



IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA

Plaintiff,

vs.

PRESTON MICHAEL NABORS

TYREKE J BAKER  
a/k/a Tyreke Baker

MIA NICHELL HOGSETT

SINCERE DEANGELO TERRY  
a/k/a Sincere Eila Terry

TREVOR EVANS WEBB  
a/k/a Trevour Evan Webb, Trevour  
Martinez, Trevour Cruz

Defendants.

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

CF-2020-2930

JUN 30 2020

RICK WARREN  
COURT CLERK


13 \_\_\_\_\_

AMENDED INFORMATION

David W. Prater, the District Attorney of Oklahoma County, Oklahoma, informs the District Court, that:

Count 1: On or about June 23, 2020, the crime of INCITEMENT TO RIOT was feloniously committed in Oklahoma County, Oklahoma, by PRESTON NABORS, TYREKE BAKER, MIA HOGSETT, SINCERE TERRY AND TREVOR WEBB, who, acting together, surrounded Oklahoma City Police Sgt. Wald's marked patrol vehicle while Sgt. Wald was transporting a homicide witness to the Oklahoma City Police Department, and confined him for a period of time while the defendants yelled threats and expletives at Sgt. Wald in an effort to obstruct Sgt. Wald, who was acting in the performance of his official duties as an Oklahoma City Police Officer, contrary to the provisions of Section 1320.2 of Title 21 of the Oklahoma Statutes and against the peace and dignity of the State of Oklahoma.

Respectfully Submitted,  
**DAVID W. PRATER**  
**DISTRICT ATTORNEY**



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**DAVID W. PRATER, OBA #15496**  
**DISTRICT ATTORNEY**

MW 06/29/20

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WITNESSES

Eric Long, #2079  
Oklahoma City Police Department  
700 Colcord Drive  
Oklahoma City, OK 73102

Aaron Ulman, #1524  
Oklahoma City Police Department  
700 Colcord Drive  
Oklahoma City, OK 73102

Sergeant Thomas Aaron Vannort,  
#1446  
Oklahoma City Police Department  
700 Colcord Drive  
Oklahoma City, OK 73102

Nicholas Wald, #1522  
Oklahoma City Police Department  
700 Colcord Drive  
Oklahoma City, OK 73102

· IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

**AFFIDAVIT AND APPLICATION FOR ARREST WARRANT**  
**AND THE ARREST WARRANT FOR THE PERSON OF:**

Name: WEBB, Trevour Evan DOB: 04/03/94  
Race: B Sex: M SSN: 499-08-1488  
Address: 731 NW 24<sup>th</sup>, OKC, OK 73103

**FOR THE CHARGES OF:** Incitement to Riot (21-1320.2)

I, **Thomas VanNort**, being first duly sworn upon oath, depose and state as follows: I am a police officer, currently holding the rank of Detective, and am employed by the City of Oklahoma City, Oklahoma, Police Department. I have been employed as a police officer since 2003. I am currently an investigator for the Special Operations Bureau.

On 06/22/2020 the City of Oklahoma City (OKC) issued a "Revocable Permit Administrative" (Permit Number REVO-2020-00777) to Brandon RILES of "Oklahoma Modern" to paint a "Black Lives Matter" mural on Shartel Ave, between Colcord Dr and Main St. The permit granted a road closure of this location and clearly marked the area to be blocked off on a map attached to the permit. The permit granted the street closure through 06/26/2020. The permitted location is located in downtown Oklahoma City, in Oklahoma County.

Later in the day on 6/22/2020, OKC Public Works employees delivered barricades for the road closure and placed them where the map from the permit showed they needed to be placed, closing the street. RILES and about five others came out and began painting outlines of their artwork on the street. There were no issues on this date.

On the morning of 06/23/2020, the full-color mural started being painted on the street on Shartel Ave. The barricades were still in the positions they were placed in by OKC employees. Shartel Ave is on the west side of Oklahoma City Police Headquarters. Police employees interacted with the

painters as they came and went. The painting group grew to around 20-30 people throughout the day as they worked to finish three large flags.

There were no police employees assigned to protest/riot related duties since the painters were not causing problems. The police interactions with the painters were mostly positive, with some officers taking photos with the painters and avoiding stepping on the murals, despite the murals blocking some avenues of crossing the street to the employees' vehicles. At one point, some of the painters even blocked this privately-owned, employee parking lot. The painters moved their vehicles when asked by the lot owner.

Going into the afternoon, some members of the group were seen making different hand gestures at the building, including holding a fist up and holding up their middle fingers. Despite these signs of disrespect to the police department, the police department never changed their stance toward the crowd, allowing them to continue carrying out their Constitutional right to protest as they continued paint the street.

At about 1430 hrs, a subject identified as Preston NABORS, moved the barricades from their permit shown and OKC placed position on the south side of Colcord Dr. to the north side of Colcord Dr. but left a route to go east on Colcord Dr. Others supported this by moving their vehicles backwards from the original barricade position, to support the new barricade position on the north side of Colcord Dr.

At 1435 hrs, NABORS went back and moved the barricades again, after having no additional traffic come through, and this position blocked the access to Colcord Dr., a street with a one-way traffic flow (eastbound) that flows from Shartel Ave to Lee Ave. Their positioning blocked off right-of-way access to the front door of the police department. This effectively extended the reach of their closure for the entire block in front of police headquarters, which was not granted in their permit. There was also no need to move the barricades since their painting had not make it past the south curb line of Colcord Dr.

At 1441 hrs, Preston NABORS returned to his vehicle (a gray Nissan Maxima with Oklahoma tag FNJ-046, which checks to NABORS) on the south side alleyway by the old City Garage, after officers walked by without engaging the group. NABORS retrieved a camo-painted, AR-15 style rifle

from the back seat of his vehicle. He pulled it out and held it up in the air, displaying it for others to see before returning it to the back seat of his vehicle. There was no sling on this rifle.

While the painting was occurring, the Oklahoma City Police Department was working a homicide that occurred in north Oklahoma City. Sgt. N. Wald #1522 transported a witness to the Oklahoma City Police Department Headquarters building to be interviewed. Upon arrival at the police headquarters building around 1515 hrs, Sgt. Wald saw the barricades blocking access to the front door of the station. Seeing there was no one immediately behind the barricades and it was safe to move the barricades and drive east on Colcord Dr., Sgt. Wald exited his vehicle and moved the barricade out of his way to proceed by. (At this time, the group's mural did not extend past the south curb line of Colcord Dr, near where the barricades were originally placed.)

Group members Tyreke BAKER and Preston NABORS immediately stood in the roadway to stop Sgt. Wald's vehicle from proceeding. While doing this, BAKER held up a camera, filming this part of the incident. BAKER and NABORS prevented Wald from conducting his official business by blocking his path but also escalated the situation by calling others. Wald tried to explain to the two that he was delivering a witness to the police station for an interview and told them to move. Wald's presence was in no way prohibiting the group from painting their murals, which were beyond the opposite side of the intersection.

BAKER and NABORS were joined by Brandon RILES. RILES also spoke with the officer, but after a brief moment, all three got out of the way so the vehicle could proceed. As the vehicle proceeded BAKER and NABORS both appeared to be holding objects up as if filming the encounter.

Wald passed the three and began to proceed east on Colcord Dr. being wholly out of the intersection and off of Shartel Ave. Sincere TERRY and Mia HOGSETT immediately ran up from the south (officer's right side) and blocked the vehicle again with TERRY screaming that the officer hit her to incite action by others. TERRY was screaming at Wald, saying "Fuck the Police!", yelling that the officer hit her, and was taunting the officer to hit her. There was no evidence of a collision between the car or any other

member of the group, this appeared to be a stunt meant to get the crowd worked up.

While in front of the vehicle, TERRY was seen on camera waving her hands. Both TERRY and HOGSETT were getting the crowd worked up for an encounter with Wald, despite this in no way prohibiting the group from painting their mural since he was still nowhere near it and was now starting to drive away from it. NABORS moved back in front of the officer's vehicle and was joined TERRY, yelling and pointing at the vehicle. They were quickly joined by an unidentified person and Trevor WEBB. WEBB stood in the front of the vehicle with his fist raised, as he had been seen doing earlier in the day. Despite the vehicle and the group being wholly out of Shartel Ave., these persons refused to move.

For a brief time, Wald's vehicle was completely confined from moving in any direction, including backwards, with both Wald and the homicide witness in the vehicle. In addition to this, TERRY was getting the crowd excited as if TERRY was trying to incite an incident between Wald and the group.

As Wald was trying to figure how to deal with the situation, he was approached on the driver's side of his vehicle by RILES, which delayed Wald's escape, but Wald continued to be reasonable and hear their arguments about his passage. Despite being off Shartel Ave. and fully onto Colcord Dr., RILES proceeded to lie to Wald and tell him the roadway had been permitted to them and they had permission to block it off. Riles said he has Shartel Ave. closed off all the way to 4<sup>th</sup> Street, which is not true.

Seeing the crowd getting ramped up, and more people arriving to block him off from accessing the Headquarters building to deliver his witness, Wald attempted to deescalate the situation by backing up away from the crowd.

As Wald backed his vehicle, he was pursued by HOGSETT, WEBB, and TERRY. They were screaming, "Fuck the Police!" and one of them yelled, "Now who got a mother fucking barricade?". As Wald drove off, the rioters again moved the barricade to block lawful passage of vehicles east on Colcord Dr.

While the rioters were blocking Sgt. Wald from accessing Headquarters, the remainder of the peaceful protestors continued to paint in the roadway, at

least twenty feet away from the vehicle and not in Wald's path. Having no interaction with Sgt. Wald and being nowhere near his vehicle, the others continued their peaceful painting.

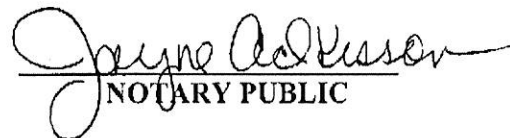
On June 25, 2020, I staffed this case with Oklahoma County District Attorney David Prater. DA Prater accepted charges.

After completing my investigation, and based on the above facts, I believe that the suspect, Trevour E WEBB, is in violation of Title 21, Section(s) 1320.2. I respectfully request a warrant be issued for the arrest of Trevour WEBB for the listed charges.

 #1446  
AFFIANT

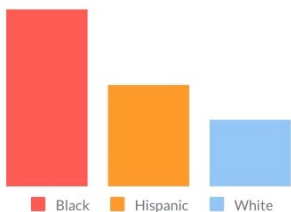
Subscribed and sworn to before me this 20th day of June, 2020.

My Commission Expires: 4-26-2023  
3004488

  
NOTARY PUBLIC

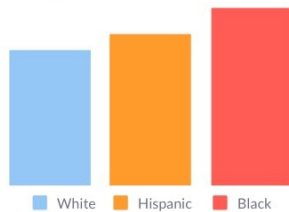
## Black people are most likely to be killed by police

**3X** more likely to be killed by police than white people.



Police Killings per 1 million population

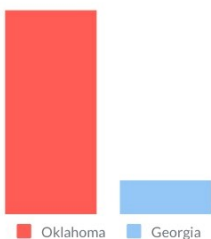
**1.3X** more likely to be **unarmed** compared to white people.



% Killed by Police Unarmed, 2013-2020

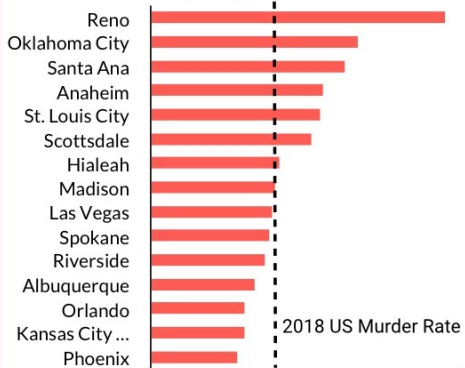
## Where you live matters

**6X** more likely to be killed by police in Oklahoma than Georgia.



Police Killings of Black People per 1M

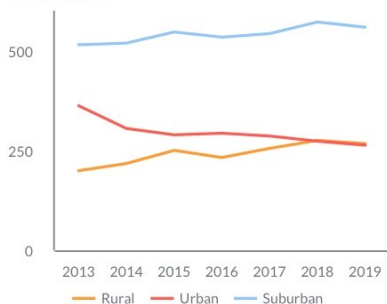
**8** of the 100 largest city police departments kill black men at **higher rates** than the US murder rate.



Police Killings of Black Men per 100K, 2013-19

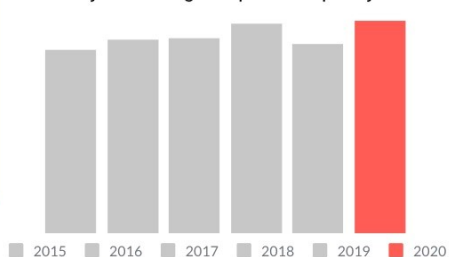
## Police violence is changing over time

Police killings have decreased in Cities but **increased** in Suburban and Rural areas



Killings by Police by Zipcode Population Density

Police killed **more** people in the first half of 2020 than they did during this period in past years



Killings by Police from 1/1 - 6/30 of Each Year

## 18 U.S. Code § 2331. Definitions

U.S. Code	Notes
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As used in this chapter—

**(1)** the term "international terrorism" means activities that—

**(A)** involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

**(B)** appear to be intended—

**(i)** to intimidate or coerce a civilian population;

**(ii)** to influence the policy of a government by intimidation or coercion; or

**(iii)** to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

**(C)** occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;

**(2)** the term "national of the United States" has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act;

**(3)** the term "person" means any individual or entity capable of holding a legal or beneficial interest in property;

**(4)** the term "act of war" means any act occurring in the course of—

- (A)** declared war;
  - (B)** armed conflict, whether or not war has been declared, between two or more nations; or
  - (C)** armed conflict between military forces of any origin;
- (5)** the term "domestic terrorism" means activities that—
- (A)** involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
  - (B)** appear to be intended—
    - (i)** to intimidate or coerce a civilian population;
    - (ii)** to influence the policy of a government by intimidation or coercion; or
    - (iii)** to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
  - (C)** occur primarily within the territorial jurisdiction of the United States; and
- (6)** the term "military force" does not include any person that—
- (A)** has been designated as a—
    - (i)** foreign terrorist organization by the Secretary of State under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189); or
    - (ii)** specially designated global terrorist (as such term is defined in section 594.310 of title 31, Code of Federal Regulations) by the Secretary of State or the Secretary of the Treasury; or
  - (B)** has been determined by the court to not be a "military force".

(Added Pub. L. 102-572, title X, § 1003(a)(3), Oct. 29, 1992, 106 Stat. 4521; amended Pub. L. 107-56, title VIII, § 802(a), Oct. 26, 2001, 115 Stat. 376; Pub. L. 115-253, § 2(a), Oct. 3, 2018, 132 Stat. 3183.)

## U.S. Code Toolbox

[Law about... Articles from Wex](#)

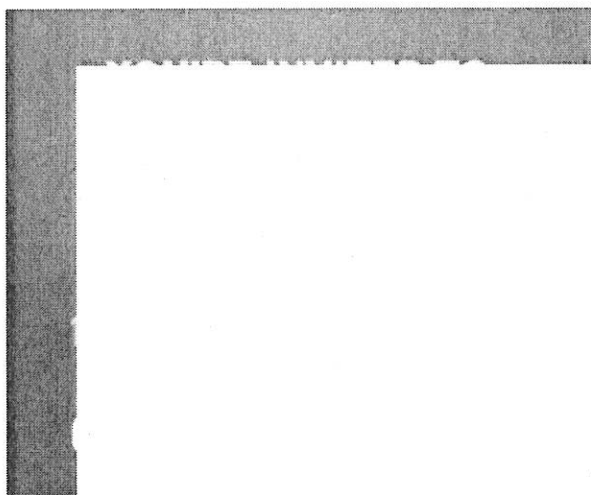
[Table of Popular Names](#)

[Parallel Table of Authorities](#)

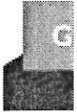
[How current is this?](#)

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JUL 31 2019

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

COURT CLERK

51 Shirley J. Feltner

IN RE: AMENDED JAIL BAIL SCHEDULE )

**A07-2019-26**

**ADMINISTRATIVE ORDER**

*(Amending Administrative Orders AD7-97-6 & AO7-2018-02)*

Effectively immediately, the following Amended Administrative Order is entered to ensure that all bail bond procedures are implemented in an orderly and expeditious manner.

