No._____

IN THE
SUPREME COURT FOR THE UNITED STATES
DECEMBER TERM 2021

In re,
ANDREW THOMAS BURNS, Sr.
Pro Se Petitioner,

PETITIONER'S APPENDIX OF EXHIBITS FOR PETITION FOR A WRIT OF MANDAMUS AND SUPPORTING BRIEF.

EXHIBIT "A"- TENTH CIRCUIT UNITED STATES COURT OF APPEALS-ORDER DENYING HABEAS REVIEW.

EXHIBIT "B"- OKLAHOMA SUPREME COURT ORDER TRANSFERRING CAUSE

EXHIBIT "C"- OKLAHOMA COURT OF CRIMINAL APPEALS ORDER DENYING APPLICATION FOR WRIT OF MANDAMUS

EXHIBIT "D"- SENTENCING TRANSCRIPT

EXHIBIT "E"- COURT REPORTERS ACT AND CORROBORATING STATE STATUTES

EXHIBIT "F"- STATE DISTRICT COURT ORDER DENYING APPLICATION FOR A WRIT OF MANDAMUS

EXHIBIT "G"- STATE DISTRICT COURT-SUMMARY INFORMATION, CASE NO. CF-1989-69

EXHIBIT "H"- COMPILATION OF OKLAHOMA EXONERATED CASES

Respectfully submitted,
Andrew T. Burns Sr.
ANDREW THOMAS BURNS, SR. #
LAW TON CORRECTIONAL FACILITY
HOUSE 1
8607 S.E. FLOWERMOUND ROAD
LAW TON, OKLAHOMA 73501

STATE OF OKLAHOMA)
)SS.
COUNTY OF COMANCHE)

SWORN AFFIDAVIT OF ANDREW THOMAS BURNS, SR.

I, Andrew Thomas Burns, Sr., the undersigned affiant, being above the age twenty-one years; and able to give testimony as to the contents provided herein; and being duly sworn under penalty for perjury pursuant to 28 U.S.C. § 1746, do state the following to be true and correct to the best of my knowledge and ability, to wit:

1) That my true and correct name is Andrew Thomas Burns, Sr. and that I am the Petitioner in the matter attached hereto.

2) That I am currently incarcerated and have been continuously incarcerated in the custody of the Oklahoma Department of Corrections for the past thirty-one years, with the prison identification number #187038.

3) That I have been wrongfully convicted of a crime in which I am innocent.

4) That during the trial in Tulsa County District Court, State of Oklahoma, Case No. CF-1989-69, following the district court's declaration of my unrequested pro se status at the behest of appointed trial counsel, and without addressing me personally, the trial court permitted appointed to approach the jury, (during closing arguments) and state "Ladies and Gentlemen of the jury, you see my defendant sitting over there at the defense table? I ask that you sentence him to life without parole." After making this remark, counsel came and sit beside me at the defense table.

5) That at the time of the trial in the underlying cause, I was completely illiterate, due to injury sustained from severe head trauma, a fact appointed counsel was well aware of, and still chose to petition the trial court for self representation on my behalf, without prior consultation with me.

6) That I have maintained my innocence throughout this lengthy process, to no avail.

7) That the supporting evidence provided herein the attached "Application to Assume Original Jurisdiction", regarding judicial abuse in the state of Oklahoma, being perpetrated against the citizens of the United States of America is true and I ask this court to take "judicial notice" of the information and the organizations/sources providing such.

8) That I'm willing to provide any additional information required or necessary for this Court's consideration in rendering justice in this matter, and I agree to speak with any investigative agent of the Department of Justice, any investigative reporter, or anyone who has an interest in seeing justice served.

The undersigned states that the above stated is true and correct and proffered under penalty for perjury, pursuant to 28 U.S.C. § 1746.

Andrew T. Burns Sr.

ANDREW THOMAS BURNS, SR.
LAW TON CORRECTIONAL FACILITY
8607 S.E. FLOWERMOUND ROAD
LAW TON, OKLAHOMA 73501

STATE OF OKLAHOMA)
)SS.
COUNTY OF COMANCHE)

SWORN AFFIDAVIT OF ANDREW THOMAS BURNS, SR.

I, Andrew Thomas Burns, Sr., the undersigned affiant, being above the age twenty-one years; and able to give testimony as to the contents provided herein; and being duly sworn under penalty for perjury pursuant to 28 U.S.C. § 1746, do state the following to be true and correct to the best of my knowledge and ability, to wit:

1) That my true and correct name is Andrew Thomas Burns, Sr. and that I am the Petitioner in the matter attached hereto.

2) That I am currently incarcerated and have been continuously incarcerated in the custody of the Oklahoma Department of Corrections for the past thirty-one years, with the prison identification number #187038.

3) That I have been wrongfully convicted of a crime in which I am innocent.

4) That during the trial in Tulsa County District Court, State of Oklahoma, Case No. CF-1989-69, following the district court's declaration of my unrequested pro se status at the behest of appointed trial counsel, and without addressing me personally, the trial court permitted appointed to approach the jury, (during closing arguments) and state "Ladies and Gentlemen of the jury, you see my defendant sitting over there at the defense table? I ask that you sentence him to life without parole." After making this remark, counsel came and sit beside me at the defense table.

5) That at the time of the trial in the underlying cause, I was completely illiterate, due to injury sustained from severe head trauma, a fact appointed counsel was well aware of, and still chose to petition the trial court for self representation on my behalf, without prior consultation with me.

6) That I have maintained my innocence throughout this lengthy process, to no avail.

FILED
United States Court of Appea
Tenth Circuit

January 27, 2020

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: ANDREW THOMAS BURNS, SR., Movant.	No. 20-5002 (D.C. No. 4:19-CV-00349-JHP-JFJ) (N.D. Okla.)

ORDER

Before **HARTZ**, **PHILLIPS**, and **McHUGH**, Circuit Judges.

Andrew Thomas Burns, Sr., a state prisoner proceeding pro se, seeks authorization to file a second or successive 28 U.S.C. § 2254 habeas application. For the following reasons, we deny authorization.

In 1990, Mr. Burns was convicted after a jury trial of first degree murder and sentenced to life in prison. He represented himself pro se during the trial with stand-by counsel. He did not file a direct appeal. After unsuccessful attempts at obtaining post-conviction relief in state court, Mr. Burns filed a § 2254 habeas application in 1995. The district court denied the habeas application and we affirmed the denial on appeal. Mr. Burns now seeks authorization to file a second or successive § 2254 habeas application.

To be entitled to authorization, Mr. Burns must make a prima facie showing that his request for authorization satisfies the requirements in 28 U.S.C. § 2244(b). *See* 28 U.S.C. § 2244(b)(3)(C). He appears to be arguing that he can meet the requirements for authorization in § 2244(b)(2)(B) for claims based on newly discovered facts. *See*

Mot. for Auth. at 1-2; 15. That subsection requires Mr. Burns to show that "the factual predicate for the claim could not have been discovered previously through the exercise of due diligence" and "the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found [him] guilty of the underlying offense." § 2244(b)(2)(B). But Mr. Burns does not point to any newly discovered evidence that would establish that a jury would not have convicted him of the underlying offense of first degree murder. Instead, he complains that he never received a complete copy of his trial record and this has prevented him from exercising due diligence to discover the factual predicate for his claims for relief related to errors at his trial. *See* Mot. for Auth. at 15 ("Petitioner was precluded from the exercise of due diligence by the state court's failure to provide him with a complete copy of the trial record/transcript . . . ."); *id.* ("[T]he factual predicate for the claim could not have been discovered previously through the exercise of due diligence due to the state[']s complete denial of his right to have a complete copy of his trial record for appellate purposes.").[1]

Mr. Burns's assertion that the state court has failed to provide him with a complete copy of his trial record does not meet the requirements for authorization in § 2244(b)(2)(B) because he has not presented newly discovered evidence demonstrating that no reasonable juror would have found him guilty of first degree murder.

