

2026 Oklahoma Judicial Summer Conference

Criminal Caselaw Update

Judge Scott Rowland
Oklahoma Court of Criminal Appeals



Court of Criminal Appeals

Since Last Summer's Conference

34 published opinions as of today

258 unpublished opinions

Hundreds of interim orders, denials of jurisdiction, etc.

Both Published and Unpublished Opinions now available from OKCCA.net



OCCA

Oklahoma Court of Criminal Appeals

- ABOUT THE COURT ▾
- SELF HELP ▾
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WHO WE SERVE

The Oklahoma Court of Criminal Appeals is the highest court in the State of Oklahoma. It is the state court of last resort in criminal matters. The Court derives its authority from the Oklahoma Constitution, which was formulated by the constitutional convention and adopted by the people of Oklahoma at the first election, held on September 17, 1907.

Notices

■ [NEW Initial Bail Determination Form/Checklist \(optional\)](#)
 A new (optional) form for the *Court's Findings for Purposes of Sentencing* is now available for use by Oklahoma judges, as guidance, or as a resource in any criminal case. The Order form is available on the OCCA website under Court Resources > [Initial Bail Order Form/Checklist](#).


■ [Uniform Jury Instructions](#) 09/12/25
 Current Oklahoma Uniform Jury Instructions (Criminal) may be found on the OCCA website under the dropdown navigation for Court Resources > [Jury Instructions](#)

COURT OF CRIMINAL APPEALS DECISIONS

JURY INSTRUCTIONS

COURT RULES

FORMS

INITIAL BAIL ORDER FORM/CHECKLIST 

DEVIATION FROM MANDATORY SENTENCING REPORTS

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- [STATE v. RUSSELL](#) 04-16-2026
2026 OK CR 15
- [MCKELVY v. STATE](#) 04-09-2026
2026 OK CR 14
- [STEEL v. STATE](#) 03-12-2026
2026 OK CR 13
- [IN RE: REVISION OF PORTION OF THE RULES OF THE COURT OF CRIMINAL APPEALS](#) 03-09-2026
2026 OK CR 12
- [IN RE: ADOPTION OF THE 2026 REVISIONS TO THE OKLAHOMA UNIFORM JURY INSTRUCTIONS-CRIMINAL \(SECOND EDITION\)](#) 03-06-2026
2026 OK CR 11
- [TERRY, et al. v. GENTNER DRUMMOND & VICKI BEHENNA](#) 03-05-2026
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ADMINISTRATIVE OFFICE OF THE COURTS

Unpublished Opinions

NOTICE ON UNPUBLISHED OPINIONS

Unpublished opinions are made available to the public free of charge on this website by the Oklahoma Supreme Court and the Administrative Office of the Courts. The information appearing on this website is for general informational purposes only. Unpublished opinions viewable on this website have not been released for official publication on the Oklahoma State Courts Network (OSCN).

Unpublished opinions of the Oklahoma Court of Criminal Appeals viewable on this website are governed by Oklahoma Court of Criminal Appeals Rule 3.5(C)(3) and are accorded no precedential value. See [Oklahoma Court of Criminal Appeals Rules 3.5\(C\)\(3\)](#) before citing an unpublished opinion of the Oklahoma Court of Criminal Appeals.

Unpublished opinions of the Oklahoma Court of Civil Appeals viewable on this website are governed by Oklahoma Supreme Court Rule 1.200 and are accorded no precedential value. See [Oklahoma Supreme Court Rule 1.200](#) before citing an unpublished opinion of the Oklahoma Court of Civil Appeals.



OSCN

Oklahoma Supreme Court
2100 N. Lincoln Blvd.
Oklahoma City, OK 73105

AGENDA



Themes and Issues

LEARNING OBJECTIVES

- *Miranda v. Arizona*/custody issues
- Evidence: DNA probabilistic testing; Expert Testimony; Hearsay/past recorded recollections
- Medical Marijuana Prosecutions
- Pre-trial Stand Your Ground Appeals
- Pre-trial State's Appeals
- 1st Amendment Free Speech versus Riot Statute
- Plea Withdrawal



State v. Leveuno, 2026 OK CR 3

FACTS

Defendant arrested for stabbing in apartment parking lot, administered *Miranda* warnings in Spanish by detective. Warnings substantially accurate, except that in closing sentence word “treatment” is used in place of “statement”.

You have the right to remain silent, anything you say they are going to use it against you in a...the court of law. You have the right to speak to an attorney, you have the right to have one present with you while they are giving you questions. If you don't have money to be able to pay for an attorney, they will write down one for you to represent you before...before they make the questions, if you want one. If you decide, if you decide to do an, um, if you decide to do a treatment, you can stop at any time, if you give one. Are you understood the rights I have...I have explained to you just now?

ISSUE

Trial Court found warnings inadequate due to the mis-translation—suppressed statement

HOLDING



State v. Luevano, 2026 OK CR 3

Unanimous Opinion by Judge Hudson

“The initial warnings given by De La Paz “touched all of the bases required by Miranda.” Egan, 492 U.S. at 203. The translated Miranda warnings reasonably conveyed to Luevano that he had the right to remain silent, that anything he said would be used against him, that he had the right to the presence of an attorney, and that if he could not afford an attorney one would be appointed for him prior to questioning. The officer's substitution of the word “treatment” for “statement” in the closing sentence of the warning--i.e., “if you decide to do a treatment, you can stop at any time”-- though unfortunate in no way undermined the effectiveness of the requisite core Miranda warnings conveyed to....”

