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**OPINION OF THE COURT OF CRIMINAL
APPEALS, STATE OF OKLAHOMA
(APRIL 1, 2021)**

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

ROBERT WILLIAM PERRY, II,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

Case No. F-2020-46

Before: Dana KUEHN, President Judge.,
Scott ROWLAND, Vice President Judge.,
Gary L. LUMPKIN, Judge., David B. LEWIS, Judge.,
Robert L. HUDSON, Judge.

SUMMARY OPINION

LEWIS, JUDGE:

Robert William Perry, II, Appellant, was tried by jury and found guilty of five counts of sexual abuse of a child under 12, in violation of 21 O.S.Supp.2014, 843.5 (counts 1, 2, and 4-6 of the information) in the District Court of Tulsa County, Case No. CF-2018-3720, before the Honorable Kelly Greenough, District

Judge. The jury set punishment at, count one, thirty-five years, count two, forty years, and counts four, five and six, life imprisonment on each count. Judge Greenough sentenced accordingly ordering that the sentences for counts one, four, five and six be served concurrently to each other and that count two be served consecutively with those counts. Perry filed a direct appeal and, thereafter a supplemental brief and motion for evidentiary hearing arguing that the State of Oklahoma did not have subject matter jurisdiction to prosecute him.

We find relief is required on Perry's jurisdictional challenge. Perry's claim is supported by 18 U.S.C. § 1153 and *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452 (2020).

Because there was insufficient evidence in the original record and Perry raised sufficient proof in his motion for evidentiary hearing, this Court remanded this case to the District Court of Tulsa County on October 7, 2020, for an evidentiary hearing. The District Court was directed to make findings of fact and conclusions of law on two issues: (a) Perry's status as an Indian; and (b) whether the crimes occurred within the boundaries of the Muscogee (Creek) Nation Reservation. Our order provided that, if the parties agreed upon evidentiary matters supporting the questions raised, the parties could enter into written stipulation setting forth those facts.

The parties appeared at the Tulsa County District Court before the Honorable Tracy L. Priddy, District Judge, on November 5, 2020, and made the following stipulations regarding question one, (1) that evidence would show that Perry became a registered citizen of the Muscogee (Creek) Nation on November 10, 2011,

and was so registered at the time of the commission of these crimes; (2) that evidence would show that Perry has a 1/128 quantum of Creek blood; and finally (3) evidence would show that the Muscogee (Creek) Nation is a federally recognized tribe. Regarding question two, the parties stipulated that the evidence would show that the location of the crimes were within the historical boundaries of the Muscogee (Creek) Nation Reservation.

The trial court filed its findings of fact and conclusions of law on November 16, 2020. The District Court found the facts recited above in accordance with the stipulation. The District Court concluded that Perry is an Indian under law and that the crimes occurred within the boundaries of the Muscogee (Creek) Nation Reservation. The District Court's findings are supported by the record. The ruling in *McGirt* governs the case and requires us to find the District Court of Tulsa County did not have jurisdiction to prosecute Perry. Accordingly, we hold that Perry's jurisdictional challenge is supported and this case should be dismissed.

DECISION

The judgment and sentence of the District Court is **REVERSED AND REMANDED WITH INSTRUCTIONS TO DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2021), the **MANDATE** is **ORDERED** to issue in twenty (20) days from the delivery and filing of this decision.

**APPEAL FROM THE DISTRICT COURT OF
TULSA COUNTY THE HONORABLE KELLY
GREENOUGH, DISTRICT JUDGE**

APPEARANCES AT TRIAL

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Opinion by: Lewis, J.

Kuehn, P.J.: Concur

Rowland, V.P.J. Concur in Result

Lumpkin, J.: Concur in Result

Hudson, J.: Specially Concur

**ROWLAND, VICE PRESIDING JUDGE,
CONCURRING IN RESULTS**

I concur in the result of today's opinion. However, consistent with my separate opinion in *Bosse v. State*, 2021 OK CR 3, ___ 3d ___. I would find that the State lacked territorial jurisdiction and not subject matter jurisdiction.

