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**OKLAHOMA CRIMINAL DEFENSE WEEKLY**

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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**

[Martin v. State](#), 2024 OK CR 30 (October 31, 2024): **Suspended Sentences:** This is a revocation case out of Cleveland County where the State filed a motion to revoke alleging a new crime. The Hon. Jay Walker revoked in full and, over objection, ordered that sentence to be served consecutively to the new charge. This is a clear violation of existing precedent that holds revocation is the execution of an existing judgment that cannot be ran consecutively to new charges, and the State conceded error, so the Court reversed. NOTE: This is another inexplicable case the Court chose to publish for no reason that I can see. It merely applied established precedent to uncontested facts.

## TENTH CIRCUIT

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[United States v. Thomas Crosby](#), No. 23-2155 (10<sup>th</sup> Cir., October 23, 2024) (Published) (Holmes, C.J., Baldock & McHugh): **Federal Sentencing Guidelines (Reasonableness)**: The Government appealed a sentence of five-days time-served in a Possession of Child Pornography case as unreasonable; and to no one's surprise the panel agreed and remanded for resentencing.

[United States v. Brian Tony](#), No. 23-2110 (10<sup>th</sup> Cir., October 29, 2024) (Published) (Holmes, C.J., Baldock & McHugh): **Federal Sentencing Guidelines (Grouping); Statutory Construction (Rule of Lenity)**: Tony was convicted of Witness Tampering and Voluntary Manslaughter. The PSR recommended all counts be grouped, but the district court declined to do so. The panel agreed with Tony, concluding that the relevant Guidelines are "grievously ambiguous" and therefore must be construed in Tony's favor under the rule of lenity.

## 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.*

## VICTORIES

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**DAVID SMITH, ALLEN SMALLWOOD, & ROBERT ROBLES**, represented co-defendants in a sprawling motorcycle gang case out of Lincoln County, culminating in not guilty verdicts on charges of Assault w/Dangerous Weapon where the Pagans and the Bandidos clashed. Amazing job, David, Allen & Robert!

**JASON EDGE**, Tulsa, represented a client that started as a murder case. The five-year-old case had many rounds of litigation, including blood test suppression which resulted in a refile as a Manslaughter I case. Three day trial, not guilty. Also, the jury sent a note wanting to see defense demonstrative boards used during closing which were blowups of some jury instructions. Terrific job, Jason!

**CHANCE BENNETT**, Tulsa County Public Defender, represented a juvenile charged with Assault and Battery on a detention officer. The State presented the detention officer as the sole witness, but on cross-examination he admitted that the incident had been recorded on video and witnessed by other residents and staff—yet the State presented no other corroborating evidence. The jury was out about 30 minutes before returning a verdict of Not Delinquent. Great work, Chance!

**HON. SHARON HOLMES**, Tulsa County, rejected a jury verdict in a sex offense case by sentencing to probation rather than imprisonment. Word is that Nick VanGilder did an excellent job at formal sentencing persuading the judge to consider probation. We feature lawyers here, but it is appropriate to recognize judges who exercise independent judgment in favor of the accused.

## **HEARSAY**

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**ARRESTED**: An Okemah police officer has been arrested for DUI after wrecking his truck.

**IMMIGRANTS**: Rep. Justin Humphreys suggested that he will file legislation that will give life sentences for crimes committed by undocumented immigrants.

**DEFERRED**: Officers who stole ammunition from a home they thought had been abandoned received deferred prosecution agreements.

**UPGRADE**: Deputies in Comanche County have received upgraded Tasers.

**NO BILLS**: An Oklahoma County grand jury recommended no charges in three officer-involved shootings.

**ACCREDITED**: The Village Police Department is one of 26 (out of a total of 320) police departments in the state which are accredited by the Oklahoma Law Enforcement Accreditation Program.

**HAIR**: DOC inmates at Mabel Basset donate hair for the “Wigs for Kids” program.

**RESPONSE**: DOC responded to Rep. Humphrey’s interim study on the transparency of its operations.

**LOW ATTENDANCE**: Not many people attended a study on sentencing reform hosted by Rep. Danny Williams.

**NEW CHIEF**: The City of Durant has named its new Chief of Police.

**RESIGNED**: The entire police force of the town of Geary has resigned.

**PSR**: Ottawa County Associate District Judge Matt Whalen deemed a pre-sentence report “lackluster” and ordered another one, delaying the imposition of sentence—and the prosecutor and defense counsel Winston Connor had choice words about the report as well).

**APPOINTED**: Gov. Stitt has appointed the next head of the Office of Juvenile Affairs.

**RETENTION**: Three of the five judges on the Court of Criminal Appeals are on the retention ballot this Tuesday.

**RETIREMENT**: The Stillwater Chief of Police has announced his retirement.

## **WACKY CRIME**

**MCALESTER**: A man has been arrested for holding auditions for a “mobile adult entertainment business” on the city’s bandstand in downtown McAlester.

**MARK HOOVER SPECIAL**: A Louisiana man threatened to blow up an Ulta Beauty Store, but his booking photo suggests he had stood in the middle of such an explosion.

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