ISSUE

Whether trial court erred in finding warnings inadequate due to the mis-translation

HOLDING

Reversed

SIGNIFICANCE FOR JUDICIAL PRACTICE

California v. Prysock, 453 U.S. 355 (1981): reviewing courts “need not examine Miranda warnings as if construing a will or defining the terms of an easement.”

Duckworth v. Eagan, 492 U.S. 195, 203 (1989):(even when warnings were not the “clearest possible formulation of Miranda's right-to-counsel advisement,” the Court found them acceptable as “sufficiently comprehensive and comprehensible when given a commonsense reading.”

State v. Russell, 2026 OK CR 15

Key Facts

- Search Warrant at Defendant's home for child pornography. Officers go to his job (Walmart) to bring him back to the residence. Officers say they asked him to return; Russell testifies "we need you to come back to your house with us" and he didn't feel like he had a choice.

Russell stood toward the bottom of the front steps or on the ground while Bell, and at times another officer or two, stood on the steps or on the porch. A photograph admitted at the suppression hearing shows Russell standing on the grass and sidewalk about three feet from his porch, one officer standing on the steps, and two others standing on the porch.

Trial Court finds custody, suppresses statements

State v. Russell, 2026 OK CR 15

Russell lists eight factors he contends established that he was in custody at the time he was asked and answered questions while standing on his own lawn during the execution of the search warrant. These include: (1) Detective Ingram sent Officer Bell "to go get" him from his place of employment; (2) Officer Bell escorted him outside his place of employment to his parked car; (3) Officer Bell escorted him back to his house; (4) Officer Bell took control/possession of his car; (5) Officer Bell took his cell phone; (6) Officer Bell and/or another Blackwell Police Officer remained with him on the porch of his house the entire time; (7) he was denied access to his house during the search; and (8) Officer Bell asked Detective Ingram towards the end of the interaction some variation of "do you want to cut him loose or should we keep him here." 3

¶11 Russell concludes from these factors that he was in custody because no reasonable person in that situation would have felt free "to terminate the interrogation and leave." He cites *Thompson v. Keohane*, 516 U.S. 99, 112 (1995) for this statement of Miranda's custody test, and focusing solely on that sentence one might conclude that a person is in custody for Miranda purposes anytime they do not subjectively feel free to leave. However, an examination of the entire passage in *Thompson* reveals that the "free to leave" language refers to the analytical process to be used in reaching the ultimate issue, which is whether there was a restraint on one's freedom of movement to a degree normally associated with a formal arrest. *Thompson*, 516 U.S. at 112 (emphasis added).

State v. Russell, 2026 OK CR 15



Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve "the ultimate inquiry": "[was] there a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 . . . (quoting *Mathiason*, 429 U.S., at 495 . . .). *Thompson*, 516 U.S. at 112 (emphasis added) (footnote omitted). *Thompson* did not alter the legal definition of custody (restraint on freedom of movement to a degree associated with a formal arrest) which has been the law since at least 1977's *Mathiason* decision. Custody requires more than a showing that one is temporarily detained and not free to go; it requires a showing that the freedom of movement is restrained to a degree more like an arrest than an investigative detention. See *Quarles*, 467 U.S. at 655; *Beheler*, 463 U.S. at 1125, *Mathiason*, 429 U.S. at 495.



State v. Russell, 2026 OK CR 15

FACTS

Trial Court applied wrong legal test in finding custody: specifically that because defendant did not feel free to leave that there was thus custody. Test is objective, and “to a degree associated with a formal arrest” which is more than just detained or not free to leave.

ISSUE

Did trial court err in finding custody and suppressing defendant’s statements?

HOLDING

Trial court abused its discretion in finding custody; reversed without dissent.

SIGNIFICANCE FOR JUDICIAL PRACTICE

Custody for purposes of *Miranda* means more than detained, but less than arrested. Custody requires more than a showing that one is temporarily detained and not free to go; it requires a showing that the freedom of movement is restrained to a degree more like an arrest than an investigative detention. See *Quarles*, 467 U.S. at 655; *Beheler*, 463 U.S. at 1125, *Mathiason*, 429 U.S. at 495.



Reece v. State, 2025 OK CR 8

FACTS

Serial rapist and murder William Reece was in Texas prison and began cooperating with Texas Rangers about various persons he had killed, one of which was Tiffany Johnston, who was raped, murdered, and dumped in rural Oklahoma County in 1997. He sought assurances from Rangers that the death penalty would not be sought; they declined to promise but indicated they would do all they could including a meeting with Oklahoma authorities, to attempt to avoid the death penalty in exchange for his information.

ISSUE

1. Voluntariness of his confession re: hope to avoid death penalty.
2. Admissibility of his initial statements, pre-Miranda warnings.

HOLDING

SIGNIFICANCE FOR JUDICIAL PRACTICE



Reece v. State, 2025 OK CR 8

As to Voluntariness:

In admitting the statements, the trial court reasoned that Holland did not promise that Reece would not receive the death penalty if he confessed, but that Holland promised that he would do everything in his power to convince the prosecutors not to seek the death penalty. The trial court also found that Holland repeatedly told Reece that the decision was not up to him, but that he would intervene on his behalf if he cooperated.