**LUMPKIN, JUDGE:
CONCURRING IN RESULTS:**

Bound by my oath and the Federal-State relationships dictated by the U.S. Constitution, I must at a minimum concur in the results of this opinion. While our nation's judicial structure requires me to apply the majority opinion in the 5-4 decision of the U.S. Supreme Court in *McGirt v. Oklahoma*, ___ U.S. ___, 140 S. Ct. 2452 (2020), I do so reluctantly. Upon the first reading of the majority opinion in *McGirt* I initially formed the belief that it was a result in search of an opinion to support it. Then upon reading the dissents by Chief Justice Roberts and Justice Thomas I was forced to conclude the Majority had totally failed to follow the Court's own precedents, but had cherry picked statutes and treaties, without giving historical context to them. The Majority then proceeded to do what an average citizen who had been fully informed of the law and facts as set out in the dissents would view as an exercise of raw judicial power to reach a decision which contravened not only the history leading to the disestablishment of the Indian reservations in Oklahoma, but also willfully disregarded and failed to apply the Court's own precedents to the issue at hand.

My quandary is one of ethics and morality. One of the first things I was taught when I began my service in the Marine Corps was that I had a duty to follow lawful orders, and that same duty required me to resist unlawful orders. Chief Justice Roberts' scholarly and judicially penned dissent, actually following the Court's precedents and required analysis, vividly reveals the failure of the majority opinion to follow

the rule of law and apply over a century of precedent and history, and to accept the fact that no Indian reservations remain in the State of Oklahoma.¹ The result seems to be some form of “social justice” created out of whole cloth rather than a continuation

¹ Senator Elmer Thomas, D-Oklahoma, was a member of the Senate Committee on Indian Affairs. After hearing the Commissioner’s speech regarding the Indian Reorganization Act (IRA) in 1934, Senator Thomas opined as follows:

I can hardly see where it (the IRA) could operate in a State like mine where the Indians are all scattered out among the whites and **they have no reservation**, and they could not get them into a community without you would go and buy land and put them on it. Then they would be surrounded very likely with thickly populated white section with whom they would trade and associate. I just cannot get through my mind how this bill can possibly be made to operate in a State of thickly-settled population. (emphasis added).

John Collier, Commissioner of Indian Affairs, *Memorandum of Explanation* (regarding S. 2755), p. 145, hearing before the United States Senate Committee on Indian Affairs, February 27, 1934. Senator Morris Sheppard, D-Texas, also on the Senate Committee on Indian Affairs, stated in response to the Commissioner’s speech that in Oklahoma, he did not think “we could look forward to building up huge reservations such as we have granted to the Indians in the past? *Id.* at 157. In 1940, in the Foreword to Felix S. Cohen, *Handbook of Federal Indian Law* (1942), Secretary of the Interior Harold Ickes wrote in support of the IRA, “[t]he continued application of the allotment laws, under which Indian wards have lost more than two-thirds of their reservation lands, while the costs of Federal administration of these lands have steadily mounted, must be terminated? (emphasis added).

of the solid precedents the Court has established over the last 100 years or more.

The question I see presented is should I blindly follow and apply the majority opinion or do I join with Chief Justice Roberts and the dissenters in *McGirt* and recognize “the emperor has no clothes” as to the adherence to following the rule of law in the application of the *McGirt* decision?

My oath and adherence to the Federal-State relationship under the U.S. Constitution mandate that I fulfill my duties and apply the edict of the majority opinion in *McGirt*. However, I am not required to do so blindly and without noting the flaws of the opinion as set out in the dissents. Chief Justice Roberts and Justice Thomas eloquently show the Majority’s mischaracterization of Congress’s actions and history with the Indian reservations. Their dissents further demonstrate that at the time of Oklahoma Statehood in 1907, all parties accepted the fact that Indian reservations in the state had been disestablished and no longer existed. I take this position to adhere to my oath as a judge and lawyer without any disrespect to our Federal-State structure. I simply believe that when reasonable minds differ they must both be reviewing the totality of the law and facts.

HUDSON, JUDGE, SPECIALLY CONCURS:

Today's decision dismisses five separate convictions for sexual abuse of a child under 12 from the District Court of Tulsa County based on the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). This decision is unquestionably correct as a matter of *stare decisis* based on the Indian status of Appellant and the occurrence of the crimes on the Creek Reservation. Under *McGirt*, the State has no jurisdiction to prosecute Appellant for the child sexual abuse in this case. Instead, Appellant must be prosecuted in federal court. I therefore as a matter of *stare decisis* fully concur in today's decision. Further, I maintain my previously expressed views on the significance of *McGirt*, its far-reaching impact on the criminal justice system in Oklahoma and the need for a practical solution by Congress. See *Bosse v. State*, 2021 OK CR 3, ___ P.3d ___ (Hudson, J., Concur in Results); *Hogner v. State*, 2021 OK CR 4, ___ P.3d ___ (Hudson, J., Specially Concur); and *Krafft v. State*, No. F-2018-340 (Okl. Cr., Feb. 25, 2021) (Hudson, J., Specially Concur) (unpublished).