[1] For example, he seeks an evidentiary hearing to determine whether the denial of his right to a complete trial record "precluded [his] ability to pursue any Batson claims or defective jury instruction violations." Mot. for Auth. at 16.

Accordingly, we deny his request for authorization. This denial of authorization "shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari." 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

EXHIBIT "B"
OKLAHOMA SUPREME COURT
(ORDER TRANSFERRING CAUSE)

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ANDREW THOMAS BURNS,

Petitioner,

v.

THE HONORABLE WILLIAM LaFORTUNE, and STATE OF OKLAHOMA,

Respondents.

No. 117,547

ORDER

Inasmuch as this transcript-related matter directly pertains to the Petitioner's criminal trial, this cause is hereby transferred to the docket of the Court of Criminal Appeals, which has exclusive jurisdiction over criminal causes. Art. 7 § 4, Okla.Const.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 17th DAY OF DECEMBER, 2018.

CHIEF JUSTICE

ALL JUSTICES CONCUR

EXHIBIT "C"
OKLAHOMA COURT OF CRIMINAL APPEALS
(ORDER DENYING APPLICATION FOR WRIT OF MANDAMUS)

90 days
From 1/8/19 / Rule (15) writ of certior
To- 4/8/19. to the Supreme Court.

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
JAN - 8 2019
JOHN D. HADDEN
CLERK

ANDREW THOMAS BURNS,

Petitioner,

v.

HONORABLE WILLIAM LAFORTUNE, STATE OF OKLAHOMA,

Respondent.

No. MA-2018-1255

ORDER DENYING PETITION FOR EXTRAORDINARY RELIEF

On November 21, 2018, Petitioner, pro se, filed a petition for writ of mandamus requesting this Court issue an order reversing an October 26, 2018 trial court order entered in the District Court of Tulsa County, Case No. CF-1989-69. The order denied Petitioner's request for a trial court order directing the Clerk of the District Court to provide Petitioner with a statement of the cost for a copy of the complete District Court record in his case. Petitioner alleges the Clerk of the District Court has refused to inform him of the cost for a complete copy of his District Court record in this case.

For a writ of mandamus, a petitioner has the burden of establishing (1) he has a clear legal right to the relief sought; (2) the respondent's refusal to perform a plain legal duty not involving the exercise of discretion; and (3) the adequacy of mandamus and the inadequacy of other relief. *See, Woolen v. Coffman*, 1984 OK CR 53, ¶ 6, 676 P.2d 1375, 1377; Rule 10.6(B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018). Petitioner has not established that he has a clear legal right to the relief sought.

This Court's Rule 10.1 directs that it is the responsibility of the Petitioner to ensure the record in this request for extraordinary relief is filed with the Clerk of this Court with the petition and supporting brief. Rule 10.1, *Rules supra*. This includes any supporting evidence presented to the District Court. Petitioner has not provided this Court with any documentation or pleadings supporting his contentions that he has been erroneously denied access to District Court records. The only record included with Petitioner's petition is a copy of the October 26, 2018, trial court order denying him extraordinary relief. Therefore, Petitioner has failed to provide this Court a sufficient record for review.

Accordingly, as Petitioner has failed to establish a clear legal right to the relief sought, the application for a writ of mandamus is **DENIED**.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 8th day of January, 2019.

DAVID B. LEWIS, Presiding Judge

DANA KUEHN, Vice Presiding Judge

DISSENT

GARY L. LUMPKIN, Judge

ROBERT L. HUDSON, Judge

SCOTT ROWLAND, Judge

ATTEST:

John D. Hadden

Clerk

EXHIBIT "D"
SENTENCING TRANSCRIPT

to my lawyer

Exhibit A pages 1-6.

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA, Plaintiff,

- v -

ANDREW THOMAS BURNS aka Andy aka Drew aka Mack aka Malachi aka Monkier aka Drewfly aka Fly, Defendant.

CASE NO. CF-89-69

TRANSCRIPT OF FORMAL SENTENCING

BEFORE THE HONORABLE CLIFFORD E. HOPPER

MARCH 2, 1990

A P P E A R A N C E S

FOR THE STATE: MR. JOHN KELSON
Assistant District Attorney
County Courthouse
Tulsa, Oklahoma 74103

FOR THE DEFENDANT: MRS. SID CONWAY
Assistant Public Defender
County Courthouse
Tulsa, Oklahoma 74103

SALLY ANN SELF
Certified Shorthand Reporter
County Courthouse
Tulsa, Oklahoma
74103

DISTRICT COURT OF OKLAHOMA
Official Transcript

appeal must be perfected within 6 months from this day. Do you understand?

MR. BURNS: Thank you.

THE COURT: You have anything else you want to say, Mr. Burns?

MR. BURNS: Thank you again.

THE COURT: You're welcome, Mr. Burns. It's my pleasure.

MR. BURNS: I believe that.

THE COURT: And you'll be ordered to pay all court costs in this matter. Do you understand?

MR. BURNS: No, I don't.

THE COURT: What is it you don't understand, Mr. Burns?

MR. BURNS: Paying court costs for what?

THE COURT: The trial of the case.

MR. BURNS: Pay court costs, being sentenced to the penitentiary, an innocent man? --hum -your Honor, do you realize what you're telling me?

THE COURT: I'm not going to argue with you, Mr. Barnes. If you want to argue, I'll hold you in contempt of Court and sentence you to 6 months and I'll place a hold on you and you'll be sorry that you did it. Do you have any other questions?

MR. BURNS: Yes, your Honor.

Ex G

page 5 liner 2-18 should be page 2, & pages 2 & 3 liner 24-25 of page 2, & liner 2-18 should be first.

THE COURT: That will be the order of the Court.

MRS. CONWAY: Judge, may I make a record with regard to his appeal rights?

THE COURT: Yes.

MRS. CONWAY: It's my understanding from my conversation with my with Mr. Burns at this time he does not wish to appeal the Judgment and Sentence against him.

I talked with Mr. Burns at length up in the jail, advised him of all of his rights to appeal. I advised him to go ahead with the appeal and told him it was against my advice not to.

It's my understanding that he has chosen not to follow my advice and he does not wish to appeal at this time.

In that regard, Judge, we'd ask to be allowed to withdraw from this case subject to being re-appointed if Mr. Burns applies to this Court to have our office re-appointed in the event he changes his mind and wishes to appeal.

to page (1-3)

THE COURT: All right. The Public Defender will be allowed to withdraw based on those representations.

MRS. CONWAY: Thank you, Judge.

* * *

EXHIBIT "E"
COURT REPORTERS ACT AND CORROBORATING STATE LAW

§ 753. Reporters

(a) Each district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands shall appoint one or more court reporters.

The number of reporters shall be determined by the Judicial Conference of the United States.

The qualifications of such reporters shall be determined by standards formulated by the Judicial Conference. Each reporter shall take an oath faithfully to perform the duties of his office.

Each such court, with the approval of the Director of the Administrative Office of the United States Courts, may appoint additional reporters for temporary service not exceeding three months, when there is more reporting work in the district than can be performed promptly by the authorized number of reporters and the urgency is so great as to render it impracticable to obtain the approval of the Judicial Conference.

If any such court and the Judicial Conference are of the opinion that it is in the public interest that the duties of reporter should be combined with those of any other employee of the court, the Judicial Conference may authorize such a combination and fix the salary for the performance of the duties combined.

