

## OCDW 10.27.25

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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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[Christopher Mitchell v. State](#), 2025 OK CR 20 (October 23, 2025): **Guilty Pleas; IAC**: In this case out Oklahoma County (the Hon. Susan Stallings, presiding), Mitchell entered blind pleas to multiple financial crimes. After sentencing, he filed a *pro se* motion to withdraw his pleas, which was denied. In this certiorari appeal, the Court reversed based on IAC, finding both deficient performance and prejudice regarding the bungled handling of a plea offer under Frye and Lafler. NOTE: The remedy was to allow him to withdraw the plea and to order the State to re-instate the original plea offer. Lumpkin, P.J., concurred in part/dissented in part, concluding that IAC was present, but dissenting to the remedy of ordering the State to re-instate the plea offer.

[Rolando Solomon Rodriguez v. State](#), 2025 OK CR 22 (October 23, 2025): Mistrial; Confrontation/Cross (Unavailable Witness); Evidence Hearsay: Rodriguez was tried by jury in Tulsa County (the Hon. Michelle Keely, presiding) and convicted of Domestic Assault & Battery w/Dangerous Weapon. A mistrial was denied when a police officer witness subpoenaed by the defense did not appear (to repeat an inconsistent statement made by the complaining witness). The Court held that the statement was properly denied as hearsay under the residual exception, but considered (apparently *sua sponte*) application of 12 O.S. 2806, which has never been construed in a published opinion from the Court. The Court opined that the statement was arguably admissible under this section, but affirmed based on materiality. NOTE: Lumpkin, P.J., concurred in result, finding the discussion of section 2806 dicta.

## **TENTH CIRCUIT**

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[United States v. Tamori Morgan](#), No. 24-3141 (10<sup>th</sup> Cir., September 2, 2025) (Published) (Matheson, Bacharach & McHugh): **Second Amendment**: Morgan moved to dismiss an indictment charging him with two counts of knowingly and unlawfully possessing a machine gun. He defended on Second Amendment grounds, with which the district court agreed and dismissed. The Government appealed (with Main Justice lawyers getting involved), and the panel reversed on the grounds that a machine gun is not an “arm” in “common use” for self-defense. NOTE: This is the overwhelming view in the Circuits.

[United States v. Zachary Jacob Blasdel](#), No. 24-5071 (10<sup>th</sup> Cir., September 2, 2025) (Published) (Bacharach, Seymour & Phillips) (N.D. Okla.): **Search and Seizure (Storage Units; Home)**: Denial of motion to suppress evidence seized from a storage unit and then a home based on that prior warrantless search is reversed. Storage unit employees had noticed the contents and alerted the police, but an officer “peeked in” and searched prior to obtaining the warrant. The search of the home was tainted by the prior illegal search, thus the good faith exception did not apply.

[United States v. Victor Kearney](#), No. 24-2078 (10<sup>th</sup> Cir., September 2, 2025) (Published) (Matheson, Ebel & Moritz): **Jury Instructions (Conspiracy to Defraud & Advice-of-Counsel)**: Conviction for conspiracy to defraud the United States is reversed based on two plain errors regarding the instructions which did not require the Government to prove Kearney used deceitful or dishonest means,

and the advice of counsel instruction indicated that it applied only to the false tax return even though it applied to the conspiracy also.

[United States v. J.D.V.](#), No. 25-9900 (10<sup>th</sup> Cir., August 27, 2025) (Published) (McHugh, Murphy & Moritz): **Juveniles/Y.O.**: Juvenile was 17 years old when he armed himself with a gun and shot his rivals. The Government moved to transfer him from juvenile to adult processing, which was granted. In this interlocutory appeal, the panel 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. Davon S. Tooley](#), No. 24-5286 (6<sup>th</sup> Cir., October 23, 2025): **Federal Sentencing Guidelines (Crime of Violence)**: Sentence is vacated because a prior conviction for second-degree manslaughter under Kentucky law was not a crime of violence under the Guidelines.

## VICTORIES

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[CARLA STINNETT](#), represented a very unpopular client, a former foster parent accused in Muskogee County of Child Abuse/Neglect for putting a child outside in the cold, a video of which had been played non-stop by the local media creating hostility toward the client. Not to fear, Carla presented the actual facts with perspective on the event and---NOT GUILTY. Great work, Carla!

**JESSE MUTH, OIDS, & P.J. SHYERS**, represented a client in a murder case but pursued a defense under the Stand Your Ground law in Ottawa County. After a two-day hearing before Judge McAffrey at which the client testified, the court dismissed (and Jesse had represented the same client just a few months ago in a different trial and secured a Not Guilty verdict). Terrific job, Jesse & P.J.!

**BEVERLY ATTEBERRY**, Tulsa, secured a Not Guilty verdict (actually four Not Guilty verdicts) for a client in front of Judge Drummond who had been charged with four counts of DUI w/Great Bodily Injury. Client took the stand, and Beverly muddled the waters on who exactly was responsible for the accident. Great job, Beverly!

**CHANCE RABON**, Lawton OIDS, secured a Not Guilty verdict in Comanche County for a client accused of a fatal stabbing. Good work, Chance!

**DICK TANNERY**, Lawton, secured a Not Guilty verdict for a client accused in Comanche County of Sexual Battery. Great work, Dick!

## **HEARSAY**

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**COURT**: Personnel in Oklahoma County held court at the Oklahoma City Homeless Alliance.

**BUSINESS HOURS**: The Pittsburg County Courthouse will have new business hours beginning next year.

**DECONFLICTION**: This made-up sounding word refers to coordination among law enforcement agencies to prevent overlapping operations.

**FIRED**: Two Delaware County Sheriff's Office employees have been fired for having sexual relations with a jail inmate and the subsequent cover-up.

**RESIGNED**: OJA Director Tim Tardibob has resigned in the wake of crises at COJC. The problems involve **injured workers**. Gov. Stitt has **appointed** Sharon "Shel" Millington as the Interim Director.

**REMODEL**: The Grady County Courthouse is about to get a facelift.

**CELL PHONES**: Be aware of a new law that prohibits use of cell phones in school zones and construction zones.

**CLEMENCY**: The family of death row inmate has sought clemency, including introducing a letter from the late Johnny Albert apologizing for the outcome of the trial.

**APPOINTED**: Jari Askins has been appointed interim City Attorney for Lawton.

**COMPENSATION**: Two men convicted wrongfully of murder in 1994 will share a \$15 million settlement with Tulsa County.

**FACILITY**: The old Tulsa County Juvenile Detention Center will become a homeless shelter.

**DENIED**: A 75-year-old woman has been denied resentencing under the Survivors' Act in Tulsa County for the 44-year old murder of her husband.

**DOC**: DOC says that the Red Rock Correctional Center (formerly known as Lawton Correctional Facility) will focus on rehabilitation.

**LICENSE**: Teen drivers in Oklahoma must pass the revised "Oklahoma Work Zone Safe Course" in order to obtain a driver's license.

**A.G.**: The Pardon and Parole Board has sought an opinion from the Attorney General specifying who has the authority to refer an inmate to the medical parole docket.\

**HUNTERS**: The hunters became the hunted as three "Oklahoma Predator Hunters" were arrested after a confrontation which resulted in a target getting injured.

## **WACKY CRIME**

**TULSA**: An employee at a Jack-in-the-Box in Tulsa has been arrested when violence erupted after a discussion about tattoos.

**RE-ARRESTED**: A mere 90 minutes after entering guilty pleas in one case, a woman was arrested again for possession of drugs and a firearm.

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