**DISTRICT COURT OF TULSA COUNTY,
STATE OF OKLAHOMA, FINDINGS OF
FACT AND CONCLUSIONS OF LAW
(SIGNED NOVEMBER 13, 2020,
FILED NOVEMBER 16, 2020)**

IN THE DISTRICT COURT IN AND FOR
TULSA COUNTY, STATE OF OKLAHOMA

ROBERT WILLIAM PERRY, II,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

Tulsa County District Court Case No. CF-2018-3720

Court of Criminal Appeals Case No. F-2016-46

Before: Tracy PRIDDY, District Judge.

This matter came on for a status conference on November 5, 2020 pursuant to the remand order of the Oklahoma Court of Criminal Appeals (“OCCA”) issued October 14, 2020. Stuart Southerland appeared on behalf of Appellant, Robert William Perry, II, whose appearance was waived. Assistants Attorney General Julie Pittman and Randall Young appeared for Appellee. Tulsa County Assistant District Attorney James Dunn also appeared. An evidentiary hearing

was not held pursuant to the parties' announcement that they had agreed and stipulated to facts supporting the issues to be determined by this Court.

The Appellant, in his supplemental brief claims that the District Court lacked jurisdiction to try him as he is a citizen of the Muscogee Creek Nation and the crimes occurred within the boundaries of the Creek Nation [Reservation]. Appellant's claim raises two questions: (a) his Indian status, and (b) whether the crime occurred in the Creek Nation [Reservation]. These issues require fact-finding to be addressed by the District Court per the OCCA Order Remanding.

I. Appellant's status as an Indian

To determine the Indian status of the Appellant, the OCCA directed the District Court to make findings of fact as to whether (1) Appellant has some Indian blood, and (2) is recognized as an Indian by a tribe or the federal government.¹ The Court finds as follows:

Findings of Fact

1. Robert William Perry, II is the named Defendant/Appellant in the above-entitled matter.

2. The parties stipulated that a representative of the Muscogee (Creek) Nation Citizenship Office would testify that Robert William Perry, II is a registered citizen of the Muscogee (Creek) Nation when the crimes that he was convicted of committing herein occurred. Robert William Perry II has been a

¹ *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012); *United States v. Prentiss*, 273 F.3d 1277, 1280-81 (10th Cir. 2001). *Generally Goforth v. State*, 1982 OK CR 48, ¶ 6, 644 P.2d 114, 116.

citizen of the Muscogee (Creek) Nation since November 10, 2011.²

3. The parties stipulated that a representative of the Muscogee (Creek) Nation Citizenship Office would testify that Robert William Perry, II has 1/128 quantum of Creek blood, as indicated in a letter dated August 2020.³

4. The parties stipulated that the Muscogee (Creek) Nation is a federally recognized tribe.⁴

Conclusions of Law

Regarding the first determination, the Court answers the first inquiry in the affirmative. The Court adopted the Evidentiary Hearing Stipulations including the attached documentation filed by the parties on November 5, 2020 and made findings of fact thereon. Robert William Perry, II is the named Defendant in this matter and he has 1/128 quantum of Creek blood. Although the term “Indian” is not statutorily defined and various terms such as “sufficient”⁵, “substantial”⁶, “significant percentage of”⁷ or “some”⁸ have been used by courts in an attempt to

² Exhibit 1, Evidentiary Hearing Stipulations 1.

³ Exhibit 1, Evidentiary Hearing Stipulations 2.

⁴ Exhibit 1, Evidentiary Hearing Stipulations 3.

⁵ *United States v. LaBuff*, 658 F.3d 873, 874-75 (9th Cir. 2011)

⁶ *Vialpando v. State*, 640 P.2d 77, 79-80 (Wyo. 1982).

⁷ *Goforth v. State*, 1982 OK CR 48,116, 644 P.2d 114, 116.

