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

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IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

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RYAN CORTLAN JOHNSON,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

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No. F-2020-208

An Appeal from the District Court of Okmulgee  
County, the Honorable Pandee Ramirez,  
District Judge

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

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**OPINION REMANDING  
WITH INSTRUCTIONS TO DISMISS**

**KUEHN, PRESIDING JUDGE:**

Ryan Cortland Johnson was tried by jury and convicted of Murder in the First Degree in the District

Court of Okmulgee County, Case No. CF-2017-316. In accordance with the jury's recommendation the Honorable Kenneth E. Adair sentenced Appellant to life imprisonment. Appellant must serve 85% of his sentence before becoming eligible for parole. Appellant appeals from this conviction and sentence.

Appellant filed a Motion for Supplementation of the Record and Request to Remand for Evidentiary Hearing, challenging the State's subject-matter jurisdiction pursuant to the Supreme Court's decision in *McGirt v. Oklahoma*, 591 U.S. \_\_\_, 140 S.Ct. 2452 (2020). Appellant claims in Proposition I that he is an enrolled member of the Chickasaw Nation and that the crimes were committed on Creek Nation tribal land. The State filed a motion to stay briefing until Appellant's motion was resolved. This Court granted the motions and remanded the case for an evidentiary hearing in the District Court of Okmulgee County. This Court noted in the Order that no evidentiary hearing would be necessary if the parties entered into a written stipulation setting forth those facts upon which they agree and which answer the questions presented, and provided the stipulation to the District Court.

On December 7, 2020, the parties filed in the District Court a motion, *Stipulations and Joint Motion to Strike Evidentiary Hearing*. The parties stipulated that the crime occurred at 3415 Cincinnati Ave. in Beggs, and that the location is within the boundaries of the Muscogee (Creek) Nation Reservation. The parties further stipulated that Appellant has some Chickasaw blood and is an enrolled member of the Chickasaw Nation, that the Chickasaw Nation is a federally recognized Indian tribe, and that Appellant was enrolled

no later than June 6, 2008. The District Court accepted these stipulations.

On December 9, 2020, the District Court issued its Findings of Fact and Conclusions of Law; these were filed with this Court on December 14, 2020. Based on the parties' stipulations, the District Court found the following facts: that Appellant has some Indian blood and has been a member of the Chickasaw Nation since June 6, 2008; that the Chickasaw Nation is a federally recognized tribe; and that Appellant committed the crime within Okmulgee County, which is entirely within the boundaries of the Muscogee (Creek) Reservation. The record supports these findings.

Based on these findings of fact, the District Court made the following conclusions of law:

- 1) Pursuant to *McGirt*, Appellant is an Indian for purposes of federal criminal jurisdiction.
- 2) The crime occurred within the boundaries of the Creek Reservation.

We adopt these conclusions of law. Appellant is a member of the Chickasaw Nation, and the crime was committed within the boundaries of the Muscogee (Creek) Nation Reservation. The ruling in *McGirt* applies to this case. The District Court of Okmulgee County did not have jurisdiction to try Appellant.

Accordingly, Proposition 1 is granted. The remaining propositions are moot.

## DECISION

The Judgment and Sentence of the District Court of Okmulgee County is **VACATED 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 **STAYED** for twenty (20) days from the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF  
OKMULGEE COUNTY THE HONORABLE  
PANDEE RAMIREZ, DISTRICT JUDGE

**ATTORNEYS AT TRIAL**

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**OPINION BY KUEHN, P.J.**

ROWLAND, V.P.J.: CONCUR IN RESULTS

LUMPKIN, J.: CONCUR IN RESULTS

LEWIS, J.: SPECIALLY CONCUR

HUDSON, J.: SPECIALLY CONCUR

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

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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:**

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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.<sup>1</sup> The result seems to be some form of “social justice” created out of whole cloth rather than a continuation 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

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<sup>1</sup> 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).

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.

**CONCURRING OPINION OF JUSTICE LEWIS**

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LEWIS, JUDGE, SPECIALLY CONCURRING:

Based on my special writings in *Bosse v. State*, 2021 OK CR 3, \_\_\_ P.3d \_\_\_ and *Hogner v. State*, 2021 OK CR 4, \_\_\_ P.3d \_\_\_ I specially concur in the decision to dismiss this case for the lack of state jurisdiction.

**HUDSON, J., SPECIALLY CONCURS:**

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Today's decision dismisses a first degree murder conviction from the District Court of Okmulgee 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 crime on the Creek Reservation. Under *McGirt*, the State has no jurisdiction to prosecute Appellant for the murder 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 OKMULGEE COUNTY,  
STATE OF OKLAHOMA, FINDINGS OF FACT  
AND CONCLUSIONS OF LAW  
(DECEMBER 8, 2020)**

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IN THE DISTRICT COURT OF THE OF TWENTY-  
FOURTH JUDICIAL DISTRICT OF THE STATE  
OF OKLAHOMA SITTING IN AND FOR  
OKMULGEE COUNTY

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RYAN CORTLAN JOHNSON,

*Appellant/Defendant,*

v.