(b) Each session of the court and every other proceeding designated by rule or order of the court or by one of the judges shall be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to regulations promulgated by the Judicial Conference and subject to the discretion and approval of the judge. The regulations promulgated pursuant to the preceding sentence shall prescribe the types of electronic sound recording or other means which may be used. Proceedings to be recorded under this section include (1) all proceedings in criminal cases had in open court; (2) all proceedings in other cases had in open court unless the parties with the approval of the judge shall agree specifically to the contrary; and (3) such other proceedings as a judge of the court may direct or as may be required by rule or order of court [as] may be requested by any party to the proceeding.

The reporter or other individual designated to produce the record shall attach his official certificate to the original shorthand notes or other original records so taken and promptly file them with the clerk who shall preserve them in the public records of the court for not less than ten years.

The reporter or other individual designated to produce the record shall transcribe and certify such parts of the record of proceedings as may be required by any rule or order of court, including all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases unless they have been recorded by electronic sound recording as provided in this subsection and the original records so taken have been certified by him and filed with the clerk as provided in this subsection. He shall also transcribe and certify such other parts of the record of proceedings as may be required by rule or order of court. Upon the request of any party to any proceeding which has been so recorded who has agreed to pay the fee therefor, or of a judge of the court, the reporter or other individual designated to produce the record shall promptly transcribe the original records of the requested parts of the proceedings and attach to the transcript his official certificate, and deliver the same to the party or judge making the request.

The reporter or other designated individual shall promptly deliver to the clerk for the records of the court a certified copy of any transcript so made.

The transcript in any case certified by the reporter or other individual designated to produce the record shall be deemed prima facie a correct statement of the testimony taken and proceedings had. No transcripts of the proceedings of the court shall be considered as official except those made from the records certified by the reporter or other individual designated to produce the record.

The original notes or other original records and the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge.

(c) The reporters shall be subject to the supervision of the appointing court and the Judicial Conference in the performance of their duties, including dealings with parties requesting transcripts.

(d) The Judicial Conference shall prescribe records which shall be maintained and reports which shall be filed by the reporters. Such records shall be inspected and audited in the same manner as the records and accounts of clerks of the district courts, and may include records showing:

(1) the quantity of transcripts prepared;

(2) the fees charged and the fees collected for transcripts;

(3) any expenses incurred by the reporters in connection with transcripts;

(4) the amount of time the reporters are in attendance upon the courts for the purpose of recording proceedings; and

(5) such other information as the Judicial Conference may require.

(e) Each reporter shall receive an annual salary to be fixed from time to time by the Judicial Conference of the United States. For the purposes of subchapter III of chapter 83 of title 5 and chapter 84 of such title [5 USCS §§ 8331 et seq. and 8401 et seq.], a reporter shall be considered a full-time employee during any pay period for which a reporter receives a salary at the annual salary rate fixed for a full-time reporter under the preceding sentence. All supplies shall be furnished by the reporter at his own expense.

(f) Each reporter may charge and collect fees for transcripts requested by the parties, including the United States, at rates prescribed by the court subject to the approval of the Judicial Conference. He shall not charge a fee for any copy of a transcript delivered to the clerk for the records of court. Fees for transcripts furnished in criminal proceedings to persons proceeding under the Criminal Justice Act (18 U.S.C. 3006A), or in habeas corpus proceedings to persons allowed to sue, defend, or appeal in forma pauperis, shall be paid by the United States out of moneys appropriated for those purposes. Fees for transcripts furnished in proceedings brought under section 2255 of this title [28 USCS § 2255] to persons permitted to sue or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeals is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal. Fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but

presents a substantial question). The reporter may require any party requesting a transcript to prepay the estimated fee in advance except as to transcripts that are to be paid for by the United States.

(g) If, upon the advice of the chief judge of any district court within the circuit, the judicial council of any circuit determines that the number of court reporters provided such district court pursuant to subsection (a) of this section is insufficient to meet temporary demands and needs and that the services of additional court reporters for such district court should be provided the judges of such district court (including the senior judges thereof when such senior judges are performing substantial judicial services for such court) on a contract basis, rather than by appointment of court reporters as otherwise provided in this section, and such judicial council notifies the Director of the Administrative Office, in writing, of such determination, the Director of the Administrative Office is authorized to and shall contract, without regard to section 6101(b) to (d) of title 41, with any suitable person, firm, association, or corporation for the providing of court reporters to serve such district court under such terms and conditions as the Director of the Administrative Office finds, after consultation with the chief judge of the district court, will best serve the needs of such district court.

HISTORY:
Act June 25, 1948, ch 646, 62 Stat. 921; Oct. 31, 1951, ch 655, § 46, 65 Stat. 726; June 28, 1955, ch 189, § 3(c), 69 Stat. 176; June 20, 1958, P. L. 85-462, § 3(c), 72 Stat. 207; July 7, 1958, P. L. 85-508, § 12(e), 72 Stat. 348; July 1, 1960, P. L. 86-568, Title I, Part B, § 116(c), 74 Stat. 303; Sept. 2, 1965, P. L. 89-163, 79 Stat. 619; Sept. 2, 1965, P. L. 89-167, 79 Stat. 647; June 2, 1970, P. L. 91-272, § 14, 84 Stat. 298; Dec. 11, 1970, P. L. 91-545, 84 Stat. 1412; April 2, 1982, P. L. 97-164, Title IV, § 401(a), 96 Stat. 56; Oct. 19, 1996, P. L. 104-317, Title III, § 305, 110 Stat. 3852; Jan. 4, 2011, P. L. 111-350, § 5(g)(4), 124 Stat. 3848.

BELVIN THOMAS POPLIN, Appellant, v. THE STATE OF OKLAHOMA, Appellee.
COURT OF CRIMINAL APPEALS OF OKLAHOMA
1992 OK CR 49; 837 P.2d 474; 1992 Okla. Crim. App. LEXIS 65; 63 O.B.A.J. 2411
No. M 92-0141
August 24, 1992, Decided
August 24, 1992, Filed
Editorial Information: Subsequent History

As Corrected September 8, 1992.

Judges: JAMES F. LANE, Presiding Judge, GARY L. LUMPKIN, Vice Presiding Judge, TOM BRETT, Judge, ED PARKS, Judge, CHARLES A. JOHNSON, Judge

CASE SUMMARY

PROCEDURAL POSTURE: Defendant moved the court for an order directing the District Court of Carter County (Oklahoma) to provide him with a complete trial transcript, and asked the court to rule on the validity of Okla. 20th Dist. Loc. Ct. R. 18 (1991).Local rule of the district court limiting the record to which an indigent criminal appellant was entitled contravened a statute and was invalid: the appellant was entitled to a complete transcript, not merely an electronic recording.

OVERVIEW: After a jury found defendant guilty of driving while impaired and operating a motor vehicle without a license, and he was sentenced to jail and a fine, the trial court determined that defendant was indigent and appointed counsel to represent him. Defendant thereupon requested a complete transcript of his trial. Citing defendant's failure to comply with a local rule of the district court that required any litigant who desired a transcript at public expense to file a motion setting forth each witness of portion of the trial or hearing requested to be transcribed, with a brief description of the error allegedly occurring during the testimony of that witness or during that portion of the trial, together with a financial disclosure statement, the trial court denied defendant's request. The court held that the local rule was invalid because it was in conflict with Okla. Stat. tit. 22, § 1362 (1991), and that Okla. Stat. tit. 20, § 106.4 (1991) did not give the trial court discretion to limit the trial record to which a defendant was entitled. The court also held that defendant was entitled to a transcription of the trial proceedings, not merely to an electronic recording of the same.

OUTCOME: The District Court Local Rule restricting defendant's right to a complete trial transcript was held to be invalid, a rule of the court relating to the record to be furnished to trial counsel was amended, and the trial court was ordered to provide counsel for defendant with a complete transcript of the trial, as requested by defendant's counsel.