ISSUE

1. Voluntariness of his confession re: hope to avoid death penalty.
2. Admissibility of his initial statements, pre-Miranda warnings.

Unanimous Court: no abuse of discretion—statements were voluntary

Voluntariness means not the product of undue coercion nor the product of any promises or threats, direct or indirect, however slight. *Malloy v. Hogan*, 1964.



Reece v. State, 2025 OK CR 8

As to the *Miranda* Issue:

Reece's interviews of February 9th and 16th were conducted in the prison where he was serving a sentence for kidnapping. The February 18th and 19th conversations were held at Site 1 and at the Friendswood jail.

¶171 The prison interviews were held in a conference room with the door slightly ajar. The interviews occurred during the day. Reece was repeatedly told that he was free to leave, and he was offered breaks, food, and drinks. Reece was not restrained and there is no evidence that Ranger Holland was armed.

¶172 The questioning at Site 1 began with Reece volunteering information about the murders. He was eager to talk about the crime and initiated the conversation. Similarly, at the Friendswood jail, Reece was free to stop the conversations at any time and was free to leave the interrogation room.

ISSUE

HOLDING

SIGNIFICANCE FOR JUDICIAL PRACTICE



Reece v. State, 2025 OK CR 8

As to the *Miranda* Issue:

On February 23, Reece wanted to take Holland to the location of J.C.'s body. Reece made Holland promise that they would continue to search for K.C.'s body. Finally, on the 26th, at Reece's request, Detective Bacon formally questioned Reece, reading the Miranda¹² warning to Reece for the first time. Reece wanted to get things off his chest. After the Miranda warning, Reece gave incriminating statements regarding the murders of L.S., J.C., and K.C. Then on February 27, Detective Bacon interviewed Reece specifically about Tiffany Johnston.

SIGNIFICANCE FOR JUDICIAL PRACTICE

Under Supreme Court cases like *Howes v. Fields*, (2012) questioning inside a prison may be non-custodial depending on circumstances. The midstream giving of the warnings was not a two step approach which SCOTUS repudiated in *Missouri v. Seibert* (2004).

ISSUE

Whether pre-*Miranda* statements were custodial

HOLDING

No. Trial Court affirmed.



SOME EVIDENTIARY ISSUES

Napolean v. State, 2025 OK CR 25

FACTS

This case involves the ruthless, near-fatal stabbing of Nancy Johnson Jones outside Hillcrest Medical Center in Tulsa on April 6, 2017. Jones had taken a quick break from visiting her stepmother to get a snack at a nearby QuikTrip before nightfall. As she approached the hospital's north entrance, her attacker came up behind her, plunged a serrated boning knife into her neck, and fled on foot towards the parking garage without taking anything from her. The disputed issue at trial was the identity of the perpetrator.

ISSUE

HOLDING

SIGNIFICANCE FOR JUDICIAL PRACTICE



SOME EVIDENTIARY ISSUES

Napoleon v. State, 2025 OK CR 25

A hospital employee witnessed the attack from near the north hospital entrance. She identified Napoleon as Jones's attacker at trial. She described the attacker to police at the scene, explaining he was wearing camouflage pants and something white on his forearm. Another hospital employee, who was in her car in the parking garage, identified Napoleon as the person she saw wearing camouflage pants hurriedly putting objects in a parking garage trashcan and dashing up the stairs. Hospital security apprehended Napoleon on the street not far from the parking garage within fifteen minutes of the attack. Based on interviews with the employees, police found the bloody knife used in the stabbing in the parking garage trashcan along with the white sock the attacker wore over his hand . When police arrested Napoleon, he was wearing black thermal pants.

ISSUE

HOLDING

SIGNIFICANCE FOR JUDICIAL PRACTICE



SOME EVIDENTIARY ISSUES

Napolean v. State, 2025 OK CR 25

DNA could neither include nor exclude Defendant due to DNA mixture. First trial was mistrial, after which prosecution enlisted Sorenson Forensics to conduct probabilistic genotyping testing via the software program BulletProof. The software program analyzed the raw data from the previously indistinguishable DNA mixtures with Napoleon's known DNA profile to calculate a ratio of the likelihood his known profile would be included within the mixture and, if so, the approximate contribution proportion of his sample within the mixture. The results showed that it was far more likely that Napoleon's DNA was a major contributor to the mixture of DNA on both the sock and pants and that his DNA exceeded 50% of both mixtures.

ISSUE

Whether DNA probabilistic genotyping is sufficiently reliable under *Daubert*, etc.

HOLDING

Unanimous Court affirms and approves use of prob. Genotyping for first time.

SIGNIFICANCE FOR JUDICIAL PRACTICE

Good application of *Daubert* to newer DNA technology. The case also discusses how “contamination” by jury handling during first trial does not affect the accuracy of probabilistic genotyping DNA analysis.

Drug Courier Profile Evidence

Pena v. State, 2026 OK CR 8

- Defendant convicted of smuggling drug proceeds, \$50,000 in currency
- Object to use of “drug courier profile” testimony as substantive evidence of guilt.
- Relies on several federal cases rejecting such testimony as substantive evidence.