⁸ *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Or. 2012).

define the quantity of Indian Blood required to satisfy this inquiry, the OCCA mandate ordered this Court to determine “whether Appellant has some Indian blood.”⁹ Thus, according to the term used by the OCCA in its Order, this Court concludes Robert William Perry, II, the named Defendant/Appellant, has some Indian blood.

Additionally, the Court answers the second part of the inquiry in the affirmative. The Court adopted the Evidentiary Hearing Stipulations including the attached documentation and made findings of fact thereon. Robert William Perry, II has been recognized as a citizen of the Muscogee (Creek) Nation since November 10, 2011 and was recognized as a citizen of the Muscogee (Creek) Nation at the time of the offenses. Finally, the Muscogee (Creek) Nation is a federally recognized tribe. Therefore, Robert William Perry, II is recognized as an Indian by a tribe or the federal government.

Having answered both inquiries in the affirmative, this Court concludes Robert William Perry, II is an Indian.

II. Whether the Crime Occurred in Indian Country

The OCCA further ordered the District Court to determine whether the crime occurred within the boundaries of the Creek Reservation, referred to as Indian Country.¹⁰ The Court finds as follows:

⁹ Order Remanding for Evidentiary Hearing October 14, 2020.

¹⁰ *McGirt v. Oklahoma*, 140 S. Ct.2452 (2020); 18 U.S.C. §§ 1152, 1153.

Findings of Fact

The parties stipulated that if the victim of the crimes that Robert William Perry II was convicted of committing was called as a witness she would testify that the offenses occurred at 4020 S. 130th East Apt. 201 in Tulsa, Oklahoma and 4915 South Utica Ave., Apt. B in Tulsa, Oklahoma.¹¹

The parties stipulated that 4020 S. 130th East Apt. 201 in Tulsa, Oklahoma and 4915 South Utica Ave., Apt. B are both within the boundaries of Creek (Muscogee) Nation.¹²

Conclusions of Law

The final inquiry is answered in the affirmative. This Court adopted the parties' Evidentiary Hearing Stipulations and made findings of fact thereon. The crime occurred at two different locations each identified by a specific address that is within the boundaries of the Creek Nation's Reservation. These boundaries were established through a series of treaties between the Creek Nation and the United States, and are explicitly recognized as a reservation defined by 18 U.S.C. § 1151(a). This Court concludes that the crimes for which Defendant/Appellant was convicted occurred within the Creek Nation [Reservation]. Based upon the Supreme Court's ruling in *McGirt v. Oklahoma*, 140 S. Ct. 2452, 207 L.Ed.2d 985 (2020), the Creek Nation Reservation is Indian Country.

¹¹ Exhibit 1, Evidentiary Hearing Stipulations 4.

¹² Exhibit 1, Evidentiary Hearing Stipulations 5.

WHEREFORE, this Court finds that Robert William Perry, II is an Indian and the crimes for which he was convicted occurred in Indian Country for purposes of the General Crimes Act, 18 U.S.C. § 1152 and the Major Crimes Act, 18 U.S.C. § 1153.

IT IS SO ORDERED this 13th day of November, 2020.

/s/ Tracy Priddy

District Judge

**EVIDENTIARY HEARING STIPULATIONS
(NOVEMBER 5, 2020)**

IN THE DISTRICT COURT IN AND FOR
TULSA COUNTY, STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff/Appellee.

v.

ROBERT WILLIAM PERRY II,

Defendant/Appellant,

Case No. CF-2018-3720, F-2020-46

The parties stipulate that if witnesses were called to testify at an evidentiary hearing ordered by the Oklahoma Court of Criminal Appeals by way of a written order dated October 7, 2020 that the witnesses would testify as follows:

1. A representative of the Muscogee (Creek) Nation Citizenship Office would testify that Robert William Perry II was a registered citizen of the Muscogee (Creek) Nation when the crimes that he was convicted of committing herein occurred. Robert William Perry II has been a citizen of the Muscogee (Creek) Nation since November 10, 2011. His Roll Number is 90663.

2. A representative of the Muscogee (Creek) Nation Citizenship Office would testify that Robert William Perry II has 1/128 quantum of Creek blood, as indicated in a letter dated August 18, 2020.