Governments > Legislation > Statutory Remedies & Rights

Once convicted, a timely notice of intent to appeal is filed, and the District Court makes a determination of indigency and appoints the Oklahoma Appellate Indigent Defender Division to represent the defendant on appeal, the statutory language of Okla. Stat. tit. 22, § 1362 (1991) is very clear. The legislature has not given the trial court any discretion in limiting the trial record which is requested in the designation of record filed by trial counsel or the supplemental designation of record filed by the appellate indigent defender. The right granted by the legislature in § 1362 is a greater right than had previously been established by federal and state caselaw and, until the legislature changes the scope of the right granted, the statutory provisions must be enforced.

Criminal Law & Procedure > Appeals > Records on Appeal

Criminal Law & Procedure > Counsel > Costs & Attorney Fees

Okla. Stat. tit. 20, § 106.4 (1991) is not in conflict with Okla. Stat. tit. 22, § 1362 (1991). The discretion given to the court in Okla. Stat. tit. 20, § 106.4 (1991) is to determine whether there is a reasonable basis for the defendant's averment that he does not have the means to pay for the transcript, not whether there is a reasonable basis for a transcript being produced for an appeal.

Governments > Courts > Authority to Adjudicate

The district court is without power to make a rule of court which contravenes any constitutional or statutory provision on the same subject.

Okla. Ct. Crim. App. R. 1.15, Okla. Stat. tit. 22, ch. 18, app. (1991) directs that when trial counsel's designation of record does not include some portion of the trial proceeding and the appellate public defender, now known as "appellate indigent defender," feels that portion should be provided, that as an alternative the court reporter may make available to the appellate indigent defender the electronic recording to determine what portion of the record should be transcribed. This is not in conflict with Okla. Stat. tit. 22, § 1362 (1991). However, once the appellate indigent defender determines the portion of the record that should be transcribed, and this is designated in the Supplemental Designation of Record, § 1362 requires the supplementary materials to be transcribed and included as part of the record on appeal.

Opinion by: JAMES F. LANE

{837 P.2d 475} ORDER INVALIDATING LOCAL RULE AND DIRECTING DISTRICT COURT TO PROVIDE APPELLANT COMPLETE TRIAL TRANSCRIPT

P1 Appellant, represented by counsel, was found guilty by a jury of Driving While Impaired, Count I, and Operating a Motor Vehicle Without License, Count II, and was sentenced October 24, 1991, to six months in the County Jail and a fine of $ 300.00 plus costs on Count I, and to thirty days in the County Jail and a fine of $ 300.00 plus costs on Count II. Appellant has appealed his conviction in Case No. CRM-91-487 in the District Court of Carter County to this Court. The District Court determined Appellant to be indigent and appointed the Oklahoma Appellate Indigent Defender Division to represent Appellant on appeal in an order dated October 28, 1991. An Accelerated Docket brief is currently due to be filed by Appellant by October 20, 1992. However, Appellant complains that the Trial Court has denied his request for a complete transcript.

P2 In a Motion to Supplement and to Address the Validity of Local Court Rule filed in this Court April 15, 1992, Appellant requests this Court order the District Court of Carter County provide him with a complete trial transcript. Appellant also requests a ruling by this Court on the validity of Rule 18 of the Local Court Rules of the 20th Judicial District of Oklahoma insofar only as said rule impacts Oklahoma's criminal appellate procedure.

P3 In an order entered May 27, 1992, the Attorney General of the State of Oklahoma was directed to respond to Appellant's motion specifically addressing the constitutionality of Local Court Rule 18. Said response was filed in this Court July 13, 1992.

P4 The following rule was adopted by the Judges of the District Court of the Twentieth Judicial District January 14, 1991:

1. Any litigant who desires a transcript at public expense for use on appeal must file with the Court a motion requesting the same. The motion must be accompanied by a financial disclosure statement. The motion must set forth each witness or portion of the trial or hearing which is requested to be transcribed, together with a brief statement or explanation of the error allegedly occurring during the testimony of that witness or during that portion of the trial. For any witness or portion of the trial requested but not accompanied by such statement or explanation, the Court will summarily deny the request for that portion of the transcript.

2. The reporter will not prepare a transcript at public expense until receiving an order approving the same. Said order will state with specificity which portions of the trial or hearing are to be transcribed.

P5 The record reflects that the Designation of Record filed October 21, 1991, by the attorney who represented Appellant at trial requested "transcript of the following: preliminary hearing and trial testimony of B. J. Hutchins; trial testimony of Delores Dodd, R.N., M. Sharif Sandhu and Belvin Poplin [the defendant]; all argument of counsel, and all matters recorded by the court reporter". Instead, the Trial Judge ordered that only the testimony of three State witnesses be transcribed.

P6 On March 5, 1992, an Amended Designation of Record was filed by Carol Walker, Assistant Appellant Indigent Defender, on behalf of Appellant requesting " . . . (2) A complete transcript of the preliminary hearing; and (3) A complete transcript of all other hearings held in this case . . .; and, (4) A complete transcript of the trial of this case, including but not limited to voir dire, opening statements, all testimony taken, closing arguments, conferences at the bench, objections and motions made during the course of the trial, arguments and rulings concerning such objections and motions, in camera proceedings, all offers of {837 P.2d 476} proof, and any and all matters recorded in any manner during the course of the trial of this case; . . .". The record reflects that the Honorable Thomas S. Walker responded to Ms. Walker by letter stating that he would not order a complete transcript until there has been complete compliance with court rules.

Title 22 O.S.1991, § 1362, directs:

The district court clerks for each county shall transmit one certified copy of the original record for each appeal authorized by the Indigent Defense Act directly to the appellate indigent defender as soon as possible after the filing of the notice of intent to appeal and the order appointing the appellate indigent defender, unless additional copies are requested, not to exceed three copies. One certified copy of all transcripts, records and exhibits designated shall be transmitted for each authorized appeal by the district court clerk to the appellate indigent defender within the time limits as established by the Rules of the Court of Criminal Appeals and applicable statutes, unless additional copies are requested, not to exceed three copies. The appellate indigent defender is hereby authorized to supplement the designation of record as filed by the trial counsel by filing a written supplemental designation of record. When a written supplemental designation of record is filed by the appellate indigent defender, it shall be the duty of the court clerk or the court reporter, as appropriate, to include the supplementary materials as part of the record on appeal. (emphasis added)

P7 Once convicted, a timely notice of intent to appeal is filed, and the District Court makes a determination of indigency and appoints the Oklahoma Appellate Indigent Defender Division to represent the defendant on appeal, the statutory language of Section 1362 is very clear. The Legislature has not given the Trial Court any discretion in limiting the trial record which is requested in the Designation of Record filed by trial counsel or the Supplemental Designation of Record filed by the appellate indigent defender. The right granted by the Legislature in Section 1362 is a greater right than had previously been established by federal and state caselaw. Therefore, until the Legislature changes the scope of the right granted, the statutory provisions must be enforced.

P8 Further, we find no merit in the State's assertion that 20 O.S.1991, § 106.4, gives district courts discretion to determine whether there is a reasonable basis for the transcript. We do not find that Section 106.4 of Title 20 is in conflict with Section 1362 of Title 22. The discretion given to the court in Section 106.4 is to determine whether there is a reasonable basis for the defendant's averment that he does not have the means to pay for the transcript, not whether there is a reasonable basis for a transcript being produced for an appeal.

P9 Accordingly, we find Rule 18 of the Local Court Rules of the 20th Judicial District of Oklahoma to be in conflict with Section 1362. We have held that the district court is without power to make a rule of court which contravenes any constitutional or statutory provision on the same subject. Pierce v. State, 383 P.2d 699 (Okl. Cr.1963). Therefore, Local Rule 18 is INVALID insofar as said rule impacts Oklahoma's criminal appellate procedure.

P10 Further, we hereby AMEND Rule 1.15 of the Rules of the Court of Criminal Appeals by deleting Rule 1.15(6). 22 O.S.1991, Ch.18, App.