The Jail Bail Schedule created herein is authorized by 22 O.S. 2016 Supp., §§ 1105 & 1105.2. The Jail Bail Schedule attached hereto shall be used by the Oklahoma County Jail. The Jail Bail Schedule shall only be utilized by the Jail following a person's arrest and prior to an individualized hearing before an arraignment judge. See AO7-2019-21.

Additionally, the Oklahoma County Jail shall comply with the following procedures in connection with the establishment of a bond amount for any person released by the jail:

1. For all cases involving *one (1) or more alleged misdemeanor offenses*, the total bond for any person released by jail bail shall be based *only upon the misdemeanor offense associated with the charge with the highest bond*, as identified on the attached Jail Bail Schedule. This will permit a person with multiple misdemeanor charges to post a single bond, based only upon the highest bond, without including bonds for the other misdemeanor charges.

2. For all cases involving *both alleged misdemeanor and felony offenses*, the total bond for any person released by jail bail shall be based *upon the total sum of the bond amounts for each of the alleged felony offenses*, as identified on the attached Jail Bail Schedule, without regard to any of the misdemeanor offenses. This will permit a person with multiple felony and misdemeanor charges to post a bond based only upon the felony charges, without including bonds for any of the misdemeanor charges.

3. For all cases involving *only alleged felony offenses and no misdemeanor offense(s)*, the total bond for any person released by jail bail shall be based *upon the total sum of the bond amounts for each of the alleged felony offenses*, as identified on the attached Jail Bail Schedule.

4. Persons released pursuant to the Jail Bail Schedule shall be given a court date to appear before the arraignment judge in accordance with the monthly schedules provided to the jail. The Jail shall post each monthly schedule that is provided to the jail and said schedule shall be publicly available for viewing for a period of 60 days. This Administrative Order also shall be posted by the jail for public viewing in a location clearly visible to the public.

5. Bail that has been set by warrant or court order shall control regardless of the language in the Jail Bail Schedule.

6. The Jail Bail Schedule sets out the bond amounts for various Categories of misdemeanor and felony offenses. Exhibits are attached that identify the specific crimes that are covered in Categories "C" & "D" and to identify the crimes that are eligible for "OR" release without a Judge's signature under this Administrative Order. In the event the statutes that outline the 85% Rule Crimes for Category "C" and/or the Defined Violent Crimes for Category "D" are subsequently amended through Legislative action, the Jail Bail Schedule shall be automatically updated and incorporate those amendments without an official amendment to this Administrative Order.

7. Some offenses require an appearance before a judge for the setting of bail. These include an *alleged violation of an ex parte or final protective order* (22 O.S. §§ 60.1, 60.2 & 60.3), *alleged domestic assault and battery or domestic assault and battery with a deadly weapon* (21 O.S. § 644) and *alleged domestic abuse, stalking or harassment* (22 O.S. § 60.1); See 22 O.S. § 1105. Bail for fugitives who are subject to charges from other states also must be set by a judge.

Any prior Administrative Orders, or portions thereof, in conflict with this Administrative Order are hereby repealed.

IT IS SO ORDERED.

DATED this 31<sup>st</sup> day of July, 2019.

  
THOMAS E. PRINCE AS FILED OF RECORD  
PRESIDING ADMINISTRATIVE JUDGE

JUL 31 2019

Category: Criminal (Felony); Sub-category: Bail, Bond and Warrants

RICK WARREN COURT CLERK  
Oklahoma County  


## Oklahoma County - Felony Jail Bail Schedule

	Felony Crime	Bail Amount
<b>A</b>	Murder I – 21 O.S. § 701.7 Murder II – 21 O.S. § 701.8 Escape from Jail or Prison – 21 O.S. § 443 Contempt (unless otherwise ordered) – 21 O.S. § 565.1 Failure to Appear (unless otherwise ordered) Manufacture of any substance covered by 63 O.S. § 2-401G	Denied
<b>B</b>	Accessory to Murder I or Murder II – 21 O.S. § 175(5) Trafficking in CDS – 63 O.S. § 2-415 Discharge of a Firearm at or into a Dwelling, Business, or Public Building – 21 O.S. § 1289.17A	\$25,000
<b>C</b>	Any crime listed in Attachment 1 or any attempt, conspiracy, or solicitation to commit a crime listed in Attachment 1	\$50,000
<b>D</b>	Any crime listed in Attachment 2 or any attempt, conspiracy, or solicitation to commit a crime listed in Attachment 2	\$15,000
<b>E</b>	Burglary II (residential) – 21 O.S. § 1435(A)	\$10,000
<b>F</b>	Any felony property crime* where the value of the property or loss is less than \$2,500	\$2,000
<b>G</b>	Accessory to a Felony - 21 O.S. § 175	½ of the felony bail amount
<b>H</b>	Domestic Abuse – 21 O.S. § 644(C, D, E, F, G or J); 21 O.S. § 644.1; 22 O.S. § 60.1(1) Stalking or Harassment – 21 O.S. § 1172 or 1173; 22 O.S. § 60.1(2) or 60.1(3) Violation of a Protective Order – 22 O.S. § 60.6	Judge
<b>I</b>	Any felony that is not listed in A, B, C, D, E, F, G, or H	\$5,000
<b>J</b>	AFCF 1 prior felony conviction	1 ½ X the felony bail amount
<b>K</b>	AFCF 2 or more prior felony convictions	2 X the felony bail amount
	* "Property crime" includes any larceny, theft, fraud, forgery, burglary other than that of a residence or business, false claim, embezzlement, possessing/selling/concealing stolen property, credit card crime, identity theft, computer crimes act violation, counterfeiting, injury to or destruction of property, false declaration to a pawnbroker, illegal gambling, tax crime, and any crime involving public assistance. It does <b>not</b> include robbery, burglary of a residence or business, bribery, blackmail, extortion, possession of a stolen firearm, or unauthorized use of a motor vehicle.	

## Oklahoma County - Misdemeanor Jail Bail Schedule

	Misdemeanor Crime	Bail Amount
<b>L</b>	Misdemeanor crimes of: Possession of CDS, DUI*, DWI*, Outraging Public Decency, Engaging or Offering to Engage in Prostitution, Possession of a Weapon, Possession of Drug Paraphernalia, and Larceny of Merchandise from a Retailer (value of property = \$500 to \$999).	\$500
<b>M</b>	Aggravated DUI*	\$1,000
<b>N</b>	Domestic Abuse – 21 O.S. § 644(C, E, F, or G); 22 O.S. § 60.1(1) Stalking or Harassment – 21 O.S. § 1172 or 1173; 22 O.S. § 60.1(2) or 60.1(3) Violation of a Protective Order – 22 O.S. § 60.6	Judge
<b>O</b>	Any misdemeanor crime that is not listed in L, M, or N or in the O.R. Bond Schedule (Attachment 3)	\$1,000
<b>*</b>	After 8 hours from arrest	

Attachment 1 - \$50,000 Bail	
1	Abuse of a vulnerable adult who is a resident of a nursing facility - 43A O.S. § 10-103
2	Aggravated assault and battery upon a person defending another person from assault and battery - 21 O.S. § 646
3	Aggravated trafficking in CDS - 63 O.S. § 2-415(C)
4	Arson in the first degree - 21 O.S. § 1401
5	Assault & battery with a deadly weapon or by other means likely to produce death or great bodily harm - 21 O.S. § 652
6	Assault with intent to kill - 21 O.S. § 653
7	Bombing - 21 O.S. § 1767.1
8	Burglary in the first degree - 21 O.S. § 1436
9	Child abuse or enabling child abuse, child neglect or enabling child neglect, child sexual abuse or enabling child sexual abuse, child sexual exploitation or enabling child sexual exploitation - 21 O.S. § 843.5
10	Child pornography or aggravated child pornography - 21 O.S. § 1021.2, 1021.3, 1024.1, 1024.2, or 1040.12a
11	Child prostitution - 21 O.S. § 1030
12	Conjoint robbery - 21 O.S. § 800
13	Forcible sodomy - 21 O.S. § 888
14	Human trafficking - 21 O.S. § 748
15	Kidnapping or kidnapping for extortion – 21 O.S. § 741 or § 745
16	Lewd molestation of a child - 21 O.S. § 1123
17	Manslaughter in the first degree - 21 O.S. § 711
18	Poisoning with intent to kill - 21 O.S. § 651
19	Rape in the first degree - 21 O.S. § 1111, 1114, or 1115
20	Robbery in the first degree- 21 O.S. § 797
21	Robbery with a dangerous weapon - 21 O.S. § 801
22	Shooting with intent to kill - 21 O.S. § 652
23	Use of a vehicle to facilitate use of a firearm/crossbow/other weapon - 21 O.S. § 652

Attachment 2 - \$15,000 Bail	
1	Aggravated assault and battery on a law enforcement officer - 21 O.S. § 650
2	Arson in the second degree – 21 O.S. § 1402
3	Assault with a dangerous weapon while masked or disguised - 21 O.S. § 1303
4	Assault with intent to commit a felony - 21 O.S. § 681
5	Assault, battery, or assault and battery with a dangerous weapon – 21 O.S. § 645
6	Burglary with explosives - 21 O.S. § 1441
7	Criminal syndicalism – 21 O.S. § 1261
8	Eluding a peace officer in a manner that endangers others or that results in an accident causing great bodily injury to another - 21 O.S. § 540A(B) or (C).
9	Escape from custody – 21 O.S. § 444
10	Extortion - 21 O.S. § 1481
11	Inciting to riot - 21 O.S. § 1320.2
12	Injuring or burning public buildings - 21 O.S. § 349
13	Maiming - 21 O.S. § 751
14	Manslaughter in the second degree - 21 O.S. § 716
15	Mistreatment of a mental patient - 21 O.S. § 843.1
16	Obtaining signature by extortion - 21 O.S. § 1485
17	Pointing firearms - 21 O.S. § 1279
18	Rape in the second degree - 21 O.S. § 1114
19	Rioting - 21 O.S. § 1311
20	Robbery in the second degree - 21 O.S. § 797
21	Sabotage - 21 O.S. § 1262
22	Seizure of a bus, discharging firearm or hurling missile at bus - 21 O.S. § 1903
23	Terrorism - 21 O.S. §§ 1268 – 1268.8
24	Use of a firearm or offensive weapon to commit or attempt to commit a felony - 21 O.S. § 1287
25	Wiring any equipment, vehicle or structure with explosives - 21 O.S. § 849

### Attachment 3 – O.R. Bond Schedule

1	Alcohol – License required
2	Alcohol – Minor in Possession
3	Allowing Animals to Run at Large
4	Altering Decal / Inspection Sticker
5	Assault
6	Assembly – Unlawful
7	Bogus Checks
8	Breach of Peace
9	Changing Lanes Unsafely
10	Child Restraint Violation
11	Child Under 18 Not Wearing Helmet
12	Cigarettes – Dispensing to a Minor
13	Conservation – Animals
14	Conservation – Birds
15	Conservation – Environment
16	Conservation – Fish
17	Conservation – License / Stamp
18	Damage to Property (misdemeanor)
19	Defrauding Innkeeper
20	Disorderly Conduct
21	Domestic Animals, Abandoning
22	Driver License Not in Possession
23	Driving Not Reasonable and Proper
24	Driving on Shoulder
25	Driving Under Revocation
26	Driving Under Suspension
27	Driving With a Foreign License
28	Eavesdropping
29	Election Laws
30	Expired Tag / Improper Display
31	Failure to Carry Registration
32	Failure to Carry Security Verification
33	Failure to Notify Police of Gun Possession
34	Failure to Obey Lawful Order
35	Failure to Obey Traffic Sign
36	Failure to Pay Toll
37	Failure to Perform Work to Minimum Standards
38	Failure to Signal
39	Failure to Stop at Red Light
40	Failure to Yield Right of Way
41	Failure to Yield to Emergency Vehicle
42	Failure to Comply with Veterinary License Law
43	Failure to Dim Headlights

44	Following Too Close
45	Impeding Traffic
46	Improper Equipment
47	Improper Lane Use
48	Improper License Plate
49	Improper Stopping on Roadway
50	Improper Turn
51	Improper Motor Vehicle Television
52	Income Tax, Failure to File
53	Larceny from a Retailer (Under \$500)
54	Larceny of TV Cable
55	Larceny of Utilities
56	Larceny – Petit
57	Larceny – Petit AFC
58	Left of Center
59	Liquor Tax – Nonpayment
60	No Seat Belt
61	Operating Minibike/Golf Cart/Off-Road M/V on Street/Highway
62	Operating Motor Vehicle in Unsafe Condition
63	Operating Motor Vehicle Not Reasonable
64	Operating Motor Vehicle without Lighted Lamps
65	Operating Motor Vehicle without Proper Plate
66	Overtaking a Stopped School Bus
67	Passing in No Passing Zone
68	Permitting Unauthorized Person to Drive
69	Public Intoxication (after 8 hours from arrest)
70	Raising Prohibited Flags over Tax Supported Property
71	Reckless Driving
72	Seat Belt – Non Use
73	Selling Lottery Ticket to a Minor
74	Selling Tobacco to a Minor
75	Speeding
76	Straddling Lane Lines
77	Taxes Due the State
78	Transport Open Container of Intoxicating Beverage or Low Point Beer
79	Trespassing
80	Truancy
81	Unlawful Use of Driver License
82	Unpermitted Discharge of a Pollutant
83	Unstable/Unsecure Load
84	Violation of License Restrictions
85	Violation of Protest Permit
86	Wrong Way on One Way



Title 21. Crimes and Punishments

Oklahoma Statutes Citationized

Title 21. Crimes and Punishments

Chapter 52 - Criminal Syndicalism and Sabotage

Oklahoma Antiterrorism Act

Section 1268 - Short Title

Cite as: O.S. §, \_\_\_

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This act shall be known and may be cited as the "Oklahoma Antiterrorism Act".

**Historical Data**

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Laws 2002, SB 822, c. 477, § 1, emerg. eff. June 6, 2002.

**Citationizer® Summary of Documents Citing This Document**

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Cite Name	Level
<b>Oklahoma Attorney General's Opinions</b>	
Cite	Name Level
<u>2013 OK AG 11,</u>	<u>Question Submitted by: Tracy L. George, Acting Executive Director, Oklahoma Pardon and Parole Board</u> Cited

**Title 57. Prisons and Reformatories**

Cite	Name Level
<u>57 O.S. 332.16,</u>	<u>Recommendation for Parole to Remain in Governor's Office no Longer than 30 Days</u> Cited

**Citationizer: Table of Authority**

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Cite	Name Level
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None Found.



**Title 21. Crimes and Punishments**

**Oklahoma Statutes Citationized**

**Title 21. Crimes and Punishments**

**Chapter 52 - Criminal Syndicalism and Sabotage**

**Oklahoma Antiterrorism Act**

**Section 1268.1 - Definitions**

Cite as: O.S. §, \_\_ \_\_

As used in this act:

1. "Biochemical assault" means the intentional delivery of any substance or material to another person without lawful cause, whether or not such substance or material is toxic, noxious or lethal to humans, to:
  - a. cause intimidation, fear or anxiety and a reasonable belief by the victim that death, disease, injury or illness will occur as a result of contamination by such substance or material and, based upon that belief, an emergency response is necessary, or
  - b. poison, injure, harm or cause disease or illness to any person;
2. "Biochemical terrorism" means an act of terrorism involving any biological organism, pathogen, bacterium, virus, chemical or its toxins, isomers, salts or compounds, or any combination of organisms, viruses or chemicals that is capable of and intended to cause death, disease, injury, illness or harm to any human or animal upon contact or ingestion, or harm to any food supply, plant, water supply, drink, medicine or other product used for or consumed by humans or animals;
3. "Conduct" includes initiating, concluding, or participating in initiating or concluding a transaction;
4. "Financial institution" includes:
  - a. any financial institution, as defined in Section 5312(a)(2) of Title 31 of the United States Code, or the regulations promulgated thereunder, and
  - b. any foreign bank, as defined in Section 3101 of Title 12 of the United States Code;
5. "Financial transaction" means:
  - a. a transaction which in any way or degree affects state, interstate or foreign commerce:
    - (1) involving the movement of funds by wire or other means,
    - (2) involving one or more monetary instruments, or
    - (3) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or
  - b. a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, state, interstate or foreign commercein any way or degree;
6. "Monetary instrument" means:
  - a. coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or
  - b. investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;
7. "Proceeds" means all monies, negotiable instruments, and securities received, used, or intended to be used to facilitate any violation of the Oklahoma Antiterrorism Act;

8. "Terrorism" means one or more kidnappings or other act of violence, or a series of acts of violence, resulting in damage to property, personal injury or death, or the threat of such act or acts that appears to be intended:

a. to intimidate or coerce a civilian population,

b. to influence the policy or conduct of a government by intimidation or coercion, or

c. in retaliation for the policy or conduct of a government by intimidation or coercion.