Drug Courier Profile Evidence

Pena v. State, 2026 OK CR 8

- Two troopers involved in stop testified; no error for them to testify about the money being hidden, how drug proceeds are typically concealed, etc.



Pena v. State, 2026 OK CR 8

They participated in Pena's traffic stop and testified about the drug trade, the flow of drugs and money through Oklahoma, and specific factors about the packaging and secreting of currency which is indicative of unlawful proceeds. Although some of this testimony would arguably qualify as drug courier profile evidence as defined by at least some of the cases relied upon by Pena, the labeling of the testimony is not the proper inquiry. The discovery of fifty-thousand dollars hidden in vacuum sealed packages secreted in a child's toy box in a rental car driving cross-country might seem curious to the average juror, but most jurors have no frame of reference to know exactly what that evidence might mean.



Pena v. State, 2026 OK CR 8

The expert testimony of Agent Perry, however, is problematic. He was not involved in the investigation but rather testified as an expert witness in illegal drug trafficking and bulk currency linked to the drug trade. Upon the State's motion, he was allowed to attend the trial and hear the testimony of Troopers Cole and Lockney about the facts of the investigation. The prosecutor then went through these witnesses' testimony, asking Agent Perry whether each fact was consistent or inconsistent with drug trafficking. His testimony, for all intents and purposes, told the jury what conclusion to reach, not because he gave expert testimony about what facts one might expect to find in the investigation of interstate bulk currency smuggling, but because he sat through the entire trial, heard the entirety of the evidence, and then combed through each bit of it stating that each was consistent with drug trafficking. His testimony crossed the line of proper expert opinion testimony outlined in Romano, and we caution prosecutors to exercise great care in keeping expert testimony within the proper confines of the Evidence Code.



Pena v. State, 2026 OK CR 8

Judge Musseman dissent.

Agent Perry's testimony went too far in telling the jury what result to reach:

"As the State's presentation of Agent Perry's testimony went beyond the protective restrictions of 2702 and influenced the jury's verdict, reversal is required."



Jacobs v. State, 2026 OK CR 2

- Defendant tried for manslaughter, state calls his daughter as witness. She had given police a recorded interview at time of crime, but did not want to testify and claimed no memory of any of the events.
- Shown video of her interview, admits it is her and authenticates it, but still refuses to acknowledge remembering even giving the interview.
- State is allowed to play the video for jury as prior inconsistent statement.
- Unanimous Court: her testimony to lack of memory is not inconsistent with prior statement and thus that was improper basis for admission.
- HOWEVER: it was proper as a prior recorded recollection, and video could be played for jury but not admitted as an exhibit *ala* 12 O.S. §2803(5)

Jacobs v. State, 2026 OK CR 2

- *The following are not excluded by the hearsay rule even though the declarant is available as a witness:*
- *. . . A record concerning a matter about which a witness once had knowledge but now has insufficient recollection to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness's memory and to reflect that knowledge correctly. The record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party[.]*

Crim Law Update



Medical Marijuana Prosecutions

TWO CASES

- *Bu v. State*, 2025 OK CRT 17: Facial and As Applied constitutional challenge to Oklahoma's medical marijuana laws.
- *Zou v. State*, 2026 OK CR 1: Various claims that, as OMMC licensee, he could not be criminally prosecuted, only dealt with administratively



Medical Marijuana Prosecutions

Bu v. State, 2025 OK CR 17

FACTS

Marijuana grower convicted of unlawful cultivation in Pontotoc County. Challenges constitutionality of Oklahoma’s medical marijuana law as overbroad and vague. Both challenges are rejected by unanimous Court of Crims. Also: Court finds that state law requiring 75% ownership of grow operations by Oklahoma resident is not met by hiring someone to sign as owner, a so called “straw owner”.

ISSUE

Are Oklahoma’s medical marijuana law constitutional, and is 75% ownership requirement satisfied by hired “owner”.

HOLDING

Yes and No.

SIGNIFICANCE FOR JUDICIAL PRACTICE

This case and *Zou v. State*, 2026 OK CR 1, analyze the interplay between OMMA administrative law and licensing and the criminal law given that outside of a properly licensed operator, cultivating marijuana is still illegal and marijuana is still a Schedule I drug under state and federal law.



FACTS

In cultivation case, 8 props of error on appeal; Since OMMA licensed, cannot be charged criminally because OMMA rules and regs provide the only remedy. This case involved attorney Matt Stacy who specialized in signing up “straw owners” who live in state. Evidence in this case showed a woman listed as 75% owner in 64 different grow operations, including this one, all orchestrated by Stacy, who was indicted federally.

ISSUE

Interplay between marijuana licensure laws and criminal laws.

HOLDING

SIGNIFICANCE FOR JUDICIAL PRACTICE

In addition to the straw ownership issue, defendant in this case complied with basically none of the licensure requirements for marijuana cultivation. Defense was these are all administrative violations to be handled by OMMA.