P11 Further, this Court's decision in Maxville v. State, 629 P.2d 1279 (Okl. Cr.1981), is hereby MODIFIED insofar as it is in conflict with this order. We note, however, that the relevant language in

Section 1362 was enacted in 1981 and became effective May 26, 1981, and this Court's decision in Maxville is dated June 9, 1981. Therefore, Section 1362 would not be applicable to the facts of Maxville.

P12 Morgan v. Graham, 497 P.2d 464 (Okl. Cr.1972), is also MODIFIED insofar as it is in conflict with this order relating to records for appeal; however, Section 1362 would not be applicable to the facts of Morgan as the relevant language in Section 1362 was not enacted until 1981.

P13 Further, Appellant contends that he is entitled to transcription of the trial proceedings, {837 P.2d 477} not an electronic recording of the same. We agree.

P14 Rule 1.15 directs that when trial counsel's designation of record does not include some portion of the trial proceeding and the appellate public defender [now known as "appellate indigent defender"] feels that portion should be provided, that as an alternative the court reporter may make available to the appellate indigent defender the electronic recording to determine what portion of the record should be transcribed. We do not find that this is in conflict with Section 1362. However, once the appellate indigent defender determines the portion of the record that should be transcribed, and this is designated in the Supplemental Designation of Record, Section 1362 requires the supplementary materials to be transcribed and included as part of the record on appeal.

P15 IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 24th day of August, 1992.

JAMES F. LANE, Presiding Judge

GARY L. LUMPKIN, Vice Presiding Judge

TOM BRETT, Judge

ED PARKS, Judge

CHARLES A. JOHNSON, Judge

EXHIBIT "F"
STATE DISTRICT COURT ORDER DENYING APPLICATION FOR WRIT OF MANDAMUS

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

DISTRICT COURT
FILED
OCT 26 2018
DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

ANDREW BURNS,

Petitioner,

vs.

STATE OF OKLAHOMA,

Respondent.

Case No. CF-1989-0069

Judge William LaFortune

ORDER DENYING APPLICATION FOR WRIT OF MANDAMUS

Petitioner's "Application for a Writ of Mandamus and Brief in Support" filed September 27, 2018 comes before this Court for consideration.

This Court finds that Petitioner has failed to establish entitlement to any relief. The authority cited by Petitioner in his Application does not support Petitioner's request.

This Court finds that Petitioner has failed to show that the Tulsa County Court Clerk's Office is refusing or failing to fulfill its statutory duties.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that based upon the foregoing, Petitioner's Motion is **DENIED**.

SO ORDERED this 24th day of October, 2018.

WILLIAM LAFORTUNE
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I certify that on the date of filing, a certified copy of the above and foregoing Order was placed in the United States Mail with sufficient postage affixed thereto, addressed to:

Petitioner, Pro Se
ANDREW T. BURNS
#187038
DCCC BOX 220
HOMINY, OK 74035

DON NEWBERRY
TULSA COUNTY COURT CLERK

BY: _____
DEPUTY COURT CLERK

Over.

EXHIBIT "G"
STATE DISTRICT COURT
SUMMARY OF INFORMATION
CASE NO. CF-1989-0069

The Oklahoma Court Information System

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY, OKLAHOMA

State of Oklahoma **v.** **BURNS ANDREW THOMAS**	**Case No. CF-1989-69** (Criminal Felony) Filed: 01/06/1989

Summary Information

Assigned Judge: Assigned Judge: Honorable Joe Jennings

Parties

BURNS, ANDREW THOMAS Defendant
State Of Oklahoma Plaintiff

Attorneys

None Found.

Due Dates

None Found.

Due dates appear for convenience only. Compliance with due dates as set forth in the court rules applicable to the court with jurisidiction in this case (or as required by an order of the court) is the responsibility of the parties in this case.

Scheduled Events

Monday, August 28, 1989 at 10:00 AM

ARRAIGNMENT (ARR)
BURNS, ANDREW THOMAS is to appear before Arraignment Docket .

Monday, September 18, 1989 at 9:00 AM

PRELIMINARY HEARING (PLH)
BURNS, ANDREW THOMAS is to appear before Preliminary Hearing Docket .

Wednesday, October 4, 1989 at 9:00 AM

PRELIMINARY HEARING (PLH)
BURNS, ANDREW THOMAS is to appear before Preliminary Hearing Docket .

Monday, October 9, 1989 at 10:00 AM

DISTRICT COURT ARRAIGNMENT (DCA)
BURNS, ANDREW THOMAS is to appear before Joe Jennings .

Monday, October 16, 1989 at 10:00 AM

DISTRICT COURT ARRAIGNMENT (DCA)
BURNS, ANDREW THOMAS is to appear before Joe Jennings .

Monday, October 23, 1989 at 10:00 AM

DISTRICT COURT ARRAIGNMENT (DCA)
BURNS, ANDREW THOMAS is to appear before Joe Jennings .

Friday, November 17, 1989 at 9:30 AM

DISTRICT COURT ARRAIGNMENT (DCA)
BURNS, ANDREW THOMAS is to appear before Joe Jennings .

Monday, December 18, 1989 at 13:30 PM

DISTRICT COURT ARRAIGNMENT (DCA)
BURNS, ANDREW THOMAS is to appear before Joe Jennings .

Monday, February 12, 1990 at 13:30 PM

JURY TRIAL (ISSUE) (JTI)
BURNS, ANDREW THOMAS is to appear before Joe Jennings .

Tuesday, February 20, 1990 at 9:30 AM

2 JURY TRIAL (ISSUE) (JTI)
BURNS, ANDREW THOMAS is to appear before Clifford E. Hopper .

Friday, March 2, 1990 at 9:30 AM

3 SENTENCING (AFTER PLEA) (SEN)
BURNS, ANDREW THOMAS is to appear before Clifford E. Hopper .

Counts

Parties appear only under the counts with which they were charged. For complete sentence information, see the court minute on the docket.

Count # 1.

Count as filed: MURDER IN THE FIRST DEGREE, in violation of 21 O.S. 701.7.

Defendant	Disposition Information
BURNS, ANDREW THOMAS	**Disposed: Felony Conviction , 03/02/1990. Jury Trial.** Disposed Statute:21 O.S. 701.7 Count as disposed:MURDER I