Peaceful picketing or boycotts and other nonviolent action shall not be considered terrorism;

9. "Terrorism hoax" means the willful conduct to simulate an act of terrorism as a joke, hoax, prank or trick against a place, population, business, agency or government by:

a. the intentional use of any substance to cause fear, intimidation or anxiety and a reasonable belief by any victim that such substance is used, placed, sent, delivered or otherwise employed as an act of biochemical terrorism requiring an emergency response or the evacuation or quarantine of any person, place or article, or

b. any act or threat of violence, sabotage, damage or harm against a population, place or infrastructure that causes fear, intimidation or anxiety and a reasonable belief by any victim that such act or threat is an act of terrorism to disrupt any place, population, business, agency or government;

10. "Terrorist activity" means to plan, aid or abet an act of terrorism or aid or abet any person who plans or commits an act of terrorism; and

11. "Transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

### Historical Data

Laws 2002, SB 822, c. 477, § 2, emerg. eff. June 6, 2002; Amended by Laws 2010, HB 2983, c. 456, § 1, eff. November 1, 2010 ([superseded document available](#)); Amended by Laws 2016, HB 2320, c. 154, § 1, eff. November 1, 2016 ([superseded document available](#)).

### Citationizer<sup>®</sup> Summary of Documents Citing This Document

Cite Name	Level
<b>Oklahoma Attorney General's Opinions</b>	
Cite	Name Level
<a href="#">2013 OK AG 11.</a>	<a href="#">Question Submitted by: Tracy L. George, Acting Executive Director, Oklahoma Pardon and Parole Board</a> Cited
<b>Oklahoma Jury Instructions- Criminal</b>	
Cite	Name Level
	<a href="#">Terrorism Hoax - Elements</a> Cited
	<a href="#">Terrorism - Definitions</a> Discussed

### Citationizer: Table of Authority

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None Found.





Title 21. Crimes and Punishments

Oklahoma Statutes Citationized

Title 21. Crimes and Punishments

Chapter 52 - Criminal Syndicalism and Sabotage

Oklahoma Antiterrorism Act

Section 1268.2 - Terrorism - Penalties

Cite as: O.S. §, \_\_\_

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A. Every act of terrorism is a felony.

B. A person convicted of terrorism shall be punished by imprisonment in the custody of the Department of Corrections for a term not exceeding life.

C. A person who kills another person or who causes the death of another person in the commission of an act of terrorism shall be guilty of murder in the first degree.

D. A person convicted of biochemical terrorism shall be ordered, in addition to the punishment imposed for the act of terrorism, to reimburse the cost of any emergency personnel, equipment, supplies, and other expenses incurred by the state and any political subdivision as a result of responding to such act of terrorism.

E. The punishment for terrorism shall be in addition to any penalty imposed for any individual offense or offenses involved in the act or acts of terrorism.

**Historical Data**

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Laws 2002, SB 822, c. 477, § 3, emerg. eff. June 6, 2002; Amended by Laws 2016, HB 2320, c. 154, § 2, eff. November 1, 2016 ([superseded document available](#)).

**Citationizer<sup>®</sup> Summary of Documents Citing This Document**

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None Found.

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None Found.



Title 21. Crimes and Punishments

Oklahoma Statutes Citationized

Title 21. Crimes and Punishments

Chapter 52 - Criminal Syndicalism and Sabotage

Oklahoma Antiterrorism Act

Section 1268.3 - Conspiracy to Commit Terrorism - Penalties

Cite as: O.S. §, \_\_ \_\_

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A. Conspiracy to commit terrorism is a felony.

B. A person convicted of conspiracy to commit terrorism shall be punished by imprisonment in the State Penitentiary for a term not exceeding life.

**Historical Data**

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Laws 2002, SB 822, c. 477, § 4, emerg. eff. June 6, 2002.

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None Found.

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None Found.



Title 21. Crimes and Punishments

Oklahoma Statutes Citationized

Title 21. Crimes and Punishments

Chapter 52 - Criminal Syndicalism and Sabotage

Oklahoma Antiterrorism Act

Section 1268.4 - Terrorism Hoax - Penalty

Cite as: O.S. §. \_\_ \_\_

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A. Terrorism hoax is a felony.

B. A person convicted of terrorism hoax shall be punished by imprisonment in the State Penitentiary for a term of not more than ten (10) years. In addition to any punishment imposed for the act of terrorism hoax, the person shall be ordered to make restitution to the victim and to reimburse the cost of any emergency personnel, equipment, supplies, and other expenses incurred by the state and any political subdivision as a result of responding to such act.

**Historical Data**

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Laws 2002, SB 822, c. 477, § 5, emerg. eff. June 6, 2002.

**Citationizer<sup>®</sup> Summary of Documents Citing This Document**

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None Found.



Title 21. Crimes and Punishments

Oklahoma Statutes Citationized

Title 21. Crimes and Punishments

Chapter 52 - Criminal Syndicalism and Sabotage

Oklahoma Antiterrorism Act

Section 1268.5 - Biochemical Assault - Penalties

Cite as: O.S. §, \_\_\_

A. Every person who, without justifiable or excusable cause, willfully commits biochemical assault against another person shall be punished as provided in this section.

B. Every act of biochemical assault is a misdemeanor punishable by imprisonment in the county jail for a term of not more than one (1) year, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment when the person knows the substance or material used to commit biochemical assault is not toxic, noxious, or lethal to humans. In addition to any term of imprisonment imposed for biochemical assault, the person shall be ordered to make restitution to the victim and to reimburse the cost of any emergency personnel, equipment, supplies, and other expenses incurred by the state and any political subdivision as a result of responding to such act.

C. Every act of biochemical assault is a felony punishable by imprisonment in the State Penitentiary for a term of not more than ten (10) years when the person knows the substance or material used to commit biochemical assault is toxic, noxious, or lethal to humans. In addition to any term of imprisonment imposed for biochemical assault, the person shall be ordered to make restitution to the victim and to reimburse the cost of any emergency personnel, equipment, supplies, and other expenses incurred by the state and any political subdivision as a result of responding to such act.

**Historical Data**

Laws 2002, SB 822, c. 477, § 6, emerg. eff. June 6, 2002.

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Title 21. Crimes and Punishments

Oklahoma Statutes Citationized

Title 21. Crimes and Punishments

Chapter 52 - Criminal Syndicalism and Sabotage

Oklahoma Antiterrorism Act

Section 1268.6 - Manufacturing, Delivering, or Possessing Toxic or Lethal Substances with Intent to Engage in Terrorist Activities - Penalties

Cite as: O.S. §, \_\_ \_\_

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A. It shall be unlawful for any person to manufacture, send, deliver or possess any toxic, noxious, or lethal substance, chemical, biological or nuclear material with the intent of engaging in terrorist activity.

B. A person convicted of a violation of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for a term of not more than eight (8) years. In addition to any term of imprisonment imposed for a violation of this section, the person shall be ordered to make restitution to victims and to reimburse the cost of any emergency personnel, equipment, supplies, and other expenses incurred by the state and any political subdivision as a result of responding to the crime.

**Historical Data**

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Laws 2002, SB 822, c. 477, § 7, emerg. eff. June 6, 2002.

**Citationizer® Summary of Documents Citing This Document**

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None Found.

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None Found.



Title 21. Crimes and Punishments

Oklahoma Statutes Citationized

Title 21. Crimes and Punishments

Chapter 52 - Criminal Syndicalism and Sabotage

Oklahoma Antiterrorism Act

Section 1268.7 - Conducting or Attempting to Conduct Financial Transaction Involving Property Related to Terrorism -

**Penalties**

Cite as: O.S. §, \_\_ \_\_

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A. No person, knowing that property is the proceeds of an act of terrorism or a monetary instrument given, received, or intended to be used in support of an act of terrorism, shall conduct or attempt to conduct any financial transaction involving that property or transport, transmit or transfer that monetary instrument with the intent to do any of the following:

1. Commit or further the commission of an act of terrorism;
2. Conceal or disguise the nature, location, source, ownership, or control of either the proceeds of an act of terrorism or a monetary instrument given, received, or intended to be used to support an act of terrorism; or
3. Conceal or disguise the intent to avoid a financial transaction reporting requirement as provided in 31 U.S.C., Section 5311 et seq., 31 C.F.R., Part 103, Title 6 of the Oklahoma Statutes, or other federal monetary reporting requirements under law.

B. Any person convicted of violating any provision of subsection A of this section shall be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term of not less than two (2) years nor more than ten (10) years, or by a fine of not more than Fifty Thousand Dollars (\$50,000.00) or an amount equal to twice the dollar amount of each transaction, whichever is greater, or by both such fine and imprisonment.

**Historical Data**

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Laws 2010, HB 2983, c. 456, § 2, eff. November 1, 2010.

**Citationizer® Summary of Documents Citing This Document**

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Cite	Name	Level
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None Found.

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None Found.



Title 21. Crimes and Punishments

Oklahoma Statutes Citationized

Title 21. Crimes and Punishments

Chapter 52 - Criminal Syndicalism and Sabotage

Oklahoma Antiterrorism Act

Section 1268.8 - Use of Money Services and Electronic Transfer in Violation of Oklahoma Antiterrorism Act - Penalty

Cite as: O.S. §, \_\_ \_\_

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Any person who knowingly or intentionally uses a money services business, as defined by the Oklahoma Financial Transaction Reporting Act, or an electronic funds transfer network for any purpose in violation of the Oklahoma Antiterrorism Act, or with intent to facilitate any violation of the Oklahoma Antiterrorism Act shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term of not less than two (2) years nor more than ten (10) years, or by a fine of not more than Fifty Thousand Dollars (\$50,000.00) or an amount equal to twice the dollar amount of each transaction, whichever is greater, or by both such fine and imprisonment.

**Historical Data**

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Laws 2010, HB 2983, c. 456, § 3, eff. November 1, 2010.

**Citationizer<sup>®</sup> Summary of Documents Citing This Document**

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## INTRODUCTION

OUJI-CR 6-57

RIOT - INTRODUCTION

The defendant is charged with (participating in a)/(incitement to) riot on [Date] in [Name of County] County, Oklahoma.

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# PARTICIPATING IN RIOT - ELEMENTS

OUJI-CR 6-58

## PARTICIPATING IN RIOT - ELEMENTS

No person may be convicted of participating in a riot unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, participating with 2 or more other persons;

Second, who are acting together,;

Third, without authority of law;

[Fourth, in a (use of force)/violence.]

OR

[Fourth, in a threat to use force/violence;

Fifth, accompanied by the immediate power of execution.]

---

Statutory Authority: 21 O.S. 1991, § 1311.

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## PARTICIPATING IN RIOT – PUNISHMENT

OUJI-CR 6-58A

### PARTICIPATING IN RIOT - PUNISHMENT

If you find beyond a reasonable doubt that the defendant committed the crime of participating in riot, you shall return a verdict of guilty by marking the Verdict Form appropriately.

If you have a reasonable doubt of the defendant's guilt of the charge of participating in riot, or you find that the State has failed to prove each element of the charge of participating in riot beyond a reasonable doubt, you shall return a verdict of not guilty by marking the Verdict Form appropriately.

If you find the defendant guilty, you shall then determine the proper punishment.

[Select the appropriate paragraph]:

If you determine that the State has proved that the crime of **murder/maiming/robbery/rape/arson** was committed in the course of the riot by proving the following elements beyond a reasonable doubt: [specify elements], then the crime of participating in riot is punishable by [state range of punishment].

OR

If you determine beyond a reasonable doubt that the riotous assembly was to (resist execution of [specify state or federal statute])/(obstruct [identify state or federal officer] in the performance of ([specify legal duty]))/(serving/executing a [specify legal process]), then the crime of participating in riot is punishable by imprisonment in the penitentiary not exceeding ten years and not less than two.

OR

If you determine beyond a reasonable doubt that [Name of Defendant] was (carrying a firearm/(deadly/dangerous weapon))/disguised at the time of the riot, then the crime of participating in riot is punishable by imprisonment in the penitentiary not exceeding ten years and not less than two.

OR

If you determine beyond a reasonable doubt that [Name of Defendant] directed/advised/encouraged/solicited other persons, who participated in the riot to acts of **force/violence**, then the crime of participating in riot is punishable by imprisonment in the penitentiary not exceeding ten years and not less than two.

Otherwise, it is punishable by a fine of up to \$1,000, or imprisonment for up to 1 year, or both. When you have decided on 1) whether [Name of Defendant] is guilty or not guilty, 2) whether [specify additional findings for enhancement of punishment: e.g., [Name of Defendant] was carrying a firearm at the time of the riot], and 3) the proper punishment, you shall fill in the appropriate spaces on the Verdict Form for the crime of participating in riot and return the verdict to the Court.

---

Statutory Authority: 21 O.S. 1991, § 1312.

#### Notes on Use

This is the basic instruction for participating in a riot, and it should be given in place of OUJI-CR 10-13 at the end of the the case. It should be modified appropriately if there are prior convictions or lesser included offenses. See OUJI-CR 10-15 to 10-25. The trial court should also prepare a Verdict Form on which the jury must indicate whether or not it determined the additional findings for the enhanced punishment as well as its finding of guilt and the proper punishment.

#### Committee Comments

The different sections in 21 O.S. 1991, § 1312 specify different punishments for the crime of participating in a riot, rather than separate offenses. *Symonds v. State*, 66 Okl.Cr. 49, 53-54, 89 P.2d 970, 973 (1939); *Schwatzfeger v. State*, 57 Okl.Cr. 92, 94, 45 P.2d 550, 551 (1935).

(2000 Supp.)

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## INCITEMENT TO RIOT – ELEMENTS

OUJI-CR 6-59

### INCITEMENT TO RIOT - ELEMENTS

No person may be convicted of incitement to riot unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, action/conduct;

Second, that with the intent to cause, aid, or assist the initiation/continuation of a riot;

Third, urged other persons;

Fourth, to commit [acts of unlawful force/violence]/[the unlawful burning/ destroying of property]/[the unlawful interference with a (police/peace officer)/fireman/ (member of the Oklahoma National Guard)/(a member of a unit of the armed services) who was officially assigned to riot duty in the lawful performance of his duty];

Fifth, the defendant's act/conduct created a clear and present danger of imminent unlawful action.].

A riot is defined as any use of force or violence, or any threat to use force or violence if accompanied by immediate power of execution, by 3 or more persons acting together and without authority of law.

---

Statutory Authority: 21 O.S. Supp. 1995, § 1320.2, 21 O.S. 1991, § 1311.

#### Notes on Use

In *Price v. State*, 1994 OK CR 26, ¶ 5, 873 P.2d 1049, 1052, the Oklahoma Court of Criminal Appeals required the Fifth Element to be given in cases involving constitutionally protected speech.

(2000 Supp.)

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## TERRORISM – ELEMENTS

OUJI CR 6-60

### TERRORISM - ELEMENTS

No person may be convicted of terrorism unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, knowingly committed an act;

Second, of violence;

Third, that resulted in (damage to property)/(personal injury);

Fourth, with the intent to coerce;

Fifth, a (civilian population)/government;

Sixth, into granting illegal political/economic demands.