The Lawyer Accused of Straw Ownership

...And Then There is Mr. Stacy

This criminal case arises from Stacy's use of a two-entity business structure to help his clients circumvent Oklahoma's medical-marijuana laws. In 2018, Oklahoma legalized the possession, growth, distribution, and sale of medical marijuana. Okla. Stat. tit. 63, § 420 et seq. (2018). To lawfully operate a medical-marijuana business, an individual or entity must meet certain Oklahoma-residency requirements. Id. §§ 422(B)(4), 427.14(E)(7)(c) (2019).¹ These requirements form a barrier to entry for individuals and entities outside of Oklahoma.

As an attorney, Stacy centered his legal practice on out-of-state clients seeking to enter Oklahoma's medical-marijuana industry. He devised a two-entity business structure for medical-marijuana businesses that was designed to hide the true ownership interests of their out-of-state owners. In this structure, one entity obtained the required license and registration using the names of Oklahoma residents, while the other entity housed the actual medical-marijuana operations controlled by the out-of-state owners.

ISSUE

The quoted material is from the 10th Circuit's opinion rejecting his claim that his federal prosecution is unlawful.

HOLDING

Stacy and Co-Defendant set for jury trial in federal court, W.D.OK. October 2026.



Pretrial Appeals

State's Statutory Appeals and Defendant's Stand your Ground Appeals

- *Haddock v. State*, 2025 OK CR 24
- *Radford v. State*, 2026 OK CR 6
- *Crawford v. State*, 2026 OK CR 19





FACTS: Stand Your Ground Appeal by Defendant

Edmond Police Lt., off duty, shot and killed her brother during family altercation involving their aged mother. Appellant was at mother's residence moving her out; brother lived, or had lived there. "The record shows that Sean was a homeless drug addict who constantly coerced and harassed his mother, Marcia Ricketson, to give him money to feed his addiction to drugs."

ISSUE

HOLDING

SIGNIFICANCE FOR JUDICIAL PRACTICE

<https://www.okcca.net/cases/2025/OK-CR-24/>



Haddock v. State, 2025 OK CR 24

FACTS: Stand Your Ground Appeal by Defendant

Deceased had lived with his mother, but apparently did not at time of his death. Appellant was worried that he was taking advantage of their mother; she was moving mother to a new home. Fight ensued over bedroom furniture. Trial judge found Appellant “arguably a trespasser”, deceased a “tenant at will” who had authority to order Appellant from the apartment.

ISSUE

HOLDING

Unanimously reversed. No evidence she was trespasser or he was tenant at will.

SIGNIFICANCE FOR JUDICIAL PRACTICE

<https://www.okcca.net/cases/2025/OK-CR-24/>



FACTS

Appellant denied immunity below, appeals to Court of Criminal Appeals. Unanimously upholds lower judge's findings: "Judge Kirkland weighed the evidence, and the record supports his finding that Appellant showing he had a fear that the victim was reaching for a gun intending to use it differs from Appellant's burden of showing that he was being attacked before he shot the victim. This finding alone resolves the issue of immunity."

ISSUE

Does fear that a person is reaching for a weapon constituted being "attacked" for Stand Your Ground Immunity?

HOLDING

No, it does not, even though it would be relevant to the affirmative defense of self-defense.

SIGNIFICANCE FOR JUDICIAL PRACTICE

This case illustrates the differences and interplay between Stand Your Ground Immunity, and the defense of self-defense at trial.



Crawford v. State, 2026 OK CR 4

FACTS

Child abuse case where state filed 2404(b) “Burk Notice” evidence of other acts. No witnesses called, state relied on its pleading. Trial Court: “But I am just going to go straight to clear and convincing. I have not heard any testimony with regard to this matter. I don't know who's going to testify to it. I don't know what she's going to say. I don't know how she's going to say it. I don't know if she's going to be a good witness. So at this point, I can't find that it's clear and convincing. I'm going to deny the State's request to use 2404(B) evidence, as I have not heard from [S.C.], and so I cannot make that decision today.”

ISSUE

Is this pre-trial ruling on Section 2404(b) appealable under 22 O.S. 1053?

HOLDING

SIGNIFICANCE FOR JUDICIAL PRACTICE

[Explain how this case affects daily judicial decision-making. What precedent does it set? How should judges apply this ruling in analogous situations?]

Oklahoma Statutes Citationized

Title 22. Criminal Procedure

Chapter 18 - Appeals

Section 1053 - State or Municipality May Appeal in What Cases

Cite as: 22 O.S. § 1053 (OSCN 2026)

Appeals to the Court of Criminal Appeals may be taken by the state or a municipality in the following cases only:

1. Upon judgment for the defendant on quashing or setting aside an indictment or information;
2. Upon an order of the court arresting the judgment;
3. Upon a question reserved by the state or a municipality;
4. Upon judgment for the defendant on a motion to quash for insufficient evidence in a felony matter;
5. Upon a pretrial order, decision, or judgment suppressing or excluding evidence where appellate review of the issue would be in the best interests of justice;
6. Upon a pretrial order, decision or judgment suppressing or excluding evidence in cases alleging violation of any provisions of [Section 13.1 of Title 21](#) of the Oklahoma Statutes; and
7. Upon an order, decision or judgment finding that a defendant is immune from or not subject to criminal prosecution.

Priority shall be given to appeals taken pursuant to paragraph 5, 6, or 7 of this section, and an order staying proceedings shall be entered pending the outcome of the appeal.