Docket

Date	Code	Count	Party	Serial #	Entry Date	User Name
01/06/1989	WRAI	nonspecific	BURNS, ANDREW THOMAS	18294198	Aug 24 1989 12:00:00:000AM	upload\RJA
	WARRANT OF ARREST ISSUED - BOND $1,000.					
01/06/1989	INFOP	nonspecific	BURNS, ANDREW THOMAS	18309006	Jan 6 1989 12:00:00:000AM	upload\KSN
	INFORMATION - PRELIMINARY - MURDER IN THE FIRST DEGREE					
01/13/1989	AFPC	nonspecific	BURNS, ANDREW THOMAS	18436955	Jan 17 1989 12:00:00:000AM	upload\KDB
	AFFIDAVIT FINDING OF PROBABLE CAUSE					
08/23/1989	TEXT	nonspecific	BURNS, ANDREW THOMAS	18094727	Aug 23 1989 12:00:00:000AM	upload\MSA
	CLARKE RICK: ARRAIGNMENT PASSED 8-28-89 AT 10:00 A.M. BOND: 1,000,000					
08/24/1989	RETW$	nonspecific	BURNS, ANDREW THOMAS	18094726	Aug 25 1989 12:00:00:000AM	upload\KSN
	RETURN WARRANT OF ARREST					
08/25/1989	RETCA	nonspecific	BURNS, ANDREW THOMAS	18094723	Aug 28 1989 12:00:00:000AM	upload\CFH
	RETURN COMMITMENT/MINUTE (ARRAIGNMENT)					
08/28/1989	TEXT	nonspecific	BURNS, ANDREW THOMAS	18497657	Aug 28 1989 12:00:00:000AM	upload\MSA
	CLARKE RICK ARRAIGNMENT - NOT GUILTY PREL SET 9-18-89 AT 9:00 A.M. CASE CALLED. DEFT. PRESENT IN CUSTODY REP. BY P.D. INFO. READING WAIVED. DEFT. WAIVES TIME TO PLEAD, ENTERS PLEA OF NOT GUILTY. BOND SET: 1,000,000 COMMITMENT ISSUED. MOTIONS TO BE ON FILE BY 9-11-89.					
08/29/1989	RETCA	nonspecific	BURNS, ANDREW THOMAS	18094719	Aug 30 1989 12:00:00:000AM	upload\CFH
	RETURN COMMITMENT/MINUTE (ARRAIGNMENT)					
09/06/1989	RETWA	nonspecific	BURNS, ANDREW THOMAS	18094716	Sep 7 1989 12:00:00:000AM	upload\CFH
	RETURN WARRANT OF ARREST					
09/18/1989	TEXT	nonspecific	BURNS, ANDREW THOMAS	18523879	Sep 19 1989 12:00:00:000AM	upload\DJK
	HARRIS JESSE: PRELIMINARY HEARING PASSED TO 10-4-89 AT 9:00, A.M. AT ST.REQUEST. DEFENDANT PRESENT, IN CUSTODY, REPRESENTED BY SID CONWAY. STATE REPRESENTED BY LUCY CREEKMORE. DEFENDANT RECOG. BACK; BOND TO REMAIN SAME.					
09/21/1989	AWITO	nonspecific	BURNS, ANDREW THOMAS	18094712	Sep 22 1989 12:00:00:000AM	upload\KSN
	APPLICATION TO ENDORSE WITNESS ON INFORM. & ORDER					
09/25/1989	RTSBN	nonspecific	BURNS, ANDREW THOMAS	18412581	Sep 26 1989 12:00:00:000AM	upload\CFH
	RETURN SUBPOENA (NO CHARGE) (3)					
09/29/1989	WHCT	nonspecific	BURNS, ANDREW THOMAS	18094711	Oct 2 1989 12:00:00:000AM	upload\CFH
	WRIT OF HABEAS CORPUS AD TESTIFICANDUM					

09/29/1989	PWHCT	nonspecific	BURNS, ANDREW THOMAS	18423785	Oct 2 1989 12:00:00:000AM	upload\CFH

PETITION - WRIT OF HABEUS CORPUS AD TESTIFICANDUM

10/04/1989	MOPRO	nonspecific	BURNS, ANDREW THOMAS	18094709	Oct 5 1989 12:00:00:000AM	upload\CFH

MOTION TO PRODUCE

10/04/1989	TEXT	nonspecific	BURNS, ANDREW THOMAS	18538337	Oct 5 1989 12:00:00:000AM	upload\DJK

HASS RUSSELL: PRELIMINARY - HELD FOR TRIAL- B.O.D.C. 10-9-89 AT 10:00,AMDEFENDANT PRESENT, IN CUSTODY, REPRESENTED BY SID CONWAY. STATE REPRESENTED BY A.J. SCHULTZ. TERRI BEELER REPORTING. 2 WITNESSES SWORN WITH RULE INVOKED. DEFENDANT HELD TO ANSWER TO CHARGE OF MURDER I BEFORE JUDGE JENNINGS. DEFENDANT RECOGNIZED BACK; BOND TO REMAIN SAME. WITNESSES SWORN: CHAD ADAMS AND WILLIE RAY MARSHALL.

10/09/1989	TEXT	nonspecific	BURNS, ANDREW THOMAS	18451039	Oct 11 1989 12:00:00:000AM	upload\DSG

JENNINGS JOE: DISTRICT COURT ARRAIGNMENT PASSED TO 10-16-89 AT 10:00 A.MDEFT PRESENT IN CUSTODY, REP BY SID CONWAY, STATE BY DONNA PRIORE, DEFTS REQUEST,

10/10/1989	TEXT	nonspecific	BURNS, ANDREW THOMAS	18518612	Oct 10 1989 12:00:00:000AM	upload\RJA

RETURN OF WRIT OF HABEAS CORPUS AD TESTITICANDUM (FOR MATERIAL WITNES FROM CTC TO TCJ

10/10/1989	TEXT	nonspecific	BURNS, ANDREW THOMAS	18529170	Oct 10 1989 12:00:00:000AM	upload\RJA

RETURN OF WRIT OF HABEAS CORPUS AD TESTIFICANDUM (FOR MATERIAL WITNESS FROM TCJ TO CTC

10/16/1989	TEXT	nonspecific	BURNS, ANDREW THOMAS	18517486	Oct 17 1989 12:00:00:000AM	upload\DSG

JENNINGS JOE: DISTRICT COURT ARRAIGNMENT PASSED TO 10-23-89 AT 10:00 A.MTO RESOLVE PLEA NEGOTIATIONS, DEFT PRESENT IN CUSTODY, REP BY SIDCONWAY, STATE BY DONNA PRIORE.

10/23/1989	AMODM	nonspecific	BURNS, ANDREW THOMAS	18094690	Oct 24 1989 12:00:00:000AM	upload\CFH

APPLICATION/MOTION TO DISMISS

10/23/1989	MOSID	nonspecific	BURNS, ANDREW THOMAS	18094694	Oct 24 1989 12:00:00:000AM	upload\CFH

MOTION TO SUPPRESS IN-COURT IDENTIFICATION

10/23/1989	O	nonspecific	BURNS, ANDREW THOMAS	18416338	Oct 24 1989 12:00:00:000AM	upload\CFH

ORDER

10/23/1989	TEXT	nonspecific	BURNS, ANDREW THOMAS	18504442	Oct 23 1989 12:00:00:000AM	upload\CSA

JENNINGS JOE: DISTRICT COURT ARRAIGNMENT PASSED TO 11/17/89 AT 9:30 AM AT DEFT REQUEST TO RECEIVE TRANSCRIPT. DEFT NOT PRESNET, IN CUSTODY, REP. BY P.D. STATE BY DONNA PRIORE. BOND TO REMAIN.

10/24/1989	CCERT	nonspecific	BURNS, ANDREW THOMAS	18358866	Oct 25 1989 12:00:00:000AM	upload\CFH

