evidence at the hearing. The OCCA affirmed, finding no abuse of discretion. NOTE: The driving force here seems to be the complete lack of effort by the State to present any evidence supporting its position as the proponent of the evidence (which usually is overlooked by the OCCA, but was not for some reason here). Judge Rowland, P.J., Specially Concurred (joined by Judge Hudson, V.P.J.), emphasizing that the opinion did not address the merits of whether this evidence was new or novel under *Daubert*, only that the trial court did not err under the facts and circumstances of this case.

[State v. Jared Landrum](#), No. S-2021-1044 (Okl.Cr., September 29, 2022) (unpublished): **Search and Seizure (Inevitable Discovery); State Appeals**: Possession of child porn case out of Garfield County where the Hon. Dennis Hladik granted a motion to suppress the contents of a cell phone (which was at another house) on the basis that police conduct rendered the consent to search it involuntary. The OCCA found no error with this ruling, but reversed based on application of the "inevitable discovery rule" finding that police would have secured a warrant for the phone. NOTE: This another "police state" opinion where the OCCA excuses police misconduct and applies the inevitable discovery doctrine which was never raised or argued by the State in the court below or on appeal. The OCCA simply applied it without any evidence that discovery of the phone would have been inevitable. This is complete judicial advocacy by the Court on behalf of the State. If any defendant had failed to raise such a defense it would have been considered waived. Look for more of this with the current composition of the Court.

[David Keith Winbush v. State](#), No. F-2021-513 (Okla. Cr., September 29, 2022) (unpublished): **Indictments & Informations (Amendment); Preliminary Hearing**: Winbush was convicted by jury in Comanche County of First Degree Murder (the Hon. Emmitt Tayloe, presiding). The OCCA affirmed, but I included this opinion because it has a good discussion of amendments to the Information and remanding for PH (no abuse of discretion). NOTE: The basic rule is that the State can amend the Information even after trial has begun as long as the accused is not “prejudiced” which as you might guess is almost never found to be the case by the OCCA.

TENTH CIRCUIT

[United States v. Joshua Price, Jr.](#), No. 21-7050 (10th Cir., August 17, 2022) (Published) (Tymkovich, C.J., Baldock & Rossman) (E.D. Okla., Hon. Ronald A. White): **First Step Act**: Dismissal of motion for sentence reduction under the First Step Act is reversed where the sentence was for a covered drug crime, but was enhanced by a non-covered murder.

[United States v. Martavious Arnez Gross](#), No. 20-6175 (10th Cir., August 18, 2022) (Published) (McHugh, Murphy & Carson) (W.D. Okla., Hon. Joe Heaton): **Waiver (Appeals Waiver)**: Challenge to the procedural reasonableness of sentence is dismissed as barred by the appellate waiver, and the sentence was not otherwise substantively unreasonable.

[United States v. Henri Michelle Piette](#), No. 20-7008 (10th Cir., August 18, 2022) (Published) (McHugh, Ebel & Eid) (E.D. Okla., Hon. Ronald A. White): **Evidence (Res Gestae); Jury Instructions (Statute of Limitations; Burden Shifting)**: In this Kidnapping and Child Sexual Abuse case, admission of other acts of abuse were admitted properly as res gestae, but the Kidnapping count was reversed because the jury instructions burden-shifted to the accused as to the timing.

UNITED STATES SUPREME COURT

“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

[In re: Alexander Sittenfeld](#), No. 22-3694 (6th Cir., September 23, 2022): **Jurors:** Interesting case where the accused sought a hearing on juror misconduct and sought an order from the district court to order jurors to surrender their cell phones for forensic examination. The panel held that the district court lacked the authority to order such an expansive request.

[United States v. Bonifacio Fernandez Sanchez](#), No. 20-4061 (4th Cir., August 23, 2022): **Illegal Reentry:** Dismissal of an indictment for illegal reentry after deportation is affirmed where the accused attacked collaterally the deportation order on the basis that the immigration judge did not advise him of his right to appeal the immigration order.

[United States v. Alexander Martinez](#), No. 20-10307 (5th Cir., August 26, 2022): **Supervised Release:** Imposition of fifteen conditions of supervised release are vacated as in conflict with the sentence pronounced orally in open court.

VICTORIES

[ROBERT JACUES](#), Coalgate, represented a client accused of Shooting with Intent to Kill, but was able to persuade the jury on the lesser offense of Assault with a Dangerous Weapon. Nice job, Robert!

JUSTIN STOUT, Muskogee, heard the two-word verdict in a Lewd Proposals case in which, as sometimes happens, the facts were on the side of the accused. The State offered probation, but that included SORNA registration for life, so the client opted for trial and took the stand. Great job, Justin!

[JARROD STEVENSON](#), OKC, represented a client in Garfield County charged with murder, but was able to persuade the jury that the case was really

about Accessory After the Fact. Kudos also to OIDS investigator Tom Koen. Nice work, Jarrod and Tom!

JEFF COE, OKC, secured a not guilty verdict in Custer County with murky details. Congratulations anyway, Jeff!