OR

First, knowingly committed an act;

Second, with the intent to incite violence;

Third, in order to create apprehension of;

Fourth, (bodily injury)/(damage to property);

Fifth, in order to coerce;

Sixth, a (civilian population)/government;

Seventh, into granting illegal political/economic demands.

---

Statutory Authority: 21 O.S. Supp. 2004, § 1268.1.

(2005 Supp.)

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# TERRORISM HOAX – ELEMENTS

OUJI CR 6-61

## TERRORISM HOAX - ELEMENTS

No person may be convicted of terrorism hoax unless the State has proved beyond a reasonable doubt each element of the crime. These elements are:

First, willfully;

Second, simulated;

Third, an act of terrorism;

Fourth, as a joke/hoax/prank/trick;

Fifth, against a place/population/business/agency/government;

Sixth, by intentionally;

Seventh, using a substance;

Eighth, to cause fear/intimidation/anxiety;

Ninth, and a reasonable belief;

Tenth, that the substance is used/placed/sent/delivered/employed as an act of biochemical terrorism;

Eleventh, that required an (emergency response)/(evacuation/quarantine of any person/place/article)].

OR

Sixth, by a/an act/threat of violence/sabotage/damage/harm;

Seventh, against a population/place/infrastructure;

Eighth, that caused fear/intimidation/anxiety;

Ninth, and a reasonable belief by any victim;

Tenth, that the act/threat is an act of terrorism;

Eleventh, that is intended to disrupt a place/population/business/agency/ government].

---

Statutory Authority: 21 O.S. Supp. 2004, § 1268.1.

Notes on Use

For definitions of biological terrorism and terrorism, see OUJI-CR 6-62, *infra*.

(2005 Supp.)



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## TERRORISM – DEFINITIONS

OUJI CR 6-62

### TERRORISM - DEFINITIONS

Biochemical Terrorism – An act of terrorism involving any biological organism or chemical or combination of organisms or chemicals that is capable of and intended to cause death, illness or harm to any human or animal upon contact or ingestion, or harm to any food or water supply or other product consumed by humans or animals.

Reference: 21 O.S. Supp. 2004, § 1268.1.

Terrorism – An act of violence resulting in damage to property or personal injury perpetrated to coerce a civilian population or government into granting illegal political or economic demands; or conduct intended to incite violence in order to create apprehension of bodily injury or damage to property in order to coerce a civilian population or government into granting illegal political or economic demands. Peaceful picketing or boycotts and other nonviolent action is not terrorism.

Reference: 21 O.S. Supp. 2004, § 1268.1.

(2005 Supp.)



**PRICE v. STATE**

1994 OK CR 26

873 P.2d 1049

Decided: 04/28/1994

**JOSHUA PRICE, III, APPELLANT, v. STATE OF OKLAHOMA, APPELLEE**

**Oklahoma Court of Criminal Appeals**

---

Cite as: 1994 OK CR 26, 873 P.2d 1049

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An Appeal from the District Court of Muskogee County, Lyle Burris, District Judge.

Joshua Price, III, was convicted of Incitement to Riot in the District Court of Muskogee County, Case No. CRF-89-234, sentenced to eight years imprisonment. The Emergency Appellate Division Panel 20 affirmed. He appeals by Petition for Review. By this Opinion on Review, Price's Judgment and Sentence for Incitement to Riot are REVERSED and the cause is REMANDED for NEW TRIAL.

Katherine Hine, Muskogee, for appellant at trial.

Barry Benefield, Oklahoma City, for appellant on appeal.

Norman Thygesen, Michael Littlefield, Asst. Dist. Attys., Muskogee, for appellee at trial.

Susan B. Loving, Atty. Gen., Cherrilyn J. McLane, Asst. Atty. Gen., Oklahoma City, for appellee on appeal.

*OPINION ON REVIEW*

PER CURIAM:

[873 P.2d 1050]

¶1 Joshua Price was tried by jury and convicted of Incitement to Riot (21 O.S. 1981 § 1320.2 [21-1320.2]) in Muskogee County District Court, Case No. CRF-89-234, before the Honorable Lyle Burris, District Judge. He received an eight year prison sentence. This Court's Emergency Appellate Division Panel No. 20 (Panel) affirmed Price's conviction in an October 15, 1993 unpublished opinion. Price is now before the Court on a Petition for Review, Rule 12.10, Rules of the Court of Criminal Appeals, 22 O.S.Supp. 1993, Ch. 18, App. The incitement to riot statute has not been before this Court, and Price challenges the constitutionality of that statute. We grant review to settle this case's constitutional question of first impression. Due to the constitutionally flawed application of the [873 P.2d 1051] statute, we withdraw the Panel's opinion and issue this opinion in its place, reversing the judgment and remanding for a new trial.

¶2 On April 30, 1989, two white Muskogee police officers were in the Port City housing project to arrest two black males for an offense unconnected with this case. A crowd of predominantly black residents gathered at the site of the arrests. Initially, the crowd was not particularly disorderly, but Price (possibly accompanied by another black male) began speaking to the crowd, using profanity, telling the officers they were unwelcome and urging them to leave. When Price started to leave the area, one of the officers told him to stop. Price continued walking then turned to face the officer with a clenched fist. The officer tackled Price and the two fell to the ground. Eventually, both officers handcuffed Price. During the struggle, appellant yelled that the officers were hurting him and asked the crowd, "Help me. Stop them. Get them off of me." (Tr. 114) The crowd moved close enough to touch the officers, and one person may have struck an officer. No other violence occurred.

¶3 A state may limit First Amendment free speech rights if the statute is narrowly drawn and there is a clear societal need to limit expression, *Broadrick v. Oklahoma*, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973). The proscribed expression must meet the clear and present danger test outlined in *U.S. v. Dellinger*.<sup>1</sup> The clear and present danger test enables a trier of fact to decide when particular expression becomes so entwined with action that the expression may be considered action and subject to suppression or punishment. See, e.g., *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1939) (state may prevent or punish speech

which provides clear and present danger of riot, violence, etc.); *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572-73, 62 S.Ct. 766, 769-70, 86 L.Ed. 1031 (1942) ("fighting words" are those which inflict injury or tend to incite immediate breach of peace; the test is whether words are likely to cause average addressee to fight). In determining the constitutionality of the federal anti-riot act, the *Dellinger* court found that speech may rise to action when it is reasonably likely to propel others to act, it is directed to inciting and likely to incite imminent lawless action, it is inseparably locked with action, or it poses a clear and present danger.<sup>2</sup> The statute need not contain this language as long as the clear and present danger test is used to interpret the statute.<sup>3</sup>

[873 P.2d 1052]

¶4 Title 21 O.S. 1981 § 1320.2 [21-1320.2] prohibits any person intending to cause, aid or abet a riot, from **doing an act or engaging in conduct** that urges others to commit acts of unlawful force or violence or other enumerated unlawful acts.<sup>4</sup> The statute contains no reference to the clear and present danger test. Here, the record indicates the trial court did not consider the evidence in light of the test.<sup>5</sup> Additionally, the trial court refused to give appellant's requested instruction on constitutionally protected speech.<sup>6</sup>

¶5 If construed to apply to speech which meets the clear and present danger test, 21 O.S. 1981 § 1320.2 [21-1320.2] would appear to be constitutional. A plain reading of the statute does not indicate to a trial court the necessity for such an interpretation. This constitutional flaw can be cured by requiring jury instructions on constitutionally protected speech, as requested here, in Section 1320.2 prosecutions.<sup>7</sup> We now hold that in each prosecution under 21 O.S. 1981 § 1320.2 [21-1320.2], the trial court shall give the following instruction to the jury after the instructions on the elements of the offense:

In determining whether the State has proved each of the above listed elements of the offense beyond a reasonable doubt, you must also find beyond a reasonable doubt: (1) the defendant intended to cause, aid or abet a riot by committing an act or engaging in conduct that urged other persons to commit acts of unlawful force or violence or other enumerated unlawful acts and (2) such act or conduct created a clear and present danger of imminent unlawful action.

¶6 Price's judgment and sentence are **REVERSED** and the cause is **REMANDED** for **NEW TRIAL**.

LUMPKIN, P.J., JOHNSON, V.P.J., and LANE and STRUBHAR, JJ., concur.

CHAPEL, J., concurs in part/dissents in part.

#### Footnotes:

<sup>1</sup> 472 F.2d 340 (7th Cir. 1972). The *Dellinger* court analyzed the constitutionality of the federal anti-riot statute. The clear and present danger test was first enunciated in *Schenk v. U.S.*, 249 U.S. 47, 52, 39 S.Ct. 247, 249, 63 L.Ed. 470, 473 (1919), and was used by this court long before *Dellinger*.

<sup>2</sup> *Dellinger*, supra note 1, 472 F.2d at 360. This Court's use of the clear and present danger test pre-dates *Dellinger*. In fact, the Court applied the test in the criminal syndicalism cases of the early 1940's, *Shaw v. State*, 76 Okla. Crim. 271, 134 P.2d 999 (1943); *Wood v. State*, 76 Okla. Crim. 89, 134 P.2d 1021 (1943); *Jaffee v. State*, 76 Okla. Crim. 95, 134 P.2d 1027 (1943); *Wood v. State*, 77 Okla. Crim. 305, 141 P.2d 309 (1943). In the first three cases, defendants were charged with being members of the Communist Party which advocated the overthrow of the government by force and violence. The Court determined that the question was whether utterances of criticism of the government were made at such a time and place as might be immediately dangerous to public peace, *Shaw*, 134 P.2d at 1019. The Court held that a defendant had a right to have submitted to the jury (1) the question whether the principles advocated by the Party presented a real and imminent danger of violence, sabotage or unlawful acts against the government, and (2) a jury instruction that such advocacy was reasonably likely to result within the immediate future in the commission of serious violence, *Shaw*, 134 P.2d at 1020. In *Wood*, 141 P.2d 309, defendants were charged with circulating and distributing published material which violated the Criminal Syndicalism Act. As a rule of law, the *Wood* court found that under the First Amendment, before utterances may be penalized, there must be a reasonable apprehension of danger to the Government, *Wood*, 141 P.2d at 319. Denial of requested jury instructions on clear and present danger prevented the jury from passing on the issues, thus denying a fundamental right, *Wood*, 141 P.2d at 320.

<sup>3</sup> This Court used the clear and present danger test in its interpretation of the Oklahoma criminal syndicalism statute in order to bring that statute in line with the Constitution. In addition, Arkansas, California, Georgia, Pennsylvania, and North Carolina have "clear and present danger" or similar language in their Incitement to riot statutes. In Delaware, Florida, Louisiana, Maryland and Michigan, courts

have required that the Incitement to riot statutes be interpreted or construed using the clear and present danger test.

<sup>4</sup> It is unclear from the record whether Price's actions at the time of arrest or his speech to the crowd are alleged to have violated the statute. The Information charged that Price "conducted himself in a combative manner and requested a group of bystanders to attack officers of the Muskogee Police Department." It would appear that Price's speech formed at least one basis for the charge. The jury could have convicted Price on that basis.

<sup>5</sup> Although the Panel discussed the clear and present danger test, it failed to apply the test. The Panel determined (1) that 21 O.S. 1981 § 1320.2 [21-1320.2], which contains no specific language prohibitions, on its face must apply only to "fighting words" and (2) that no constitutional issue is raised by analogy to *Harrington v. Tulsa*, 763 P.2d 700, 701 (Okla. Cr. 1988) (Tulsa disturbing the peace ordinance which prohibited use of "abusive or violent language" held constitutional because wording on its face required an act or conduct inciting violence or tending to provoke or excite others). The Panel declared that the state is authorized to punish speech in certain cases, found that this statute falls within that category and that Price made "inflammatory remarks". Under case law these conclusions do not sufficiently analyze the statute or Price's behavior to justify finding that constitutionally protected speech has not been impermissibly infringed.

<sup>6</sup> The Panel held this was not error, citing *Scott v. State*, 84 Okla. Crim. 171, 180 P.2d 196 (1947). In *Scott* the defendant did not testify and presented no substantial evidence to support his theory of the case. This Court noted that questions regarding trial instructions must be determined by the facts in each case and found that as no substantial evidence supported Scott's theory, the trial court correctly refused to give requested instructions. *Scott* does not support the trial court's refusal in this case. A defendant is entitled as a matter of law to jury instructions supporting the defense theory if there is possible support in the evidence, even if the evidence is discredited. *Broadrick v. State*, 706 P.2d 534, 536 (Okla. Cr. 1985); *Davis v. State*, 665 P.2d 1186, 1195 (Okla. Cr. 1983); *Holt v. State*, 278 P.2d 855, 857 (Okla. Cr. 1955). Here, defendant and numerous witnesses presented testimony supporting defense theory that appellant did not utter "fighting words", but engaged in constitutionally protected expression of opinions.

<sup>7</sup> See Footnote 2 above.

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CHAPEL, Judge, concurring in part, dissenting in part:

¶1 I agree in all respects with the Court's excellent opinion and take exception only to the disposition. I dissent to the decision to remand the case for a new trial, and believe we should reverse with instructions to dismiss. The case should be dismissed for a variety of compelling reasons. Prominent among them is the fact that this case [873 P.2d 1053] epitomizes the effect of delay in our appellate system. The delay in this case was harmful, prejudicial and therefore unconstitutional.

¶2 Price, an indigent, filed his notice of intent to appeal in this case on November 27, 1989. Acquiring counsel who could timely reach his case complicated matters for Price. The Oklahoma Indigent Defense System first represented Price, then later his case was contracted out. His brief in support of his appeal was filed on November 16, 1992. The State filed its brief on June 21, 1993. Forty-three months elapsed before Price's appeal was at issue in this court. When the appeal was finally perfected and this Court reviewed the proceedings, we found the trial court had committed reversible error by refusing to issue requested instructions which were necessary for any constitutional prosecution under this statute. Price was sentenced to eight years incarceration. He remains imprisoned on this invalid conviction.

¶3 This Court recently addressed the issue of appellate delay and decided we were "powerless to cure this problem". *Manous v. State*, 797 P.2d 1005 (Okla. Cr. 1990). I must respectfully disagree. This Court unquestionably has the jurisdiction and authority to grant relief to individuals in criminal appeals for violations of their Constitutional rights. Where appellate delay is unreasonable, harmful, and prejudicial to a defendant's rights, the delay is unconstitutional and this Court should fashion appropriate relief. Not only should this Court act on its authority to grant relief in cases like this, it would certainly be preferable to any Federal District Court or Federal Circuit Court attempt to address the problem for us.

¶4 Upon remand, Price could be convicted, receive a mistrial, be acquitted, or have his case dismissed. If the case is remanded for another trial, the State will have to pay the expenses of prosecuting and defending the case. Moreover, the State cannot realistically expect to get a greater sentence than that imposed at the first trial, and Price will receive credit for the time he is now serving. Thus, there is almost no possibility of additional sanctions should Price be convicted again. Price's acquittal would mean, as a matter of

justice, that he will have been convicted and served years in prison before his case was resolved in his favor, and that he will have labored under the disabilities of a felony conviction. Should his case be dismissed, the result would be the same as if we dismiss it now, without the attendant delay that will result from our remand.

¶5 Price did not raise the issue of unreasonable appellate delay as a proposition of error. However, he was clearly prejudiced by the delay; he has spent more than four years wrongfully incarcerated on an erroneous conviction, with all the attendant stigma and disabilities of the conviction itself. To subject him to another trial would, in my judgment, compound a serious constitutional wrong. For these compelling reasons, I would reverse with instructions to dismiss.