COURT REPORTER'S CERTIFICATE

11/09/1989	T&2	nonspecific	BURNS, ANDREW THOMAS	18342223	Nov 13 1989 12:00:00:000AM	upload\TES
	ORIGINAL TRANSCRIPT & 2 COPIES OF PRELIMINARY HEARING 10-4-89 COPY TO PD					
11/17/1989	PYREQ	nonspecific	BURNS, THOMAS			d\KRS
	PAYMENT REQUEST-IN RE: TRANS					
11/17/1989	TEXT	nonspecific	BURNS, THOMAS			d\DSG
	JENNINGS JOE: DISTRICT COURT P.M.DEFT PRESENT IN CUSTODY, REP BY SI EFTS MOTIONS AND DEFTS REQUEST, /					
12/18/1989	TEXT	nonspecific	BURNS, THOMAS			d\DSG
	JENNINGS JOE: DISTRICT COURT ORDER FOR MENTAL EVALUATION, DEFT IN CUSTODY, REP BY SID CONWAY, STATE BY LUCY CREEKMORE.					
2 12/19/1989	O	nonspecific	BURNS, ANDREW THOMAS	18442418	Dec 20 1989 12:00:00:000AM	upload\KRS
	ORDER ON THE HEARING OF THE APPLICATION FOR DETERMINATION OF COMPETENCY					
3 01/18/1990	TEXT	nonspecific	BURNS, ANDREW THOMAS	18094679	Jan 18 1990 12:00:00:000AM	upload\DSG
	JENNINGS JOE:ORDER TO BE SUBMITTED ON COMPETENCY FROM DR. NICHOLSON					
4 01/25/1990	LT	nonspecific	BURNS, ANDREW THOMAS	18094670	Jan 26 1990 12:00:00:000AM	upload\KSN
	LETTER FROM DR NICHOLSON					
01/25/1990	REQJT	nonspecific	BURNS, ANDREW THOMAS	18094671	Jan 25 1990 12:00:00:000AM	upload\DSG
	REQUEST FOR JURY TRIAL					
01/25/1990	TEXT	nonspecific	BURNS, ANDREW THOMAS	18573602	Jan 25 1990 12:00:00:000AM	upload\DSG
	JENNINGS JOE: JURY TRIAL(ISSUE)SET FOR 2-12-90 AT 1:30 P.M. DEFT DEFT PRESENT IN CUSTODY, REP BY SID CONWAY, STATE BY LUCY CREEKMORE, COURT REPORTER BECKY THOMPSON. HEARING ON PREVIOUS APPLICATION FILED ON COMPETENCY, LETTER REPORT RECEIVED DATED 1-18-90 FROM DR. R. NICHOLSON, BOTH SIDES STIPULATE TO LETTER REPORT THAT THE DEFT IS COMPETENT AND DEFT WAIVES JURY. COURT DETERMINES THAT THE DEFT IS COMPETENT TO PROCEED. ARRAIGNMENT HELD, PLEADS NOT GUILTY, JURY TRIAL SET-ISSUE, $30 JURY TRIAL ASSESSMENT,					
02/02/1990	RTSUB	nonspecific	BURNS, ANDREW THOMAS	18322157	Feb 5 1990 12:00:00:000AM	upload\TME
	RETURN SUBPOENA					
02/08/1990	RTSBN	nonspecific	BURNS, ANDREW THOMAS	18094668	Feb 9 1990 12:00:00:000AM	upload\KSN
	RETURN SUBPOENA (NO CHARGE) (9)					
02/12/1990	REQCR	nonspecific	BURNS, ANDREW THOMAS	18347799	Feb 15 1990 12:00:00:000AM	upload\RCW
	COURT REPORTER FEE AT TRIAL (JURY/NON JURY)					

02/13/1990	SUBAU	nonspecific	BURNS, ANDREW THOMAS	18094665	Feb 14 1990 12:00:00:000AM	upload\KSN

SUBPOENA/AUTHORIZATION TO PAY WITNESS (5)

02/13/1990	MOSID	nonspecific	BURNS, ANDREW THOMAS	18253667	Feb 14 1990 12:00:00:000AM	upload\KSN

MOTION TO SUPPRESS IN-COURT IDENTIFICATION

02/14/1990	TEXT	nonspecific	BURNS, ANDREW THOMAS	18368131	Feb 16 1990 12:00:00:000AM	upload\RCW

HOPPER CLIFFORD: (CONTINUED JURY MINUTE) RETRIAL FEBRUARY 20, 1990 9:30.

02/14/1990	TEXT	nonspecific	BURNS, ANDREW THOMAS	18530487	Feb 15 1990 12:00:00:000AM	upload\RCW

HOPPER CLIFFORD: JURY TRIAL (ISSUE) ENDED IN MISTRIAL. DEFT. PRESENT & REPRESENTED BY SID CONWAY. STATE REPRESENTED BY A. J. SHULTZ. REPORTER: SALLY SELF. CASE CALLED, BOTH SIDES ANNOUNCED READY FOR TRIAL. THE JURORS ARE CALLED & SWORN AS TO QUALIFICATIONS. THE JURY IS IMPANELED & EXAMINED FOR CAUSE. THE FOLLOWING JURORS EXCUSED FOR CAUSE: MARK [illegible]. THE JURORS ARE ACCEPTED FOR CAUSE. PEREMPTORY CHALLENGES: STATE - 1. KATHERYNE TAYLOR 2. JAMES ROOP 3. FRANCES DOLL 4. DARREN RAMSEY 5. THRU 9. WAIVED.DEFT. - 1. PHYLLIS TURNER 2. ELVIN MILEY 3. SHIRLEY MARODE 4. PERMELIA LAWSON 5. JON LA PLANTE 6. BOB WILLIAMS 7. THRU 9. WAIVED. THE FOLLOWING JURORS ARE ACCEPTED & SWORN TO TRY THE CAUSE. 1. NANCY MURRAY 2. MARY MUIR 3. DONNA KIDWELL 4. MARTHA MC COMESS 5. SHIRLEY OLIVER 6. WINFRED WILLIAMS 7. BRIAN K. WARD 8. ESTHER WILSON 9. MICHELLE PERRY 10. ALETHA THOMPSON 11. MELVIA DAVIS 12. RONNIE HOUGH ALTERNATE: GARRY

02/14/1990	TEXT	nonspecific	BURNS, ANDREW THOMAS	18565710	Feb 16 1990 12:00:00:000AM	upload\RCW

HOPPER CLIFFORD: (CONTINUED JURY MINUTE) MC DONALD. OPENING STATEMENTS ARE MADE. 12 WITNESSES SWORN - 1. LLOYD ADAMS 2. JAMESMECA LIGHTNER 3. TAMICA DE LOUISER 4. CHAD EUGENE ADAMS 5. SHARON DE LOUISER 6. DR. ROBERT HEMPHILL 7. EDWARD COFFMAN, TPD 8. LEON DAVIS 9. ANDREW THOMAS BURNS 10. EDWARD COFFMAN TPD 11. STEVEN ODOM, TPD 12. ANDREW THOMAS BURNS RULE WAS INVOKED. STATE PRESENTS EVIDENCE AND RESTS. DEFENDANT DEMURS & DEMURRER IS OVERRULED. DEFENDANT PRESENTS EVIDENCE & RESTS. DEFENDANT RENEWS HIS DEMURRER & DEMURRER IS OVERRULED. DEFENDANT MOVES FORDIRECTED VERDICT & IS OVERRULED. BOTH SIDES REST. THE JURY IS INSTRUCTED AS TO THE LAW. CLOSING ARGUMENTS ARE MADE. SWEARING OF THE BAILIFF IS WAIVED & AT 10:10 P.M., THE BAILIFF & THE JURY RETIRE FOR DELIBERATION. AT 5:50 P.M., JURY RETURNS INTO OPEN COURT WITHOUT A VERDICT. COURT DECLARES MISTRIAL. FOREMAN OF THE JURY WAS MELVIA DAVIS. DEFENDANT RECOGNIZED BACK FOR JURY

02/15/1990	VERDU	nonspecific	BURNS, ANDREW THOMAS	18094638	Feb 16 1990 12:00:00:000AM	upload\KSN

UNSIGNED VERDICT(S), #=(2)

02/15/1990	TEXT	nonspecific	BURNS, ANDREW THOMAS	18094640	Feb 16 1990 12:00:00:000AM	upload\KSN

DEF'S REQUESTED INSTRUCTION #1

02/15/1990	WFP	nonspecific	BURNS, ANDREW THOMAS	18266533	Feb 16 1990 12:00:00:000AM	upload\AGW

WITNESS FEES PAID TO TAMICA DELOUISER/VO#31919

02/15/1990	WFP	nonspecific	BURNS, ANDREW THOMAS	18309002	Feb 16 1990 12:00:00:000AM	upload\AGW