JOHN NOBLES, Tulsa, won a DUI jury trial in Tulsa County. The accused spun the tires on his heavy duty dually which resulted in a traffic stop. The truck had a heavy odor of marijuana, and the accused refused both breath and blood tests while inviting Trooper Calliccoat to take a steroid test. The jury was out about 20 minutes before returning with a not guilty verdict. Great job, John!

HEARSAY

BOOKED: The daughter of Tulsa County District Attorney Steve Kunzweiler has been booked into jail after stabbing her father. This situation has [similarities](#) to the stabbing of Oklahoma Labor Commissioner Mark Costello.

EXPOSED: A deputy in Beckham County was exposed to fentanyl and his partner had to administer Narcan. Also, meth is Oklahoma's number one drug killer, but [fentanyl](#) is rising.

ARRESTED: Jay-area attorney Jason Smith has been arrested for negligent homicide.

ARRESTED II: Former OU football player Tommie Harris has been arrested for refusing to leave a downtown OKC hotel.

ANNOUNCED: Stephens County District Judge Brent Russell has announced that he is running for a District Judge position.

BACK: Enid attorney Robert Faulk has resumed his practice in Enid.

PC: Two attorneys in Tulsa are trying to obtain post-conviction relief in a 1998 murder case.

COMPETENCY: OKC attorney Ed Blau explains competency to stand trial to the media.

WOODS COUNTY: The Woods County Courthouse is in dire need of plumbing repairs but no plumbing company wants the work.

CERTIFIED: Mayes County Court Reporter Bethany DeGarmo has earned national certification.

OFFICER DOWN: An OKC police officer was killed in an off-duty vehicle accident.

SELF-DEFENSE: The Tulsa County Sheriff's Office recently held a self-defense class...for realtors.

LEAVE: The Durant Chief of Police has been placed on leave.

LEAVE II: An Adair County deputy has been placed on leave after being charged with Aggravated Assault in Arkansas.

STABBED: A Marshall County inmate has stabbed a jailer.

PARTNERS: The Love County Sheriff's Office is partnering with the U.S. Marshal's Office.

ACCOUNTABLE: A prosecutor in Kansas City may be held accountable for withholding evidence in a murder case.

CHARGED: The former Superintendent of OKC's Seeworth Academy has been charged with embezzlement.

DEBATES: The debates between the Oklahoma County District Attorney candidates and the candidates for Governor will be live-streamed.

BATTERED: The link goes to an interesting story of a battered-woman case from 1998.

CRANE: A 60-ton crane in downtown OKC tipped over and fell onto the Mahogany Steakhouse.

DENIED: The Pardon and Parole Board has denied clemency to death row inmate Benjamin Cole.

SEIZURE: Police have seized 143 pounds of the Devil's Lettuce in Yukon.

SENSELESS: A really odd, senseless killing in OKC (perhaps a road rage incident).

FIRST: Judge Ada Brown has become the first female Choctaw federal judge.

BOARD: Colleen Johnson has been named to the Board of the Office of Juvenile Affairs.

APPOINTED: Derrick Scobey and Adam Luck have been appointed to the Oklahoma County Jail Trust.

STRANGE: People are going missing and turning up dead east of Oklahoma City (as Mark Hoover says, an interesting and strange story).

BIG BROTHER: The NTSB wants all new vehicles to be equipped with an Intoxilyzer-like device.

CHARGED: A Tillman County deputy has been charged with Child Abuse.

TATTOOS: A medical director in Tulsa encourages citizens to think twice about getting tattoos.

SURVIVAL: Interesting story of how one man survived in federal prison.

SHORT-HANDED: The Mustang Police Department is short-handed.

REBUKED: Outgoing District Attorney Paul Smith has been “rebuked” by a 4-0 vote of the DAC for taking a job as a teacher while employed as the DA.

PROMOTION: Scotty Cox has been promoted to Deputy Warden of the Bill Johnson Correctional Center.

COLD CASE: The most infamous cold case in Oklahoma history is still a cold case. Also, a **new law** may assist police solve cold cases.

ARMOR: The Muskogee Police Department has a new armored vehicle (not military surplus).

COMFORT: The Pottawatomie County Sheriff’s Office has a new “Therapy Dog” to comfort staff and crime victims.

NO. 2: Oklahoma is number two in the nation for murders of women by men.

WACKY CRIME

SENIOR: A senior citizen attacked a woman...with his cane.

TULSA: Someone in Tulsa placed a fake parking ticket on a poorly-parked SUV.

SIGNS: Some weird signs have been popping up in the OKC metro.

EXPOSED: A man exposed himself to an X-ray technician at a hospital...prompting Mark Hoover to wonder if this was a double exposure.

STOLEN: An OKC man stole...a Dallas Cowboys garden flag.

SIGNATURE: Apparently, repeatedly wearing Sponge Bot shorts and socks during burglaries will get you caught.

NOT HAPPY: Oklahoma is one of the least-happy states; however, we did make the **Top Ten Taco City** list.

BANNED: Sigma Alpha Epsilon has been banned from participation in OSU Homecoming events for some Animal House-like shenanigans.

WEREWOLVES: We apparently have werewolves in Oklahoma.

STRUCK: A woman was injured when she was hit on the head...by a cell phone that fell out of the sky at the State Fair.

CHASE: A Tulsa man led police on a chase...on his bicycle.

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