### **Citationizer® Summary of Documents Citing This Document**

Cite Name	Level
<b>Oklahoma Supreme Court Cases</b>	
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<b>Oklahoma Jury Instructions- Criminal</b>	
Cite	Name Level
	<u>Inciting Imminent Violence - Elements</u> Cited
	<u>Incitement to Riot - Elements</u> Cited

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<b>Oklahoma Court of Criminal Appeals Cases</b>	
Cite	Name Level
<u>1988 OK CR 231, 763 P.2d 700,</u>	<u>HARRINGTON v. CITY OF TULSA</u> Cited
<u>1990 OK CR 57, 797 P.2d 1005,</u>	<u>MANOUS v. STATE</u> Cited
<u>1955 OK CR 2, 278 P.2d 855,</u>	<u>HOLT v. STATE</u> Cited
<u>1943 OK CR 22, 134 P.2d 1021, 76</u>	<u>Wood v State</u> Cited
<u>Okl.Cr. 89,</u>	
<u>1943 OK CR 23, 134 P.2d 1027, 76</u>	<u>Jaffee v State</u> Cited
<u>Okl.Cr. 95,</u>	
<u>1943 OK CR 51, 134 P.2d 999, 76 Okl.Cr. 271,</u>	<u>Shaw v State</u> Discussed at Length
<u>1943 OK CR 99, 141 P.2d 309, 77 Okl.Cr. 305,</u>	<u>Wood v State</u> Discussed at Length
<u>1947 OK CR 51, 180 P.2d 196, 84 Okl.Cr. 171,</u>	<u>Scott v State</u> Cited
<u>1983 OK CR 57, 665 P.2d 1186,</u>	<u>DAVIS v. STATE</u> Cited
<u>1985 OK CR 108, 706 P.2d 534,</u>	<u>BROADDRICK v. STATE</u> Cited
<b>Title 21. Crimes and Punishments</b>	
Cite	Name Level
<u>21 O.S. 1320.2,</u>	<u>Incitement to Riot</u> Discussed at Length
<b>Title 22. Criminal Procedure</b>	
Cite	Name Level

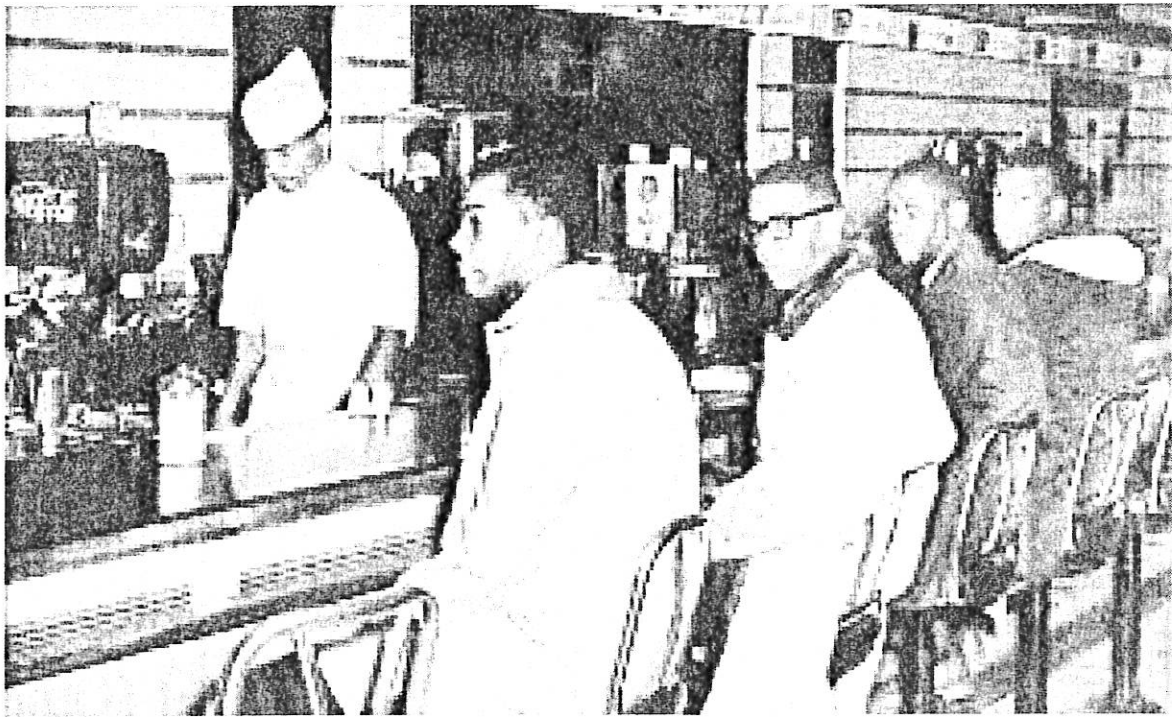
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22 O.S. Rule 12.10.

Petition for Review



Woolworth's Counter sit-in 2/1/1960



Clara Luper Okc sit-ins (1958)



The Stand in the Schoolhouse Door took place at Foster Auditorium at the University of Alabama on June 11, 1963. George Wallace, the Governor of Alabama, in a symbolic attempt to keep his inaugural promise of "segregation now, segregation tomorrow, segregation forever" and stop the desegregation of schools, stood at the door of the auditorium to try to block the entry of two African American students: Vivian Malone and James Hood.

## A BRIEF SNAPSHOT OF RECENT RIOTS ERRUPTING FROM POLICE VIOLENCE AGAINST BLACKS

- 1970: Augusta, GA Riot was fueled by long-simmering grievances about racial injustice, and was sparked by White officials' stonewalling in the face of Black citizens' demand for answers about the beating death of Black teenager Charles Oatman.
- 1980: Miami Riots following acquittal of Miami-Dade officers in death of Arthur McDuffie, a black insurance salesman and Marine
- 1989: Overtown Riots (Miami, FL) after officer shot a black motorcyclist (the officer was later convicted of manslaughter)
- 1992: LA Riots erupt after video of LAPD beating Rodney King goes public
- 1996: St. Petersburg Riots after a black teen who had been pulled over for speeding was shot an killed by an officer who claimed his gun accidentally discharged
- 2001: Cincinatti, OH riots over fatal shooting of unarmed black male, Timothy Thomas, by Cincinatti police officer
- 2009: Oakland, CA riots after fatal shooting of unarmed black man, Oscar Grant, by a BART transit police officer
- 2014-2015: Ferguson, MO unrest and riots over shooting of Michael Brown
- 2015: Baltimore, MD riots over shooting of Freddie Gray
- 2016: Minnesota: Video of police shooting Philando Castille during a traffic stop goes viral
- 2020: Ahmad Arbery and Brionna Taylor shooting deaths are already in the national news when the video of George Floyd's death goes viral, erupting in nationwide protests, including in Okc.



<https://www.nationalgeographic.com/history/2020/06/2020-not-1968.html>

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HISTORY & CULTURE RACE IN AMERICA

# 2020 is not 1968: To understand today's protests, you must look further back

The conflicts of 2020 aren't just a repeat of past troubles; they're a new development in the American fight for racial equality.

BY THOMAS J. SUGRUE

PUBLISHED JUNE 11, 2020

The 1960s Black Power activist formerly known as H. Rap Brown once said that “violence is as American as cherry pie.”

Over the last two weeks, more than a thousand protests—most of them peaceful, though some devolved into violence—have swept across America caused by outrage over the death of George Floyd, recorded as a Minneapolis police officer pressed a knee to his neck for nearly nine minutes while Floyd was handcuffed and lying face down. Floyd was one of approximately 1,100 people killed annually by police use of force in the United States in recent years, according to data compiled by Fatal Encounters, a nonprofit that tracks police-involved deaths since 2000. A disproportionate number of the people killed, like Floyd, are African American.

Casting their eyes to the past, observers search for comparisons to today's uprisings in the chaos of 1968. But the roots of 2020's events go far deeper into the last hundred years of American history, which were punctuated by race riots, massacres, and clashes between the police and African Americans. Starting in 1919, three major waves of nationwide uprisings in the 20th century shed light on how the fight for racial equality has grown, how it's changed, and what has stayed the same.

## Red Summer

The first wave came in the early 20th century, culminating in the so-called Red Summer of 1919, when the country was recovering from World War I, bitterly divided by racial and gender tensions and anti-immigration fervor, and ravaged by the deadly Spanish flu epidemic. That year, dozens of violent racial clashes played out with ferocity in at least 25 places including small towns such as Elaine, Arkansas, and Bisbee, Arizona, and in big cities, including Omaha, Nebraska, Chicago, Illinois, and Washington, D.C. During this first wave, hundreds of thousands of African Americans were moving north in what came to be known as the Great Migration, seeking jobs created by wartime spending and fleeing the violence and oppression in the former Confederacy.

In 1921, white mobs, with the complicity of local police, torched Tulsa, Oklahoma's black business district, known as “Black Wall Street,” killing about 300 people and leaving nearly all of the city's black population homeless. In most of these massacres and riots, the police turned a blind eye to white violence and instead arrested African Americans for defending themselves.

In response to these brutal tactics, African Americans invested energy in building up civil rights organizations in the 1920s and

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racial pride and self-determination, most notably the United Negro Improvement Association, led by Marcus Garvey. Empowered by the right to vote (a right denied to blacks through voter suppression across most of the South), African Americans in northern cities began to exercise their electoral clout.

## Fighting fascism abroad, racism at home

The second mass wave of protest and racial violence came during the disruptive years of the Depression and World War II. In 1941, when civil rights and labor leader A. Philip Randolph threatened a March on Washington to demand that the federal government open up defense jobs to African Americans, President Franklin Roosevelt succumbed to the pressure and signed an order creating the Committee on Fair Employment Practices. The hypocrisy of racism in a country that was fighting a world war for democracy fueled anger among many African Americans, unleashing one of the most intense periods of black political organizing and white opposition ever.

In a second wave of the Great Migration, hundreds of thousands of black workers moved north and west during the war, finding jobs in aircraft factories and shipyards. Newspapers serving African American communities, led by the *Pittsburgh Courier*, publicized racial discrimination and violence and launched the “Double V” campaign for victory against fascism abroad and against white supremacy at home.

In Mobile, Alabama and Detroit in 1943, whites fearful of rising black militancy and competition for jobs and housing rampaged through black neighborhoods and attacked black workers, a reprise of what had happened in the 1919 Red Summer. More than 240 race riots broke out that year throughout the United States. African Americans were not the only targets; the same year, in Los Angeles, white mobs angry about a new racial threat attacked young Mexican American men. In all of these cities, the police swept in, taking the side of white rioters.

During and after World War II, African Americans actively protested—both peacefully and violently—against racism and police brutality. New York's City's Harlem neighborhood was a hotbed of civil rights activism. In August 1943, after a white police officer shot Private Robert Bandy, an African American soldier on leave, angry crowds of blacks outraged at police brutality broke shop windows and clashed with law enforcement officials. In wartime Birmingham, Alabama, African Americans resisted second-class treatment on the city's buses, clashing with white drivers, passengers, and police. In 1943 and 1944, civil rights activists in Chicago staged sit-ins at restaurants that refused to serve blacks. Those protests snowballed into a nationwide movement between the war and the mid-1960s.

## The turbulent Sixties

Fueled by growth of the civil rights movement, a third and enormous wave of urban uprisings swept the country between 1963 and 1968. The protests grew out of decades of grassroots organizing against racial segregation and discrimination in employment, housing, transportation, and commerce, both in the North and the South.

In 1963, Martin Luther King, Jr. and the Southern Christian Leadership Conference marched in Birmingham, Alabama, demanding the desegregation of department stores, restaurants, public restrooms, and drinking fountains. In a violent show of force, Birmingham Commissioner of Public Safety Eugene “Bull” Connor infamously ordered police officers and firefighters to turn guard dogs and fire hoses on nonviolent protestors, many of them schoolchildren. In retaliation for the brutality, angry local blacks calling for self-defense rampaged through the city's business district. When peaceful demonstrations did not get the desired results and law enforcement officials used force to suppress dissent, protestors often turned to more disruptive tactics.

It was a pattern that would be repeated hundreds of times over the next several years, drawing energy from the rising Black Power movement, which called for black pride, self-defense against racist attacks, and self-determination. Philadelphia, Harlem, and

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African Americans burned and looted stores and faced violent retribution on the part of big cities' nearly all-white police forces. In Newark, New Jersey, 34 people died, 23 of them at the hands of the police. In Detroit, 43 people died, most of them shot by some 17,000 police, National Guard, and military troops sent to put down the rebellion. In April 1968, sorrow and fury over Martin Luther King, Jr.'s assassination turned to uprisings in which more than 100 cities were burned.

The 1960s uprisings differed from their precursors in 1919 and 1943. The later demonstrations—both nonviolent and disruptive—were led by African Americans, unlike the race riots in Chicago, Tulsa, Detroit, and Los Angeles that were instigated by white mobs. In the 1960s, almost all looting and burning happened in African American neighborhoods, targeting mostly white-owned local shops accused of overcharging black customers for inferior goods. Some whites joined in vandalizing stores, but the crowds and the business districts affected were overwhelmingly black.

The only whites out on the streets in sizeable numbers were law enforcement officials, who fueled the flames of discontent by beating and shooting protestors. Many white Americans—including presidential candidates Richard M. Nixon and George Wallace—cheered the police. Those who were more sympathetic to black protesters included prominent members of the blue-ribbon, bipartisan Kerner Commission, established by President Lyndon B. Johnson to investigate the causes of the 1960s uprisings. Its 11 members, including the nation's only black U.S. Senator, Edward Brooke (R-Mass), and NAACP Executive Director Roy Wilkins, published a bestselling report that concluded that for many blacks, "police have come to symbolize white power, white racism, and white repression."

## Changing face of protest

In the decades that followed 1968, outbreaks of protest and conflict were more geographically isolated, but their causes and fury foreshadowed the events of 2020. In 1992, mass protests and riots exploded in Los Angeles after the acquittal of white police officers who were captured on video brutally beating black motorist Rodney King. Twenty years later, the deaths of more African Americans at the hands of police ignited public outrage, mass protests, and sometimes attacks on white-owned businesses. Activists around the country loosely banded together in the Black Lives Matter movement, founded in 2013 by Alicia Garza, Patrisse Cullors, and Opal Tometi in response to the acquittal of a Florida man who fatally shot an unarmed 17-year-old black student, Trayvon Martin, who was visiting relatives in a gated community. The coalition uses protests, social media, and publicity to shine a bright light on police violence against African Americans.

2020's uprisings resemble those of 1919, 1943, and 1968 in certain respects: They grow out of simmering hatreds seeded by the long, festering history of white violence and police brutality against African Americans that has taken hundreds of lives of per year, including Floyd, Breonna Taylor, and Ahmaud Arbery, three of the most recent victims. Most of 2020's protests have been peaceful, early reports have found, with a fraction becoming violent.

But more than ever before, today's demonstrations are markedly interracial—African American, Asian American, Latinx, and white faces, covered by masks to prevent the spread of COVID-19, appear in city centers, blockaded across bridges and highways, and gathered in front of the White House. It suggests a new phase of opposition that is uniting groups who did not have much in common for most of American history. In cases where conflicts have erupted, those assaulted, tear-gassed, or shot with rubber bullets are of all races.

The geography of violence and looting looks different in 2020 as well. Clashes of the past happened mostly in black neighborhoods; today, they have often started and spread to wealthy downtowns and suburban shopping malls. Looters have gone after local shops and global chains in wealthy neighborhoods such as Rodeo Drive in Beverly Hills, Soho in New York, and Buckhead in Atlanta. We can't yet wholly grasp the significance of demonstrators spraying graffiti that say both "Black Lives Matter" and "Eat the Rich" but amidst soaring unemployment and ongoing racial injustice, we might be seeing something that is both old and new.

The current protest movement is another chapter in this nation's long history of demanding justice and equality for all. [LEARN MORE](#)

Richmond, Virginia; anti-police protestors taking the knee from Seattle to Rio de Janeiro and Rome; and U.S. public officials debating whether to defund or rebuild their police forces from the ground up.

It remains to be seen if the uprisings of 2020 will resolve the long-standing issues of racial injustice fought again and again on America's streets, but when many races march together rather than face off, the arc of history may be bending toward justice again.

Thomas J. Sugrue, a leading scholar of cities, politics, race, and civil rights, is professor of history and social and cultural analysis at New York University. His books include the Bancroft Prize-winning *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit*, *Sweet Land of Liberty: The Forgotten Struggle for Civil Rights in the North*, and *These United States: A Nation in the Making, 1890 to the Present*.

*Editor's Note: This article originally misstated the number of people killed annually by police in the United States. It is approximately 1,100, including more than 1,000 police-involved shootings, in which Black Americans are killed by police at twice the rate of white Americans.*

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Title 21. Crimes and Punishments

Oklahoma Statutes Citationized

Title 21. Crimes and Punishments

Chapter 55 - Other Crimes Against Public Peace

Riots and Unlawful Assemblies

Section 1311 - Definition of Riot

Cite as: O.S. §, \_\_\_

Any use of force or violence, or any threat to use force or violence if accompanied by immediate power of execution, by three or more persons acting together and without authority of law, is riot.