THE STATE OF OKLAHOMA,

*Appellee/Plaintiff.*

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Case Nos. CF-2017-316

F-2020-208

Before: Pandee RAMIREZ, District Judge.

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**FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

NOW on this 8th day of December, 2020, the above-styled matter comes on before me, the undersigned Judge, pursuant to an order from the Oklahoma Court of Criminal Appeals remanding this case for an evidentiary hearing. The State is represented by District Attorney Carol Iski and Assistant Attorney

General Ted Pepper. The Appellant/Defendant is represented by Adam Banner of the Oklahoma Legal Group. After examining the file herein and accepting the stipulations by the parties, this Court finds no evidentiary hearing is requested by the parties, and based on the stipulations, makes the following findings:

### **Findings of Fact**

1. The Court of Criminal Appeals has asked this Court to make a determination as to Appellant/Defendant's status as an Indian. This Court finds, by stipulation of the parties, that Ryan Cortlan Johnson has 1/32 Indian blood and has been a member of the Chickasaw Nation since June 6, 2008.

2. This Court finds, by stipulation of the parties, that the Chickasaw Nation is a federally recognized Tribe.

3. The Court of Criminal Appeals has further asked this Court to make a determination as to whether the crime occurred in Indian Country. This Court finds, by stipulation of the parties, that Ryan Cortlan Johnson committed the crime at issue in this case within Okmulgee County, which lies entirely within the Muscogee (Creek) Reservation boundaries.

**Conclusions of Law**

1. The Court finds, pursuant to *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), that Ryan Cortlan Johnson is an Indian for purposes of federal criminal jurisdiction.

2. The Court further finds the crime occurred within the boundaries of the Creek Reservation.

Signed this 8th day of December, 2020.

/s/ Pandee Ramirez

District Judge

**COURT OF CRIMINAL APPEALS,  
STATE OF OKLAHOMA, ORDER  
REMANDING FOR EVIDENTIARY HEARING  
(NOVEMBER 24, 2020)**

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IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

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RYAN CORTLAN JOHNSON,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

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No. F-2020-208

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

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**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 Johnson filed his brief in chief on September 11, 2020, appealing from his conviction in the District Court of Okmulgee County, Case No. CF-2017-316. Also on September 11, 2020, Appellant filed a Motion for Supplementation of the Record and Request to Remand for Evidentiary Hearing, challenging the State's subject-matter jurisdiction pursuant to the Supreme Court's decision in *McGirt v. Oklahoma*, 591 U.S. \_\_\_, 140 S.Ct. 2452 (2020). Appellant claims that he is an enrolled member of the Chickasaw Nation and that the crimes were committed on Creek Nation tribal land. Appellant requests this Court remand the matter for an evidentiary hearing on that claim.

On November 3, 2020, the State of Oklahoma, by and through Mike Hunter, Attorney General of the State of Oklahoma, filed a motion to stay briefing schedule. The State's response brief was due November 10, 2020. Appellant has moved to supplement the record on appeal with a Certificate of Degree of Indian Blood of the Chickasaw Tribe, and a letter from the Director of Tribal Government Services for the Chickasaw Nation stating that Appellant possesses 1/32 Chickasaw Indian Blood and is recognized as a Chickasaw Nation Citizen. In its Motion, the State does not dispute that Appellant is an enrolled member of the Chickasaw Nation, with a blood quantum of 1/32; that he was an enrolled member at the time the crimes were committed; and that the crimes occurred within the boundaries of the Creek Nation.

Appellant claims that, due to the *McGirt* decision, it must be determined whether he is an Indian who committed a major crime on an Indian reservation. The State requests briefing in this matter be stayed

pending this Court's ruling on Appellant's motion to supplement and his request for an evidentiary hearing. Appellant's Motion to Supplement the Record is **GRANTED** for the narrow purpose of considering the necessity for an evidentiary hearing on these claims.

**IT IS THEREFORE THE ORDER OF THIS COURT** that Appellant's Motion to Supplement the Record and Request to Remand for Evidentiary Hearing is **GRANTED**. The State's motion to stay briefing schedule pending the outcome of the evidentiary hearing is **GRANTED**.

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 Okmulgee 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.<sup>1</sup>

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 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

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<sup>1</sup> See *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).

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 Okmulgee County: Appellant's Brief in Chief and his Motion to Supplement the Record, each filed September 11, 2020; and the State's Motion to Stay Briefing Schedule and Response to the Appellant's Motion, filed November 3, 2020.

The Clerk of this Court is **DIRECTED** to transmit a copy of this Order to the Court Clerk of Okmulgee County; the District Court of Okmulgee County, the Honorable Kenneth E. Adair, 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 24th day of November, 2020.

/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