Historical Data

R.L. 1910, § 5990; Amended by Laws 1978, SB 208, c. 248, § 2, emerg. eff. July 1, 1978; Amended by Laws 1990, SB 453, c. 261, § 3, emerg. eff. May 24, 1990; Amended by Laws 2002, SB 1536, c. 460, § 21, eff. November 1, 2002 ([superseded document available](#)); Amended by Laws 2009, SB 611, c. 274, § 3, eff. November 1, 2009 ([superseded document available](#)); Amended by Laws 2022, SB 1742, c. 209, § 2, eff. November 1, 2022 ([superseded document available](#)).



Crawford v. State, 2026 OK CR 4

FACTS

State brought appeal—pretrial order “suppressing or excluding evidence”.

State: means any pre-trial order which keeps out any of state’s evidence.

Defendant: Suppress or exclude are terms of art for constitutional violations such as 4th Amendment, 5th Amendment, etc.

Majority opinion plus 4 separate writings. Lumpkin—CIP/DIP; Lewis—Specially Concur; Hudson—dissent; Rowland—Specially concur.

ISSUE

Is this pre-trial ruling on Section 2404(b) appealable under 22 O.S. 1053?

HOLDING

Under (6), suppress or exclude are limited to constitutional violations.

SIGNIFICANCE FOR JUDICIAL PRACTICE

This case is of questionable use to anyone because of its multiple holdings and complexities. However, it will be superceded by new legislation effective Nov. 1, 2026 greatly expanding the right of the State to pre-trial appeals.

**House Bill
3497 Effective
November 1,
2026**

5. Upon a final pretrial order, decision, or judgment:

- a. suppressing evidence on constitutional grounds, or
- b. excluding evidence on any other grounds,

where appellate review of the issue would be in the best interests of justice;

6. Upon a final pretrial order, decision or judgment:

- a. suppressing evidence on constitutional grounds, or
- b. excluding evidence on any other grounds,

in cases alleging a violation of any of the provisions of Section 13.1 of Title 21 of the Oklahoma Statutes; and



Terry et al. v. Drummond, 2026 OK CR 10

2025

Certified Question of Law from Tenth Circuit Court of Appeals

Does riot statute require the State to prove the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence toward another to convict for threats constituting riot?

2025

October, 4 Certified Questions of Law from Tenth Circuit

All in some way questioning the applicability of the *Counterman v Colorado* standard to Oklahoma's riot statute

2026

Terry v. Drummond I and II by Court of Crim Appeals

July, 2025 opinion answers first Certified Question. January, 2026 opinion answers other four questions.



First Amendment/Riot Statutes

Terry et al. v. Drummond, et al

- **The Underlying Litigation:** Federal District Judge trying to rule on plaintiffs' motion for temporary injunction in their lawsuit challenging the constitutionality of Oklahoma's riot statute. Tenth Circuit is asking about the *mens rea* required, and particularly whether it satisfies the requisite mental state of *Counterman v. Colorado*.

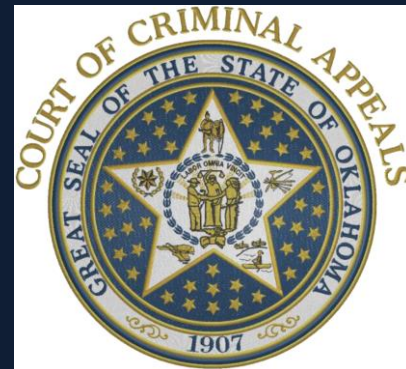




A Quick Excursion into *Counterman*

Counterman v. Colorado, 2022

- In “true threats” prosecutions based upon the content of speech, prosecution must show some subjective *means rea* on part of defendant. Specifically, must show that the defendant “consciously disregard[ed] a substantial [and unjustifiable] risk that [his] conduct will cause harm to another....”



¶3 The Court of Appeals certified the following additional four questions for our consideration and we respond pursuant to the *Uniform Certification of Questions of Law Act*. See 20 O.S.2021, § 1601 *et seq.*:

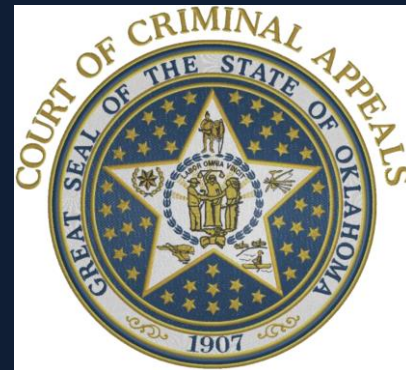
1. If § 1311 does require the State in a threats prosecution to prove a defendant had a *mens rea* of willfulness, see 2025 OK CR 11, ¶¶ 6-7, does "willfulness" mean that, under Oklahoma law, a defendant must have *at least* "consciously disregard[ed] a substantial and unjustifiable risk" that "others could regard his statements as threatening violence"? See *Counterman v. Colorado*, 600 U.S. 66, 78-82 (2023).
2. The OCCA's opinion states "the crime of riot . . . relates to and prohibits *certain defined conduct* rather than forms of expression." 2025 OK CR 11, ¶ 10 (quoting *State v. Bad Heart Bull*, 257 N.W.2d 715, 722 (S.D. 1977)). Does this mean § 1311 does not cover speech at all?
3. Does "any threat to use force or violence" in § 1311 cover only "true threats"? True threats are "statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003).
4. The OCCA's opinion states that § 1311 requires "mutual or common intent" along with "immediate power of execution," which together "substantially produce the same effect" as requiring proof a defendant "consciously disregarded a substantial risk." 2025 OK CR 11, ¶ 8. How do these other requirements satisfy *Counterman's* mandate that the State in a threats prosecution must prove a defendant's subjective intent of recklessness?