**Historical Data**

R.L. 1910, § 2558.

**Citationizer® Summary of Documents Citing This Document**

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<b>Oklahoma Court of Criminal Appeals Cases</b>	
<i>Cite</i>	<i>Name</i>
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<u>1973 OK CR 9, 505 P.2d 507,</u>	<u>WRIGHT v. STATE</u>
	<i>Cited</i>
<b>Oklahoma Jury Instructions- Criminal</b>	
<i>Cite</i>	<i>Name</i>
<i>Level</i>	
	<u>Participating in Riot - Elements</u>
	<i>Cited</i>
	<u>Incitement to Riot - Elements</u>
	<i>Cited</i>
<b>Title 21. Crimes and Punishments</b>	
<i>Cite</i>	<i>Name</i>
<i>Level</i>	
<u>21 O.S. 1320.1,</u>	<u>Riot</u>
	<i>Cited</i>
<b>Title 57. Prisons and Reformatories</b>	
<i>Cite</i>	<i>Name</i>
<i>Level</i>	
<u>57 O.S. 138,</u>	<u>Credits for Good Conduct, Blood Donations, Training Program Participation, etc.</u>
	<i>Cited</i>
<u>57 O.S. 332.16,</u>	<u>Recommendation for Parole to Remain in Governor's Office no Longer than 30 Days</u>
	<i>Cited</i>

**Citationizer: Table of Authority**

*Cite*      *Name*      *Level*

None Found.



Title 21. Crimes and Punishments

Oklahoma Statutes Citationized

Title 21. Crimes and Punishments

Chapter 55 - Other Crimes Against Public Peace

Section 1320.1 - Riot

Cite as: O.S. §, \_\_\_

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For the purposes of this Act, "riot" means that crime defined in 21 Oklahoma Statutes, Section 1311.

**Historical Data**

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Laws 1969, HB 1138, c. 89, § 1, emerg. eff. March 25, 1969.

**Citationizer<sup>®</sup> Summary of Documents Citing This Document**

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Cite Name      Level

**Title 21. Crimes and Punishments**

Cite	Name	Level
<u>21 O.S. 1311.</u>	<u>Definition of Riot</u>	Cited



Title 21. Crimes and Punishments

Oklahoma Statutes Citationized

Title 21. Crimes and Punishments

Chapter 55 - Other Crimes Against Public Peace

Section 1320.2 - Incitement to Riot

Cite as: O.S. §, \_\_\_\_

It shall be unlawful and shall constitute incitement to riot for a person or persons, intending to cause, aid, or abet the institution or maintenance of a riot, to do an act or engage in conduct that urges other persons to commit acts of unlawful force or violence, or the unlawful burning or destroying of property, or the unlawful interference with a police officer, peace officer, fireman or a member of the Oklahoma National Guard or any unit of the armed services officially assigned to riot duty in the lawful performance of his duty.

**Historical Data**

Laws 1969, HB 1138, c. 89, § 2, emerg. eff. March 25, 1969.

**Citationizer® Summary of Documents Citing This Document**

Cite Name	Level
<b>Oklahoma Court of Criminal Appeals Cases</b>	
Cite	Name Level
<u>1994 OK CR 26, 873 P.2d 1049,</u>	<u>PRICE v. STATE</u> Discussed at Length
<b>Oklahoma Jury Instructions- Criminal</b>	
Cite	Name Level
	<u>Incitement to Riot - Elements</u> Cited
<b>Title 21. Crimes and Punishments</b>	
Cite	Name Level
<u>21 O.S. 1320.4,</u>	<u>Penalty for Riot or Incitement to Riot</u> Cited
<b>Title 57. Prisons and Reformatories</b>	
Cite	Name Level
<u>57 O.S. 138,</u>	<u>Credits for Good Conduct, Blood Donations, Training Program Participation, etc.</u> Cited
<u>57 O.S. 332.16,</u>	<u>Recommendation for Parole to Remain in Governor's Office no Longer than 30 Days</u> Cited

**Citationizer: Table of Authority**

Cite Name Level

None Found.



Title 21. Crimes and Punishments

Oklahoma Statutes Citationized

Title 21. Crimes and Punishments

Chapter 55 - Other Crimes Against Public Peace

Section 1320.4 - Penalty for Riot or Incitement to Riot

Cite as: O.S. §, \_\_ \_\_

Any person guilty of the crime, as set forth in Section 1320.2 of this title, shall be deemed guilty of a felony, punishable by not more than ten (10) years in prison, or a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

**Historical Data**

Laws 1969, HB 1138, c. 89, § 4, emerg. eff. March 25, 1969; Amended by Laws 1997, HB 1213, c. 133, § 340 (effective date amended to July 1, 1999, by Laws 1998, 1st Extr. Sess., HB 1002, c. 2, §§ 23-26, emerg. eff. June 19, 1998) ([superseded document available](#)); Amended by Laws 1999, 1st Extr. Sess., HB 1009, c. 5, § 234, emerg. eff. July 1, 1999 ([superseded document available](#)).

**Citationizer<sup>®</sup> Summary of Documents Citing This Document**

Cite      Name Level

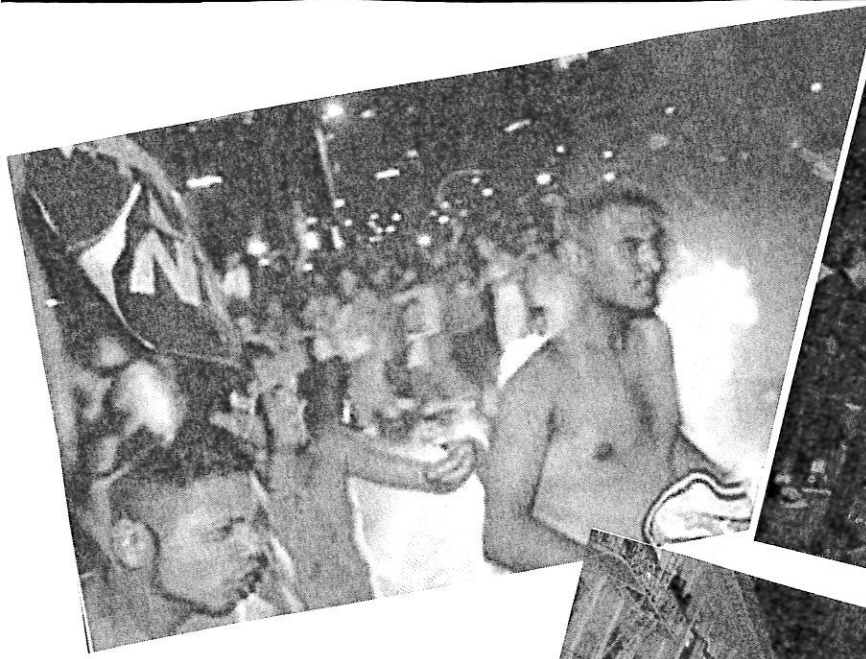
None Found.

**Citationizer: Table of Authority**

Cite Name      Level

**Title 21. Crimes and Punishments**

Cite	Name	Level
<u>21 O.S. 1320.2</u>	<u>Incitement to Riot</u>	Cited



SPORTS RIOTS



IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

IN DISTRICT COURT  
OKLAHOMA COUNTY

STATE OF OKLAHOMA

Plaintiff,

CF-2020

JUN 26 2020

RICK WARREN  
COURT CLERK

vs.

98 \_\_\_\_\_

MALACHAI DAVIS

CF-2020-2935

Defendant.

*Palumbo*  
INFORMATION

David W. Prater, the District Attorney of Oklahoma County, Oklahoma, informs the District Court, that:

Count 1: On or about the 30th day of May 2020, the crime of **TERRORISM** was feloniously committed in Oklahoma County, Oklahoma, by MALACHAI DAVIS, acting with a large crowd of other individuals who were using force or violence resulting in damage to property and personal injury to law enforcement officers, did unlawfully, willfully and feloniously break the windows of CJ's Bail Bonds, an act intended to influence the policy or conduct of a government by intimidation or coercion and in retaliation for the policy or conduct of a government by intimidation or coercion, in violation of Section 1268.1(8) of Title 21 of the Oklahoma Statutes and against the peace and dignity of the State of Oklahoma.

Count 2: On or about the 30th day of May 2020, the crime of Malicious Injury and Destruction of Property was feloniously committed in Oklahoma County, Oklahoma, by MALACHAI DAVIS, who willfully, wrongfully, and maliciously defaced and destroyed building, causing fire damage, at 417 N. Classen Blvd., Oklahoma City, causing a loss which has an aggregate value of one thousand (\$1,000.00) dollars or more, which was not his own, contrary to the provisions of Section 1760 of Title 21 of the Oklahoma statutes, and against the peace and dignity of the State of Oklahoma.

Respectfully Submitted,  
**DAVID W. PRATER**  
**DISTRICT ATTORNEY**



**DAVID W. PRATER, OBA #15496**  
**DISTRICT ATTORNEY**

---

WITNESSES

Cecil James Knight, Jr  
417 N Classen Blvd.  
Oklahoma City, OK 73106

Sergeant Karl Pulliam, #1729  
Oklahoma City Police Department  
700 Colcord Drive  
Oklahoma City, OK 73102

MI-2020-627

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA  
STATE OF OKLAHOMA

JUN 16 2020

RICK WARREN  
COURT CLERK

AFFIDAVIT AND APPLICATION FOR ARREST WARRANT  
AND THE ARREST WARRANT FOR THE PERSON OF:

DAVIS, MALACHAI  
W/M 510/120 DOB: 01 DEC 2001 SSN: 216-59-5725  
Address: 1920 E 2<sup>nd</sup> Street  
Edmond, OK 73034  
Address: 616 Robin Hill Rd  
Edmond, OK 73003

FOR THE CHARGES OF:  
VIOLATION OF OKLAHOMA ANTITERRORISM ACT [SS 21-1268]  
INCITEMENT TO RIOT [SS 21-1320.2]  
UNLAWFUL CARRY [SS 21-1272]  
MALICIOUS DESTRUCTION OF PROPERTY [21-1760]

**I, Detective Karl Pulliam, being duly sworn upon oath, depose and state as follows:**

I am a police officer employed by the City of Oklahoma City, Oklahoma and have been so employed for approximately 11 years. I am currently assigned as a detective to the Criminal Intelligence – Sensitive Cases Unit. I was assigned to conduct a follow-up investigation on persons suspected of participating in criminal activity during the protests related to Black Lives Matter that occurred on 30MAY2020 in the area of: Oklahoma City Police Department Headquarters [700 Colcord Dr]; the intersection of NW 23<sup>rd</sup> St and N Classen Blvd; and CJ's Bail Bonds [417 N Classen Blvd] in Oklahoma City, Oklahoma County.

On 30MAY2020, at approximately 1900 HRS, protesters gathered at the intersection of NW23<sup>rd</sup> St and Classen Blvd, in Oklahoma City, in Oklahoma county. This protest was initially announced on social media by "Oklahoma call for reproductive justice", "black lives matter" and the "Oklahoma people's party" a few hours prior to the gathering. A crowd numbering in the hundreds gathered at NW23<sup>rd</sup>/Classen intersection and within minutes, the crowd started standing in the street and blocking the flow of traffic in all directions. OCPD officers were dispatched to the intersection to ensure the safety of protesters and motorists, as this intersection is one of the busiest in NW Oklahoma City. The crowd began walking around the perimeter of the intersection in a rough circle, with several agitators staying to the center to keep the crowd in an excited state. Several people were carrying flags that were identified as belonging to the following groups: AntiFa, Soviet Union (communism), American Indian Movement, anarcho-communism (solid red), and the original Oklahoma flag (red with "46" inside a star) (currently adopted by Oklahoma socialists). Participants carried a variety of handmade signs that supported antifa, black lives matter, reproductive justice, George Floyd, anti-police and anti-government positions. Several known supporters of anti-establishment organizations were present in the

crowd. Participants were swarming and refusing to move out of the path of on-coming cars and cars were being struck while they were trying to pass through the intersection. At this point, OCPD officers began trying to remove the more violent and agitated participants.

As the protest escalated, the crowd began moving south towards the downtown area. The group continued obstructing traffic and blocking streets as they moved. Numerous windows were broken, and property vandalized as the crowd moved towards downtown. The tone of the group shifted from peaceful protest and rallying to rioting and destruction as they approached police headquarters. OCPD set up a hasty perimeter around police headquarters to keep the crowd from closing on the headquarters building. The crowd continued escalating in their actions and verbalizations. Items were being thrown towards officers manning the perimeter, which was established by parking police vehicles at key points to create a hasty barrier and easily recognized line between police and protesters. Several scout cars were vandalized, with windows smashed and dents kicked into them. Anti-police graffiti to include "ACAB" and "1213" [all cops are bastards] was sprayed onto nearby buildings. Water bottles, rocks and other items were thrown towards police officers as the crowd escalated their rioting. Police officers were forced to stand the rioters off with chemical munitions [CS], less lethal kinetic energy impact devices [beanbag shotgun, 40mm KEID rounds] to keep the crowd from overrunning the perimeter. The police officers eventually had to use chemical munitions and less lethal KEIDs to drive the rioters away from the police headquarters, as they were becoming increasingly aggressive in their language and actions. The rioters retreated to the area of "The Flea" (bar) at NW4th/ N Shartel Ave. Several rioters got on top of the building and they were throwing rocks and other objects down onto the police officers and police cars on the ground. Building unrelated to the police department and city of Oklahoma City were vandalized and several arsons were performed or attempted by rioters.

During these actions of vandalism and arson, multiple subjects recorded live video that was streamed to Facebook Live. A video [labeled RPreplay\_Final1590902527 in my case file] was submitted to the Oklahoma City Police Department. It is the live stream feed from Facebook user profile Eric TheGeneral Ruffin. The video has a run time of 42 minutes and 26 seconds. It begins at approximately the deployment of tear gas from the Oklahoma City Police Department. On review of the video, the camera operator moves westbound from N Shartel Ave and Robert S Kerr Ave to N Classen Blvd. He then goes northbound on N Classen Blvd and encounters a group of people at CJ's Bail Bonds located at 417 N Classen Blvd in Oklahoma City, Oklahoma County.

At [28:22] of the video, glass is heard breaking and an alarm goes off. The video catches several subject banging on the windows of CJ's Bail Bonds, causing the windows to break. The camera continued to move north, panning back south and catching a sign reading "CJ's Bail Bonds". Glass can be heard breaking throughout.

At [29:40] of the video, the camera catches a white female wearing all black clothing attempt to kick a partially broken window as a white male in a white and black striped shirt walks in front of the camera. This subject, later identified as Defendant – Malachai Davis, poses with the camera operator and brandishes brass knuckles to the camera. At that time, the brass knuckles are in Defendant – Malachai Davis' right hand. A paused screenshot of the video shows the brass knuckles on the left hand of Defendant – Malachai Davis; he had sustained deep-looking

lacerations to his hand on the middle and ring fingers and the pinky knuckle [though the camera image is reversed, so the knuckles and resulting injuries may have occurred to the right hand]. Of particular note was the injury upon the ring finger, which looked as though it could have been caused by the brass knuckles sliding against the finger after an impact.

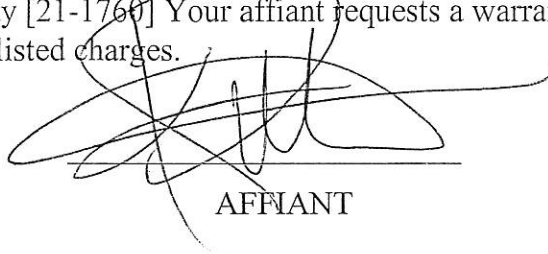
A short time later, the camera observes several subjects calling to burn down CJ's. Other subjects ignite a rag and throw through a broken window at CJ's Bail Bonds. The rag fails to catch the building on fire. Defendant – Malachai Davis was not seen before nor after the above listed sighting of him.