3. The parties stipulate that Muscogee (Creek) Nation is a federally recognized tribe.

4. The parties stipulate that if the victim of the crimes that Robert William Perry II was convicted of committing was called as a witness she would testify that the offenses occurred at 4020 S. 130th East Apt. 201 in Tulsa, Oklahoma and 4915 South Utica Ave., Apt. B in Tulsa, Oklahoma.

5. The parties further stipulate that 4020 S. 130th East Ave. Apt. 201 and 4915 South Utica Ave., Apt. B are both within the boundaries of Creek (Muscogee) Nation.

SIGNED THIS 5th DAY OF November, 2020.

Respectfully submitted,

/s/ Randall Young

Assistant Attorney General
Counsel for Plaintiff/ Appellee,
State of Oklahoma

/s/ Erik Greyles

Tulsa County District Attorney's Office
Counsel for Plaintiff/Appellee,
State of Oklahoma

App.19a

/s/ Stuart W. Southerland
Tulsa County Public Defender's Office
Counsel for Defendant/Appellant,
Robert William Perry, II

**MUSCOGEE (CREEK)
NATION ENROLLMENT VERIFICATION
(AUGUST 18, 2020)**



**MUSCOGEE (CREEK) NATION
ENROLLMENT VERIFICATION**

Date: 8/18/2020
To: Whom it May Concern
From: Muscogee (Creek) Nation
Citizenship Board
P.O. Box 580
Okmulgee, OK 74447

Subject: Enrollment Verification
Re: Name: Robert William Perry, II
Address: 5027 S 35th West Ave
Tulsa OK 74107-7433



Birthdate: 6/22/1990
Enrollment Date: November 10, 2011
Roll Number: 90663
Degree of Creek Blood: 1/128

I hereby certify that Robert William Perry, II,
DOB: 6/22/1990 is enrolled with the Muscogee (Creek)
Nation. Enrollment Date: 11/10/2011 Roll Number:
90663, Degree of Creek Blood: 1/128.

App.21a

Sincerely,

/s/ Nathan Wilson

Director

Muscogee (Creek) Nation

Citizenship Office

**COURT OF CRIMINAL APPEALS,
STATE OF OKLAHOMA, ORDER
REMANDING FOR EVIDENTIARY HEARING
(OCTOBER 7, 2020)**

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

ROBERT WILLIAM PERRY, II,

Appellant,

v.

STATE OF OKLAHOMA,

Appellee.

Case No. F-2020-46

Before: David B. LEWIS, Presiding Judge.,
Dana KUEHN, Vice President Judge.,
Gary L. LUMPKIN, Judge., Robert L. HUDSON,
Judge., Scott ROWLAND, Judge.

**ORDER GRANTING APPELLANT'S MOTION
FOR SUPPLEMENTATION OF RECORD
AND REQUEST TO REMAND FOR
EVIDENTIARY HEARING; REMANDING
MATTER FOR EVIDENTIARY HEARING; AND
GRANTING STATE'S MOTION TO STAY
BRIEFING SCHEDULE PENDING OUTCOME
OF EVIDENTIARY HEARING**

Appellant Perry filed his brief in chief on June 1, 2020, appealing from his conviction in Tulsa County Case No. CF-2018 3720. On August 24, 2020, Perry's Motion for Supplementation of the Record and Request to Remand for Evidentiary Hearing (Motion for Supplementation) was filed with this Court, challenging the State's subject-matter jurisdiction pursuant to the Supreme Court's decision in *McGirt v. Oklahoma*, Case No. 18-9526, 591 U.S. ___ (2020), 2020 WL 3848063. Perry requests this Court remand the matter for an evidentiary hearing on that claim. That same date, Perry tendered his supplemental brief for filing, and filed a motion for leave to file the supplemental brief out of time.

On September 29, 2020, the State of Oklahoma, by and through Mike Hunter, Attorney General of the State of Oklahoma, filed a motion to stay briefing schedule and request for evidentiary hearing. The State's response brief was due September 29, 2020. The State alleges that Perry's Motion for Supplementation and tendered brief raise the issue of subject-matter jurisdiction, claiming that he is an enrolled member of the Muscogee Creek Nation and that the crimes were committed on Creek tribal land. The State alleges it has investigated these claims and has determined that Perry is an enrolled member of the Muscogee Creek Nation, having 1/128 blood quantum; that he was an enrolled member at the time the crimes were committed; and that the crimes occurred on Creek tribal land.