BOTTOM LINE ON *TERRY* CASE

Terry et al. v. Drummond, et al

- Criminal statutes which target speech for its content must meet the *mens rea* standard of *Counterman v. Colorado*, which is reckless disregard that their speech would be regarded as a true threat. Statutes like the riot statute which require conduct along with speech to meet the elements are subject to the familiar standard of “willfulness”.





Right to Testify--Denial

Lopez v. State, 2025 OK CR 15

FACTS

In first degree murder prosecution, defendant testifies. Court had barred evidence about victim's past violent history without evidence that Defendant was aware of it at time of killing. During his testimony, Appellant stated deceased wasn't acting like himself, "I know how he gets."

ISSUE

HOLDING

SIGNIFICANCE FOR JUDICIAL PRACTICE

DEFENSE: You said you know how he is?

APPELLANT: Yes, I know how he can get.

DEFENSE: Okay. Were you concerned that he had a knife in his hand?

APPELLANT: Yes.

DEFENSE: Why?

APPELLANT: Because why would you just have a knife in your hand when you were around people that care about you, you know. I mean just acting angry. Acting mad.

DEFENSE: To your knowledge did [the victim] have a history with having knives in his hand?

APPELLANT: Yes, he'd been to prison before for stabbing somebody.

STATE: Your Honor, this is exactly - - we had motions - -

The following then took place at the bench out of the hearing of the jury:

COURT: Are we done here?

DEFENSE: I was trying to - -

COURT: Counsel, where do we go from here?

DEFENSE: You said you know how he is?

APPELLANT: Yes, I know how he can get.

DEFENSE: Okay. Were you concerned that he had a knife in his hand?

APPELLANT: Yes.

DEFENSE: Why?

APPELLANT: Because why would you just have a knife in your hand when you were around people that care about you, you know. I mean just acting angry. Acting mad.

DEFENSE: To your knowledge did [the victim] have a history with having knives in his hand?

APPELLANT: Yes, he'd been to prison before for stabbing somebody.

STATE: Your Honor, this is exactly - - we had motions - -

The following then took place at the bench out of the hearing of the jury:

COURT: Are we done here?

DEFENSE: I was trying to - -

COURT: Counsel, where do we go from here?



FACTS

Trial Court finds he “vitiates” his right to testify by violating the Order. Defense counsel says client isn’t a lawyer and has a right to testify, but trial judge terminates his right to testify before defendant had given any significant details about the day of the crime.

ISSUE

Abuse of discretion to end Appellant’s testimony as sanction for violating motion *in limine*?

HOLDING

Termination was excessive sanction under facts of this case.

SIGNIFICANCE FOR JUDICIAL PRACTICE

Defendant may forfeit their right to testify by their conduct when that conduct is extreme, wanton, disorderly, disruptive, disrespectful, etc. This single statement by defendant does not rise to that level and should have prompted an admonishment to jury to disregard it.



FACTS

The new “survivor act” allows inmates to seek reduction of sentence from trial court upon showing domestic or sexual abuse was a “substantial contributing factor” to the criminal act. Appellant here sought a hearing and was denied, and tried to appeal that denial to Court of Criminal Appeals. Court unanimously finds the order non-appealable.

ISSUE

HOLDING

SIGNIFICANCE FOR JUDICIAL PRACTICE



FACTS

“Individuals seeking resentencing pursuant to this Act must first seek and be granted permission to apply by the trial court. 22 O.S.Supp.2024, § 1090.5 (C). A trial court order denying such a request is not a final appealable order. 22 O.S.Supp.2024, § 1090.5(C)(2)(“If the court finds that such person has not met the requirements to apply for resentencing as provided for in subsection A of this section, the court shall notify the person and deny his or her request without prejudice.”).

ISSUE

HOLDING



FACTS

The new “survivor act” allows inmates to seek reduction of sentence from trial court upon showing domestic or sexual abuse was a “substantial contributing factor” to the criminal act. Appellant here sought a hearing and was denied, and tried to appeal that denial to Court of Criminal Appeals. Court unanimously finds the order non-appealable.

ISSUE

Whether the initial decision to allow or denial a hearing is appealable?

HOLDING

It is not appealable, but defendant may apply again presumably after revisions.

SIGNIFICANCE FOR JUDICIAL PRACTICE

Perhaps counter-intuitively, a trial court’s denial to allow a hearing under the Survivor Act cannot be appealed, but it is without prejudice. Thus, defendant can amend the motion, revise, etc. and try again. If hearing is held and relief denied, THAT is of course appealable.



FACTS

Appellant not advised of state's offer in white collar case—15 years suspended and 200,000 restitution. Offer lapsed; blind plea or trial, he chose blind plea and got 10 in 20 out and 563 restitution. Filed to withdraw plea; in denying, trial court weighed whether plea was knowing and voluntary.