This investigation was conducted in conjunction with an Oklahoma County Sheriff's Office investigation into the burning of one of their vans on OCSO property. I spoke with Detective Michael Ballenger.

On 09JUN2020, multiple anonymous tips entered the OCPD Crimestoppers tip line that identified Defendant – Malachai Davis as the suspect with the brass knuckles. This subject was located via social media and public information. His last listed residence was in Edmond, Oklahoma. I checked with Edmond Police Department and they provided me with a picture of Defendant – Malachai Davis taken at the time of his last arrest [26JUL2018]. Based on this, Defendant – Malachai Davis was positively identified as the individual in the video.

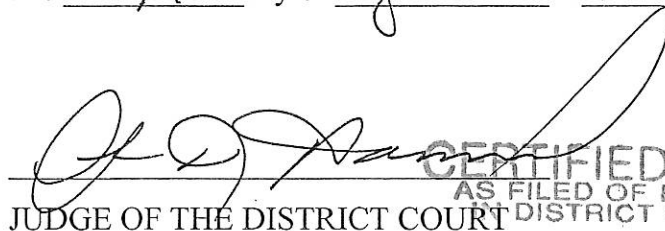
On 15JUN2020, I spoke with Carol Knight at CJ's Bail Bonds. She said the damage done to the building totaled at approximately \$8,850.00. She said she would like to see charges pressed against all subjects related to the damage of the business.

Based on the facts obtained during the course of the investigation it is the belief of your Affiant; Defendant - Malachai Davis is in violation of Oklahoma State Statutes Violation of Oklahoma Antiterrorism Act [SS21-1268] ; Incitement to Riot [21-1320.2] ; Unlawful Carry [SS 21-1272] ; Malicious Destruction of Property [21-1760] Your affiant requests a warrant be issued for the arrest of the Defendant for the listed charges.



AFFIANT

Subscribed and sworn to before me this 16 day of June 2020  
Time 1:15 pm



CERTIFIED COPY  
AS FILED OF RECORD  
JUDGE OF THE DISTRICT COURT DISTRICT COURT

JUN 16 2020

RICK WARREN COURT CLERK  
Oklahoma County  
Page 3 of 3

WARRANT

STATE OF OKLAHOMA )  
 ) SS. 21-1268  
 ) SS. 21-1320.2  
 ) SS. 21-1272  
 ) SS. 21-1760  
COUNTY OF OKLAHOMA )

Case No. MS-2020-627

Warrant No. \_\_\_\_\_

THE STATE OF OKLAHOMA TO ANY SHERIFF OR PEACE OFFICER WITHIN THE STATE OF OKLAHOMA:  
*Whereas, complaint in writing, and upon oath has been made before me, THE UNDERSIGNED JUDGE, in and for said County, charging that*

DAVIS, Malachai  
1920 E 2<sup>nd</sup> Apt 1312  
Edmond, OK 73034

R/S: W/M  
DOB: 01/29/1990  
SSN: 216-59-5725

HAIR: BLK  
EYES: BRO  
HGT: 510

WGT: 130

*did prior to 06/20/2020, in the county of Oklahoma, State of Oklahoma, commit the crime of:*

VIOLATION OF OKLAHOMA ANTITERRORISM ACT [SS 21-1268]  
INCITEMENT TO RIOT [SS 21-1320.2]  
UNLAWFUL CARRY [SS 21-1272]  
MALICIOUS DESTRUCTION OF PROPERTY [21-1760]

*You are therefore commanded forthwith to take said Malachai Davis and bring Him before me or some other magistrate having cognizance of this case, to be dealt with according to law.*

THE DEFENDANT IS TO BE ADMITTED TO BAIL IN THE SUM OF \$50,000 Bond Type: surety

IN OKLAHOMA COUNTY OKLA  
Given under my hand and the seal of said Court of said County on 6/16/2020

JUN 16 2020

RICK WARREN, Court Clerk

(SEAL) Rick Warren

[Signature]  
Judge of the District Court

SHERIFF'S RETURN

STATE OF OKLAHOMA vs. DAVIS, MALACHAI

Warrant No. \_\_\_\_\_

*Received this writ on \_\_\_\_\_, and executed the same by arresting said \_\_\_\_\_ and brought Him before said Court as commanded.*

\_\_\_\_\_  
P.D. Taylor Sheriff

COMMITMENT

THE STATE OF OKLAHOMA, OKLAHOMA COUNTY,  
TO THE SHERIFF OF OKLAHOMA COUNTY:

The within named defendant having been brought to me under warrant, and having been duly arraigned and bail fixed in the sum of \$\_\_\_\_\_, and bail not having been giving, you are hereby commanded to receive said defendant into your custody and retain him until legally discharged.

\_\_\_\_\_  
Judge



**WRIGHT v. STATE**

1973 OK CR 9

505 P.2d 507

Case Number: A-16446

Decided: 01/10/1973

Oklahoma Court of Criminal Appeals

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Cite as: 1973 OK CR 9, 505 P.2d 507

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Appeal from the District Court of Oklahoma County; Ben LaFon, Judge.

Rex Allen Houseley was convicted of the offense of Riot; he was sentenced to a term of two (2) years imprisonment, and he appeals. Judgment and sentence affirmed.

Charlie B. Wright and Bobby Dan Clark were convicted of the offense of Riot, After Former Conviction of a Felony; they were sentenced to terms of twenty-five (25) years imprisonment, and they appeal. Sentence modified from twenty-five (25) years to fifteen (15) years, and as so modified, judgment and sentence is affirmed. Modified and affirmed.

H.A. Leatherman, Oklahoma City, for appellants.

Larry Derryberry, Atty. Gen., Michael D. Tinney, Asst. Atty. Gen., for appellee.

OPINION

BLISS, Judge:

¶1 Appellants, and each of them were charged, tried, and convicted by a jury in the District Court of Oklahoma County, Oklahoma with the offense of Riot. Wright and Clark were convicted after former conviction of a felony and sentenced to serve terms of twenty-five (25) years in the state penitentiary, while Houseley was convicted as a first offender. From those judgments and sentences, this timely conjoint appeal has been perfected.

¶2 At the trial, Floyd Wallis testified he was 19, and that on the evening in question, April 17, 1970, he had just pulled up in front of his brother-in-law's house at 1512 South Pettee in Oklahoma City shortly before midnight. In the car with him at the time were his wife, Betty, and a friend, Roger Lineman.

¶3 He testified that while they were sitting in the car, a carload of boys pulled up behind him, exited their car, and came to his vehicle and asked him if he knew a person by the name of Rich Ward. He testified he left his vehicle, stating he did not know a Rich Ward, and at that point, he was jumped by an estimated seven assailants, and a fight started. He testified he hollered to his brother-in-law for help, that during the melee he was struck on the left arm by a piece of angle iron, and that he remembered being on the ground several times. He testified he was cut on his arm and had knots on his head, kick marks on his legs, and one on his back. He testified that while he was lying on the ground he saw several of his assailants get into what he told officers was a 1955 or 1956 red and white Chevrolet, that he was not certain of the color, and that he had kicked out the driver's side window in the fight. He testified his brother-in-law, James Ronnie Wagoner, was lying in the street with a big gash on his neck, and part of his ear torn off. Wallis said Lineman helped him get Ronnie into the house, and that the assailants then came back, attempted to get into their house, and kicked out the windows in Wallis's automobile.

¶4 After first stating he could not make a definite statement, Wallis identified Wright as one of his assailants, indicating that he had met Wright two and one-half years earlier, and stated the other two defendants in the courtroom had the same description and same size, but indicated there were more assailants than were present in the courtroom. Cross-examination did nothing to reinforce Wallis's testimony, and he did state that he would not say under oath that he had ever seen the two defendants, Houseley and Clark before that day in the courtroom.

¶5 The brother-in-law, Wagoner, stated he was at home at approximately 11:45 p.m. on the date in question at 1512 Southwest Pettee when he heard a car honk outside, looked out the window, and saw it was his brother-in-law. He stated he saw a car pull up behind his brother-in-law's car and he saw six or seven people alight from the car carrying "pop bottles and stuff" behind their backs. He testified he looked for something with which to help his brother-in-law and then ran out toward the fight empty-handed. He testified he did not know who or what hit him, but that when he regained consciousness, part of one ear was missing, he had several head gashes which required 75 stitches to close, and a skull fracture.

¶6 Betty Wallis's testimony was substantially the same as that given by her husband, but she also was unable to identify any of the assailants, and she could not say for certain how many assailants there were. She testified she recalled seeing more than three people, and that they all jumped on her husband after asking him if he knew a person by the name of Richard Ward. She testified she saw Ronnie Wagoner come out of the house, run across the street, and that they all jumped on him. She described the vehicle used by the assailants as a two-tone 1955 or 1956 Chevrolet. She testified on cross-examination that she knew Charlie B. Wright, but did not recall seeing him there the night of the fight. She did state she recognized the individual in the blue shirt who came up to the auto and talked to her husband, but the transcript does not reflect whether it was Houseley or Clark.

¶7 Amy Lee Taylor testified that she was living at 1511 South Pettee on the date in question and was awakened by her son about 11:45 p.m., who told her that there was a fight occurring in the alley behind their house. She testified that she walked to the window, looked out, and saw Mr. Wagoner come running out of his apartment, and at the same time, saw a "whole bunch of boys out in the alley fighting with another man." She testified that just as Mr. Wagoner came out the door, one of them hit him with a bottle of some kind, and that the bottle shattered and knocked him down. She testified that every time he tried to get up, four or five boys kept hitting him with bottles, and that one had something that looked like a piece of iron or a long piece of metal.

¶8 She testified that she went down the stairs and out the back door and got a good look at all of the participants in the fight. She testified she tried to help Mr. Wagoner and that once they got him into his apartment, all of the boys came back to the door and started to smash it in. She identified all three of the defendants as having participated in the fight. She testified on cross-examination that she had seen the same group of boys in her front yard before dark, a little after 6:00 o'clock on the night in question. She stated they were riding around in a car, and that they got out several times, and they were talking to neighborhood children. She also stated there appeared to be seven or eight persons involved in the fight, besides Mr. Wagoner and his brother-in-law. She testified that the area where the fight took place was well lighted.

¶9 Mrs. Taylor's son, Keith, testified that he was a thirteen-year-old seventh grader, and that he was watching television at approximately 11:45 p.m., when he heard a car honk and went to look out the window. His testimony concerning the fight was substantially similar to that of the other prosecution witnesses. He testified further that he could identify Charlie Wright as one of the participants in the fight, having seen him at other occasions around the area, and also, that he called the police. He testified, as did his mother, that he could identify two other participants in the fight, but that they were not present in the courtroom at the trial.

¶10 Officer Harold Behrens testified that he and his patrol partner received a radio assignment to a gang fight at approximately 12:15 a.m. in the 1500 Block of South Pettee. The officer described the fight scene, the automobile with the windows broken out, and the two victims who had been beaten up. He testified to summoning an ambulance, observing the damage to the door of the Wagoner residence apparently where the attempt to gain entry had been made. The officer testified approximately 45 minutes later they were patrolling the 1500 Block of South Pennsylvania and observed two vehicles, one a 1956 two-tone Chevrolet, and the other a 1957 Oldsmobile, and that there was a large group of boys in and around the two vehicles. The officer testified the Chevrolet was green and white, and the Oldsmobile was red and white.

¶11 The officer testified that they stopped, talked to some of the subjects and placed seven of the boys under arrest for loitering. He also stated that at that time he noticed the 1956 Chevrolet had the driver's side window broken out of it, that there were glass splinters in the floorboard and on the seat of the vehicle, and that lying on the back seat of the vehicle he found a long piece of pipe or an I-beam of some sort which appeared to have blood on it. He testified the pipe was impounded as evidence, and stated that the Chevrolet was the car normally driven by one of the defendants, Bobby Clark. He identified Clark as being one of the three defendants in the courtroom. He also stated that the defendants Charlie Wright and Rex Houseley were present and that Wright had what appeared to be blood stains on his clothing and scratch marks on his hands. The officer stated all three of the defendants had blood on their clothes and scratch marks on their arms and hands.

¶12 On cross-examination the officer testified that no effort was made to lift any fingerprints from the metal bar and that no attempt was made to determine whether or not the substance on the bar and on the clothing was, in fact, blood. The officer stated on cross-examination that most of the witnesses at the scene were fairly certain they had seen either a blue and white or a green and white vehicle leave the scene.

¶13 Officer Gene Christian testified that he was assigned to the detective division and that he made an investigation the day following the incident. He testified he interviewed the three defendants in the city jail, and that at that time the defendant Clark had on a dark blue shirt. He stated that Clark had a small cut on his right arm and minor scratches and bruises on his right arm. He identified Clark in the courtroom. He testified the defendant Wright also had blood on the sleeve in front of his shirt, and that Houseley appeared to have a minor bruise on his face.

¶14 The defense called as its only witness Robert Settle, who testified that he is the manager of the C & J Auto Parts at 2521 South May, and that he employed Charlie Wright as a driver and delivery man at his place of business, and that Wright was employed in his place of business on the day in question. He testified that Wright's hours were from 8:00 in the morning until 6:00 in the evening.

¶15 The defense stipulated that Charlie Wright and Bobby Clark were previously convicted as co-defendants in a case of Knowingly Concealing Stolen Property, which resulted in three-year suspended sentences for each man.

I.

¶16 The appellants assigned twelve (12) errors which they consolidate under five propositions, the first of which is that the appellants were entitled to sufficient time between the preliminary hearing and the trial to obtain a copy of the preliminary hearing transcript. Where due diligence is shown in an effort to acquire same and a showing as to its need is made, it is then prejudicial error to force a defendant to trial without a preliminary hearing transcript and effective counsel.

¶17 The record reflects that while the attorney for the appellants represents all three appellants on appeal, he sought to represent only one of the defendants, Wright, on the trial. The record reflects that Wright was represented by the Public Defender at his preliminary hearing and at the trial, but that the attorney for the appellants was hired the night before the trial. The Public Defender announced he was ready to proceed to trial in Mr. Wright's behalf, and the court denied a motion for a 24-hour continuance on behalf of the hired counsel to obtain a preliminary hearing transcript.

¶18 A careful examination of the record fails to convince this Court that the man whom appellant Wright attempted to hire as counsel actually showed due diligence in an effort to acquire a preliminary hearing transcript, or made an adequate showing as to any need for that transcript, or showed that the non-availability of that transcript at the trial actually created any prejudice for that particular defendant or either of the other two defendants.

¶19 The record reflects that the attorney, Leatherman, requested 24 hours in which to obtain a preliminary hearing transcript, but he made no indication as to whether or not he could actually obtain such a transcript within 24 hours. Further, the record reflects that the District Attorney's office had a copy of the transcript in the courtroom at the time and it would have been a simple matter for Mr. Leatherman to request that the court order or require the State to provide the defendant with a copy of same. Further, the Public Defender who represented the appellant Wright at the preliminary hearing two weeks prior to trial was present in the courtroom and the record indicates he was sufficiently familiar with the preliminary hearing testimony to have properly impeached witnesses from his recollection if such became necessary. We note, also, that he apparently saw no need to order a preliminary hearing transcript for impeachment purposes.

¶20 As Mr. Leatherman correctly points out, his position is in direct contradiction to a local court rule that trial counsel will not be permitted to be released later than ten (10) days prior to the setting of a case for trial. Counsel poses the question why the trial judge did not sever the defendants and continue the matter as to the appellant Wright. The record reflects that no motion for severance was made on behalf of any of the appellants, and, in fact, hired counsel for the other two appellants announced ready for trial, as did the Public Defender assigned to the appellant Wright. It is settled law in the state of Oklahoma that motions for severance, as well as motions for a continuance, are addressed solely to the sound discretion of the trial judge, whose denial of such motions will not be disturbed on appeal unless there is a clear showing of an abuse of discretion. *Ferguson v. State, Okl.Cr., 489 P.2d 523* (1971); *Brumelow v. State, Okl.Cr., 488 P.2d 1298* (1971).