Due to the *McGirt* decision, the State alleges, in light of the stipulated facts, it must be determined if Perry is an Indian who committed major crimes on

an Indian reservation. The State requests briefing in this matter be stayed pending this Court's ruling on Perry's motion to supplement and his request for an evidentiary hearing.

IT IS THEREFORE THE ORDER OF THIS COURT that Appellant Perry's Motion to Supplement the Record and Request to Remand for Evidentiary Hearing is **GRANTED**. The Clerk of this Court is **DIRECTED** to file Perry's tendered Supplemental Brief Regarding Subject-Matter Jurisdiction. The State's motion to stay briefing schedule pending the outcome of the evidentiary hearing is **GRANTED**.

In his supplemental brief, Appellant claims the District Court lacked jurisdiction to try him. Appellant argues that he is a citizen of the Muscogee Creek Nation and the crimes occurred within the boundaries of the Creek Nation. Appellant relies on *McGirt v. Oklahoma*, No. 18-9526 (U.S. July 9, 2020).

Appellant's claim raises two separate questions: (a) his Indian status and (b) whether the crime occurred in the Creek Nation. These issues require fact-finding. We therefore **REMAND** this case to the District Court of Tulsa County, for an evidentiary hearing to be held within sixty (60) days from the date of this Order.

Recognizing the historical and specialized nature of this remand for evidentiary hearing, we request the Attorney General and District Attorney work in coordination to effect uniformity and completeness in the hearing process. Upon Appellant's presentation of *prima facie* evidence as to the Appellant's legal status as an Indian and as to the location of the

crime in Indian Country, the burden shifts to the State to prove it has subject matter jurisdiction.

The hearing shall be transcribed, and the court reporter shall file an original and two (2) certified copies of the transcript within twenty (20) days after the hearing is completed. The District Court shall then make written findings of fact and conclusions of law, to be submitted to this Court within twenty (20) days after the filing of the transcripts in the District Court. The District Court shall address only the following issues.

First, the Appellant's status as an Indian. The District Court must determine whether (1) Appellant has some Indian blood, and (2) is recognized as an Indian by a tribe or the federal government.¹

Second, whether the crime occurred within the boundaries of the Creek Nation. In making this determination the District Court should consider any evidence the parties provide, including but not limited to treaties, statutes, maps, and/or testimony.

The District Court Clerk shall transmit the record of the evidentiary hearing, the District Court's findings of fact and conclusions of law, and any other materials made a part of the record, to the Clerk of this Court, and counsel for Appellant, within five (5) days after the District Court has filed its findings of fact and conclusions of law. Upon receipt thereof, the Clerk of this Court shall promptly deliver a copy of that record to the Attorney General. A supplemental

¹ See *Goforth v. State*, 1982 OK CR 48, ¶ 6, 644 P.2d 114, 116. See also *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012); *United States v. Prentiss*, 273 F.3d 1277, 1280-81 (10th Cir. 2001).

brief, addressing only those issues pertinent to the evidentiary hearing and limited to twenty (20) pages in length, may be filed by either party within twenty (20) days after the District Court's written findings of fact and conclusions of law are filed in this Court.

Provided however, in the event the parties agree as to what the evidence will show with regard to the questions presented, they may enter into a written stipulation setting forth those facts upon which they agree and which answer the questions presented and provide the stipulation to the District Court. In this event, no hearing on the questions presented is necessary. Transmission of the record regarding the matter, the District Court's findings of fact and conclusions of law and supplemental briefing shall occur as set forth above.

IT IS FURTHER ORDERED that the Clerk of this Court shall transmit copies of the following, with this Order, to the District Court of Tulsa County: Appellant's Brief in Chief filed June 1, 2020 and his Supplemental Brief tendered for filing August 24, 2020 and filed contemporaneously with this order.

The Clerk of this Court is **DIRECTED** to transmit a copy of this Order to the Court Clerk of Tulsa County; the District Court of Tulsa County, the Honorable Kelly Greenough, District Judge; Appellant, the State of Oklahoma, and all counsel of record.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 7th day of October, 2020.

App.27a

/s/ David B. Lewis
Presiding Judge

/s/ Dana Kuehn
Vice Presiding Judge

/s/ Gary L. Lumpkin
Judge

/s/ Robert L. Hudson
Judge

/s/ Scott Rowland
Judge

ATTEST:

/s/ John D. Hadden
Clerk