ISSUE

HOLDING

SIGNIFICANCE FOR JUDICIAL PRACTICE



Mitchell v. State, 2025 OK CR 20

The plea offer in this case "was a formal one with a fixed expiration date." Frye, 566 U.S. at 145. Plea counsel admittedly did not timely communicate the State's final offer to Petitioner. Counsel's alleged inability to contact Petitioner because he did not have Petitioner's contact information, and his reliance on Petitioner's bondsman to do so on his behalf, did not relieve him of his ethical duty to communicate with his client. 6 Id. See also Jimenez, 2006 OK CR 43, ¶¶ 7-8, 144 P.3d at 905-06 ("Counsel's role in plea-bargaining involves observance of certain prevailing professional norms."). It is difficult to contemplate an attorney not having basic contact information for his client. Moreover, that plea counsel did not simply obtain Petitioner's contact information directly from Petitioner's bondsman is inexplicable and shows a complete lack of diligence. Indeed, Petitioner's bondsman testified at the withdraw hearing that he never had any issues contacting Petitioner.

¶13 Plea counsel bore the duty to communicate with Petitioner, not Petitioner's bondsman. Given the circumstances presented here, Petitioner was not to blame for plea counsel's failure to communicate the plea offer. The record clearly shows that Petitioner's attorney did not make a meaningful attempt to inform him of the State's final plea offer before the offer expired.



We recognize there are competing interests at play in this case. On the one hand, Petitioner has suffered a constitutional injury and must be restored, as closely as possible, to the position he occupied before the State's final plea offer lapsed because of ineffective assistance. See *id.* at 172. Further, the record shows that Petitioner expressed a willingness to accept responsibility for his actions. During the March 7th hearing, Petitioner told the trial court that he knew he "would be eventually . . . paying restitution to make people whole" and hoped all along to "have a settlement that help[ed] everybody." 10 On the other hand, additional information concerning Petitioner's crimes came to light at his sentencing hearing and sheds light on the financial, emotional, and psychological impact his actions had on his victims.

¶24 Having weighed these various factors and the circumstances presented in this case, we find the best way to neutralize the taint of the constitutional error Petitioner suffered is through the reinstatement of the State's January 22, 2024 plea offer. 11 In doing so, the positions of each party will be restored as closely as possible to the positions they occupied before the plea offer lapsed.



Mitchell v. State, 2025 OK CR 20

We recognize there are competing interests at play in this case. On the one hand, Petitioner has suffered a constitutional injury and must be restored, as closely as possible, to the position he occupied before the State's final plea offer lapsed because of ineffective assistance. See *id.* at 172. Further, the record shows that Petitioner expressed a willingness to accept responsibility for his actions. During the March 7th hearing, Petitioner told the trial court that he knew he "would be eventually . . . paying restitution to make people whole" and hoped all along to "have a settlement that help[ed] everybody." 10 On the other hand, additional information concerning Petitioner's crimes came to light at his sentencing hearing and sheds light on the financial, emotional, and psychological impact his actions had on his victims.

¶24 Having weighed these various factors and the circumstances presented in this case, we find the best way to neutralize the taint of the constitutional error Petitioner suffered is through the reinstatement of the State's January 22, 2024 plea offer. In doing so, the positions of each party will be restored as closely as possible to the positions they occupied before the plea offer lapsed.



Plea Withdrawal

Mitchell v. State, 2025 OK CR 20

FACTS

Judge Lumpkin Dissents in Part: Would not require the initial offer to be extended but would vitiate this plea offer and allow the parties to continue negotiation.

ISSUE

HOLDING

SIGNIFICANCE FOR JUDICIAL PRACTICE



FACTS

Defendant charged with “major crime” under 18 U.S.C. 1153 (child sexual abuse). Trial Court denies his motion to dismiss finding he is not “Indian” for purposes of Indian Country Jurisdiction. The tribe of which he is a member is federally-recognized by the Department of the Interior.

Question of First Impression: Must the tribe, under *McGirt*, be federally recognized?

ISSUE

HOLDING

SIGNIFICANCE FOR JUDICIAL PRACTICE



“we clarify that our Indian status test requires the defendant to show that (1) he or she has some quantum of Indian blood; and (2) he or she is a member of, or affiliated with, a federally recognized tribe. We agree the evidence showed that Bertrand has Indian blood and that he was an enrolled member of the Chickamauga Tribe when the charged offenses occurred. Nevertheless, because his tribe is not on the BIA list of federally recognized tribes, we find the trial court did not err in finding Bertrand failed to satisfy the requirements of the second prong of the Indian status test. Hence, Bertrand is not an Indian for purposes of criminal jurisdiction and the State had jurisdiction to prosecute this case.”

ISSUE

Did trial court abuse discretion in denying defendant’s motion to dismiss?

HOLDING

No abuse of discretion.

SIGNIFICANCE FOR JUDICIAL PRACTICE

Rogers test for Indian status *ala McGirt*:

(1) has Indian blood, and (2) is recognized as an Indian by a tribe or the federal government, requires that tribe have federal recognition.

The End of the Trail

Scott Rowland, Judge

Oklahoma Court of Criminal Appeals

srowland@okcca.net or Scott.Rowland@oscn.net