¶21 The record further reflects that appellant Wright's newly-hired attorney made no effort to comply with the statutory requirements fundamental to a motion for continuance. 22 O.S. 1971 § 584 [22-584]; 12 O.S. 1971 § 668 [12-668]. We have previously held that the failure of an affidavit for continuance to comply with the requirements of § 668, supra, renders a request for continuance fatally defective. *Snow v. State, Okl.Cr., 453 P.2d 274* (1969); *Crosswhite v. State, Okl.Cr., 317 P.2d 781* (1957). In view of the foregoing, we find the trial court committed no error, did not abuse its discretion, and thus the first proposition is without merit.

## II.

¶22 The second proposition urges that appellant Wright was denied counsel of his own choice in violation of his constitutional rights.

¶23 After examining the record in this case, as well as the authorities submitted by the appellant, Wright, we must conclude that under the facts and circumstances in this particular case that this proposition is likewise without merit. Appellant's brief on this particular point ends with the bald, conclusatory statement that: " \* \* \* And, under all the circumstances the refusal to allow a continuance by the trial judge amounted to, among other things, an abuse of discretion because the defendant was prejudiced thereby." As we noted above, we found no abuse of discretion and found no prejudice offered on behalf of the defendant.

¶24 In support of this proposition appellant cites three cases: *Abel v. State, Okl.Cr., 383 P.2d 710* (1963); *Application of Kinnison, Okl.Cr., 335 P.2d 645* (1959); and *Jackson v. State, Okl.Cr., 316 P.2d 213* (1957). The holdings of those cases, that a defendant is entitled to the aid of counsel of his own choice when able to employ same, a right not limited to the trial, but extended to all stages of the proceeding, in that a defendant who is able to employ counsel has the right to be represented by counsel of his own choice and the denial of such personal right is a fundamental error, is not contested by the State in their brief. However, a close reading of the three cases cited by appellant, as well as the case offered by the State for its contention, coupled with independent research by this Court, has failed to reveal a fact situation which approximates the case at bar.

¶25 *Abel*, *Kinnison*, and *Jackson* all involve pleas of guilty, and appeals therefrom, or appeals from denied applications to withdraw the pleas of guilty. In *Kinnison* and *Jackson* there was no counsel present with the defendant at the time the plea was entered. In both of those cases, Judge Brett, writing for the Court, takes particular note of the undue haste involved in accepting the pleas of guilty. For example, in the *Kinnison* case a total of four days elapsed between the commission of the crime and the incarceration of the defendant in the state penitentiary. The *Abel* case, supra, which most closely approximates the facts in the case at bar, indicates the defendant was returned from a mental examination only one day prior to entering his plea, had never formally been arraigned or entered his plea, and did not have a trial date set. Once again, these facts and circumstances do not square with the case before us.

¶26 The State relies upon *Thompson v. State, Okl.Cr., 462 P.2d 299* (1969) for the proposition reflected in the First Syllabus by the Court:

"Although every accused has the right to counsel, he is not entitled to a further continuance in his trial to secure private counsel of his choice where he has been represented since inception of the charge by retained counsel or court-appointed counsel and appears for trial with court-appointed counsel adequately prepared to defend accused."

¶27 As in the cases cited by the appellant, we also agree that the proposition stated by the Attorney General is a proper statement of the law, and while it appears to be controlling in this particular case, it, too, fails to square with the facts before us. In *Thompson*, supra, in the several months between the time of the preliminary hearing and the time of the trial in district court, *Thompson* was represented by at least nine attorneys, some private and some court-appointed, and he again sought to change his counsel at the time of trial.

¶28 After considering the cases submitted in both briefs, conducting independent research, and carefully examining the record before us, this Court cannot agree in this particular case that the defendant was denied any constitutional right or was not adequately represented.

## III.

¶29 Proposition three is directed toward the appellants Bobby Dan Clark and Rex Allen Houseley, who assert that because they were represented by the same attorney on the trial, a conflict of interest existed because the jury had to fix penalty for more than one defendant and a waiver of the right to effective representation of counsel could not be presumed or implied from their silence, and therefore those two appellants were denied their constitutional rights.

¶30 Appellant cites as authority *People v. Chacon*, 69 Cal.2d 765, 73 Cal. Rptr. 10, 447 P.2d 106 (1968) which involves a case in which the court appointed an inexperienced public defender to represent four defendants in a capital case. We need only observe that on the trial, the appellants Houseley and Clark were represented by privately retained counsel of their own choice, one Carroll Samara, an Oklahoma City attorney, known to this Court to be extremely well-versed in the trial of criminal cases. We hold that these defendants cannot now be heard to complain of any error committed by counsel whom they selected and retained. Further, we would be more inclined to adopt as persuasive a Tenth Circuit holding which came down just two days after the Chacon case and which was cited by the State for the proposition that joint representation of co-defendants does not constitute a denial of counsel, unless a conflict of interest or prejudice results from such procedure and that while the appointment of separate counsel for indigent co-defendants is desirable, failure to do so is not inherent error. *Fryar v. United States*, 404 F.2d 1071 (10th Cir., 1968) U.S. cert. denied, 395 U.S. 964, 89 S.Ct. 2109, 23 L.Ed.2d 751 (1969). The record in this case does not reflect such a conflict of interest or prejudice resulting from such joint representation.

#### IV.

¶31 Appellant's proposition four urges the court erred in overruling the appellant's motion to quash the information before any jurors were sworn or evidence adduced and gave improper instructions and was without jurisdiction to try the defendants for a felony based on the information.

¶32 The court committed no error in overruling appellant's demurrer since the demurrer was oral and fails to comply with the statute, 22 O.S. 1971 § 505 [22-505].

¶33 The statute is clear and unambiguous:

"The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of the objection to the indictment or information, or it must be disregarded."

The record before us fails to reflect any compliance with the above-cited statute; therefore, the demurrer was defective.

¶34 Appellant's complaint as to the propriety of the instructions given is not properly before us for several reasons. The petition-in-error cites several assignments of error, none of which deal with instructions. The original record reflects no instructions were requested by the defendant and the transcript reflects that no objection was made to the instructions at the time they were given. Further, counsel's brief includes no citations of authority with regard to improper instructions. We have examined the instructions that were given and are of the opinion that those instructions generally cover the subject matter of inquiry. Thus, we find any objection to the instructions to be without merit considering the condition of the record. *Lewis v. State, Okl.Cr.*, 433 P.2d 854 (1967); *Schapansky v. State, Okl.Cr.*, 478 P.2d 912 (1971).

#### V.

¶35 In the fifth and final proposition, appellant contends the court committed error in admitting certain evidence, a metal I-beam, claiming the I-beam was not sufficiently identified as the one used to injure the victim, and cites for that proposition *Gresham v. State, Okl.Cr.*, 456 P.2d 119 (1969). Appellant's citation of that case is quite correct as far as it goes.

¶36 Judge Brett, writing for the Court, in Syllabus Number Two stated:

"Before physical object allegedly taken in commission of burglary is admitted in evidence, it must be sufficiently connected with the crime itself by proper identification."

The appellant failed, however, to recite the balance of that Syllabus, which states:

"However, it is not necessary that such identification should positively and indisputably describe such article. If it is sufficiently described to justify its admission in evidence, the lack of positive identification goes to the weight of such evidence rather than its admissibility."

¶37 We are of the opinion in this case, after reading the trial transcript, that the evidence complained of was sufficiently identified to justify its admission.

¶38 The balance of the arguments and the authorities marshalled by appellant under propositions four and five are devoted primarily to an attack on the sufficiency of the information in this case, an attack which is not wholly without merit.

¶39 Appellant further asserts that the evidence was insufficient to warrant the jury's finding of guilty and that the court erred in refusing to direct a verdict to find the defendant not guilty.

¶40 Appellant maintains that, at best, the information alleges a misdemeanor and therefore the court was without jurisdiction to try the case. As we pointed out earlier in proposition four, the appellant failed to make a proper attack on the information, that is, a written and filed demurrer, motion to quash, or motion to set aside the information. Although he orally demurred and moved to dismiss the information on several occasions, the appellants did plead to the information and proceeded to trial. Failure to file a proper demurrer, or motion to quash the information is tantamount to filing no pleadings at all. It is settled law in Oklahoma that where no demurrer or motion to quash the information is filed, and a plea of "not guilty" is entered and a trial is had, the defendant waives any defect in the information, except that the court has no jurisdiction of the subject matter and that no public offense has been committed. *Smith v. State*, 79 Okl.Cr. 151, 152 P.2d 279 (1944). Thus, it becomes necessary to determine whether or not the court had jurisdiction and whether or not a public offense had been committed.

¶41 The charging portion of the information in the instant case alleges the appellants "acting conjointly and together, in the county and state aforesaid, on the day and year aforesaid, then and there being, and did then and there wilfully, unlawfully, and feloniously in the immediate vicinity of 1512 South Pettee in Oklahoma City, in the said county and state, without authority of law, commit assault and riotous acts, by use of force and violence and threats to use force and violence, accompanied by immediate power of execution against diverse persons at the scene and in a manner adapted to disturb the public peace and incite public alarm, said defendant did effect a riot; \* \* \*"

¶42 We find the charging portion of the information reflects all of the elements set out under 21 O.S. 1971 § 1311 [21-1311], which defines riot:

"Any use of force or violence, or any threat to use force or violence if accompanied by immediate power of execution, by three or more persons acting together and without authority of law, is riot."

Thus, we must also find that under the evidence in the case and the information that a public offense was committed.

¶43 Punishment for riot is set out under the following statute, 21 O.S. 1971 § 1312 [21-1312]:

"Every person guilty of participating in any riot is punishable as follows:

"1st. If any murder, maiming, robbery, rape or arson was committed in the course of such riot, such person is punishable in the same manner as a principal in such crime.

"2nd. If the purpose of the riotous assembly was to resist the execution of any statute of this State or of the United States, or to obstruct any public officer of this State or of the United States, in the performance of any legal duty, or in serving or executing any legal process, such person is punishable by imprisonment in the penitentiary not exceeding ten years and not less than two.

"3rd. If such person carried at the time of such riot any species of firearms, or other deadly or dangerous weapon, or was disguised, he is punishable by imprisonment in the penitentiary not exceeding ten years and not less than two.

"4th. If such person directed, advised, encouraged or solicited other persons, who participated in the riot to acts of force or violence, he is punishable by imprisonment in the penitentiary for not exceeding twenty and not less than two years.

"5th. In all other cases such person is punishable as for a misdemeanor."

¶44 Appellants contend that they were convicted under the third sub-section of § 1312, when at most the information charges and they were convicted of section five, a misdemeanor, and that therefore the court was without jurisdiction to try that misdemeanor offense. It is settled law in Oklahoma that crimes are graded by the punishment which may be inflicted rather than the punishment which is inflicted. Further, we have specifically ruled that a conviction under § 1311 constitutes a felony conviction in Oklahoma. *Swartzfeger v. State*, 57 Okl.Cr. 92, 45 P.2d 550 (1935), *Symonds v. State*, 66 Okl.Cr. 49, 89 P.2d 970 (1939).

¶45 Appellant argues that the use of the weapon should have been pled in the information, and we agree that the better practice would have been for the District Attorney to have amended the information after the preliminary hearing and prior to trial, setting out the use of the weapon; but, under the facts and circumstances and the evidence in the case before us, we are unable to hold the failure to so amend the information constitutes prejudicial or reversible error. However, it would appear that the best interests of justice would be served by a modification of the sentence.

¶46 Inasmuch as this Court is powerless to modify a sentence below the statutory minimum, the conviction as to Rex Allen Houseley, who was sentenced to a term of two (2) years, is and the same is hereby affirmed.

¶47 As to appellants Wright and Clark, sentence will be modified downward from twenty-five (25) years, to terms of fifteen (15) years each.

BUSSEY and BRETT, JJ., concur.

### **Citationizer® Summary of Documents Citing This Document**

Cite Name	Level
Oklahoma Court of Criminal Appeals Cases	
Cite	Name
1977 OK CR 51, 560 P.2d 978,	RAPER v. STATE
1977 OK CR 76, 560 P.2d 1044,	WARTSON v. STATE
1977 OK CR 80, 561 P.2d 83,	GRAY v. STATE
1977 OK CR 150, 562 P.2d 947,	ATKINS v. STATE
1977 OK CR 328, 572 P.2d 991,	LANE v. STATE
1978 OK CR 47, 579 P.2d 194,	WILLIAMS v. STATE
1978 OK CR 88, 582 P.2d 1334,	WHITE v. STATE
1974 OK CR 218, 529 P.2d 546,	KING v. STATE
1975 OK CR 35, 532 P.2d 444,	WILLIAMSON v. STATE
1975 OK CR 119, 539 P.2d 412,	CHANCE v. STATE
1975 OK CR 143, 538 P.2d 1066,	METOYER v. STATE
1981 OK CR 142, 636 P.2d 378,	NEALY v. STATE
1982 OK CR 44, 644 P.2d 106,	SMITH v. STATE
1975 OK CR 192, 542 P.2d 209,	SANDS v. STATE
1983 OK CR 69, 664 P.2d 1036,	TATE v. STATE
1985 OK CR 12, 695 P.2d 8,	HUDDLESTON v. STATE
1986 OK CR 63, 718 P.2d 369,	LOPEZ v. STATE
1986 OK CR 155, 727 P.2d 96,	SPEARS v. STATE
1976 OK CR 161, 552 P.2d 707,	HERNDON v. STATE
1976 OK CR 242, 555 P.2d 70,	NICHOLS v. STATE
1976 OK CR 245, 555 P.2d 85,	KIRK v. STATE
1976 OK CR 292, 556 P.2d 1285,	JOHNSON v. STATE
1977 OK CR 2, 558 P.2d 1171,	LAUGHTON v. STATE

### **Citationizer: Table of Authority**

Cite Name	Level
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**Cite Name****Level****Oklahoma Court of Criminal Appeals Cases**

Cite	Name	Level
<u>1957 OK CR 74, 316 P.2d 213,</u>	<u>JACKSON v. STATE</u>	Cited
<u>1957 OK CR 98, 317 P.2d 781,</u>	<u>CROSSWHITE v. STATE</u>	Cited
<u>1959 OK CR 15, 335 P.2d 645,</u>	<u>APPLICATION OF KINNISON</u>	Cited
<u>1935 OK CR 55, 45 P.2d 550, 57 Okl.Cr.</u>	<u>Swartzfeeger v State</u>	Discussed
<u>92,</u>		
<u>1939 OK CR 31, 89 P.2d 970, 66 Okl.Cr.</u>	<u>Symonds v State</u>	Discussed
<u>49,</u>		
<u>1963 OK CR 60, 383 P.2d 710,</u>	<u>ABEL v. STATE</u>	Cited
<u>1967 OK CR 195, 433 P.2d 854,</u>	<u>LEWIS v. STATE</u>	Cited
<u>1969 OK CR 124, 453 P.2d 274,</u>	<u>SNOW v. STATE</u>	Cited
<u>1944 OK CR 67, 152 P.2d 279, 79 Okl.Cr.</u>	<u>Smith v State</u>	Discussed
<u>151,</u>		
<u>1969 OK CR 194, 456 P.2d 119,</u>	<u>GRESHAM v. STATE</u>	Cited
<u>1969 OK CR 304, 462 P.2d 299,</u>	<u>THOMPSON v. STATE</u>	Cited
<u>1970 OK CR 172, 478 P.2d 912,</u>	<u>SCHAPANSKY v. STATE</u>	Cited
<u>1971 OK CR 333, 488 P.2d 1298,</u>	<u>BRUMBELOW v. STATE</u>	Cited
<u>1971 OK CR 376, 489 P.2d 523,</u>	<u>FERGUSON v. STATE</u>	Cited

**Title 12. Civil Procedure**

Cite	Name	Level
<u>12 O.S. 668,</u>	<u>Procedure for Motion for Continuance</u>	Cited

**Title 21. Crimes and Punishments**

Cite	Name	Level
<u>21 O.S. 1311,</u>	<u>Definition of Riot</u>	Cited
<u>21 O.S. 1312,</u>	<u>Penalties for Riot</u>	Cited

**Title 22. Criminal Procedure**

Cite	Name	Level
<u>22 O.S. 505,</u>	<u>Requirements of the Demurrer</u>	Cited
<u>22 O.S. 584,</u>	<u>Postponement of Trial for Sufficient Cause</u>	Cited