WITNESS FEES PAID TO CHAD ADAMS/VO#31921

02/15/1990	WFP	nonspecific	BURNS, ANDREW THOMAS	18327520	Feb 16 1990 12:00:00:000AM	upload\AGW
	WITNESS FEES PAID TO JAMESMECA LIGHTNER/VO#31918					
02/15/1990	WFP	nonspecific	BURNS, ANDREW THOMAS	18368129	Feb 16 1990 12:00:00:000AM	upload\AGW
	WITNESS FEES PAID TO SHARON DELOUISER/VO#31920					
02/15/1990	WFP	nonspecific	BURNS, ANDREW THOMAS	18394088	Feb 16 1990 12:00:00:000AM	upload\AGW
	WITNESS FEES PAID TO LEON J. DAVIS/VO#31911					
02/15/1990	WFP	nonspecific	BURNS, ANDREW THOMAS	18412579	Feb 16 1990 12:00:00:000AM	upload\AGW
	WITNESS FEES PAID TO LLOYD ADAMS/VO#31922					
02/15/1990	TEXT	nonspecific	BURNS, ANDREW THOMAS	18431228	Feb 16 1990 12:00:00:000AM	upload\KSN
	INSTRUCTIONS OF THE COURT					
02/20/1990	SUBAU	nonspecific	BURNS, ANDREW THOMAS	18094620	Feb 21 1990 12:00:00:000AM	upload\KRS
	SUBPOENA/AUTHORIZATION TO PAY WITNESS					
02/20/1990	RTSBN	nonspecific	BURNS, ANDREW THOMAS	18094622	Feb 21 1990 12:00:00:000AM	upload\KRS
	RETURN SUBPOENA (NO CHARGE)					
02/20/1990	MOSID	nonspecific	BURNS, ANDREW THOMAS	18094624	Feb 21 1990 12:00:00:000AM	upload\KRS
	MOTION TO SUPPRESS IN-COURT IDENTIFICATION					
02/20/1990	REQCR	nonspecific	BURNS, ANDREW THOMAS	18094625	Feb 20 1990 12:00:00:000AM	upload\RCW
	COURT REPORTER FEE AT TRIAL (JURY/NON JURY)					
02/20/1990	REQJT	nonspecific	BURNS, ANDREW THOMAS	18094627	Feb 20 1990 12:00:00:000AM	upload\RCW
	REQUEST FOR JURY TRIAL					
02/20/1990	SUBAU	nonspecific	BURNS, ANDREW THOMAS	18253665	Feb 21 1990 12:00:00:000AM	upload\KRS
	SUBPOENA/AUTHORIZATION TO PAY WITNESS (4)					
02/20/1990	RTSBN	nonspecific	BURNS, ANDREW THOMAS	18262952	Feb 21 1990 12:00:00:000AM	upload\KRS
	RETURN SUBPOENA (NO CHARGE)					
02/20/1990	MOLIM	nonspecific	BURNS, ANDREW THOMAS	18373724	Feb 21 1990 12:00:00:000AM	upload\KRS
	MOTION IN LIMINE					
02/20/1990	SUBAU	nonspecific	BURNS, ANDREW THOMAS	18379246	Feb 21 1990 12:00:00:000AM	upload\KRS
	SUBPOENA/AUTHORIZATION TO PAY WITNESS					
02/21/1990	TEXT	nonspecific	BURNS, ANDREW THOMAS	18518610	Feb 21 1990 12:00:00:000AM	upload\CSA

HOPPER CLIFFORD: (CONTINUED MINUTE) *SEE FREEFORM* WITNESSES SWORN: 1. LLOYD ADAMS, 2. JAMESMECA MARIA LIGHTNER, 3. TAMICA DELOUISER, 4. CHAD ADAMS, 5. SHARON DELOUISER, 6. OFF.EDWARD COFFMAN, 7. ROBERT LEE HEMPHILL M.D., 8. LEON DAVIS, 9. ANDREW BURNS, 10. OFF. EDWARD COFFMAN, REBUTTAL. SENTENCING SET FOR 3/2/90 AT 9:30 A.M. DEFT TO BE HELD WITHOUT BOND.

02/21/1990	TEXT	nonspecific	BURNS, ANDREW THOMAS	18537040	Feb 21 1990 12:00:00:000AM	upload\CSA

HOPPER CLIFFORD: (CONTINUED MINUTE) *SEE FREEFORM* TEN WITNESSES SWORN. REPORTER: SALLY SELF. RULE WAS INVOKED. STATE PRESENTS EVIDENCE AND RESTS. DEFT DEMURS AND DEMURRER IS OVERRULED. DEFT MOVES FOR DIRECTED VERDICT AND IS OVERRULED. BOTH SIDES REST. THE JURY IS INSTRUCTED AS TO THE LAW. CLOSING ARGUMENTS ARE MADE. THE BAILIFF IS SWORN AND AT 1:00 P.M. THE BAILIFF AND THE JURY RETIRE FOR DELIBERATION. AT 3:00 P.M. THE JURY RETURNS INTO OPEN COURT WITH THEIR VERDICT, WHICH IS READ INOPEN COURT, ORDERED RECORDED AND FILED, AND IS TO WIT: "WE, THE JURY IMPANELED AND SWORN IN THE ABOVE ENTITLED CAUSE, DO UPON OUROATHS FIND THE DEFT GUILTY AS CHARGED IN THE INFORMATION HERIN & FIX PUNISHMENT AS LIFE IN PRISONMENT WITHOUT POSSIBLITY OF PAROLEJURORS CONCURRING, SIGNED JACK MILLER, FOREMAN." JURY DISCHARGED *SEE NEXT PAGE*

02/21/1990	TEXT	nonspecific	BURNS, ANDREW THOMAS	18563097	Feb 21 1990 12:00:00:000AM	upload\CSA

HOPPER CLIFFORD: CASE CALLED, BOTH SIDES PRESENT, AND ANNOUNCE READY FORTRIAL. THE STATE OF OKLAHOMA PRESENT AND REP. BY A.J. SHULTZ. DFT PRESENT, IN CUSTODY, PRO SE. SID CONWAY, PRESENT ON DEFT'S BEHALF. THE JURORS ARE CALLED AND SWORN AS TO QUALIFICATIONS THE JURY IS IMPANELLED AND EXAMINED FOR CAUSE. THE FOLLOWING JURORS ARE ACCEPTED FOR CAUSE. PEREMPTORY CHALLANGES: STATE: 1. MEGAN LANDERS, WAIVES 2,3,4,5,6,7,8,9. DEFT: 1. RONALD HOLDERNESS, 2. ROBERT SIEVERT, 3. SUZANNE HICKS, 4. MARTHA HUZILIK, 5. DONALD RICE, 6. DALE MOORE, 7,8,9. WAIVED. THE FOLLOWING JURORS ARE ACCEPTED AND SWORN TO TRY THE CAUSE: 1. MARYGOLD, 2. SAMUEL SHAW, 3. HUNTER LAYTON, 4. BRIAN MOSS, 5. BONNIE THOMPSON, 6. MARION SURMAN, 7. A.J. ZINN, 8. JACK MILLER, 9. RAYMOND BRANCH, 10. BONNIE MIZE, 11. NANCY MURPHY, 12. CYNTHIA COOK, ALTERNATE: DAVID HILL. OPENING STATEMENTS ARE MADE. **SEE NEXT PAGE**

02/22/1990	WFP	nonspecific	BURNS, ANDREW THOMAS	18094586	Feb 23 1990 12:00:00:000AM	upload\AGW

WITNESS FEES PAID TO LLOYD ADAMS/VO#32232

02/22/1990	WFP	nonspecific	BURNS, ANDREW THOMAS	18094590	Feb 23 1990 12:00:00:000AM	upload\AGW

WITNESS FEES PAID TO JAMESMECA LIGHTNER/VO#32229

02/22/1990	WFP	nonspecific	BURNS, ANDREW THOMAS	18094591	Feb 23 1990 12:00:00:000AM	upload\AGW

WITNESS FEES PAID TO TAMICA DELOUZIER/VO#32227

02/22/1990	WFP	nonspecific	BURNS, ANDREW THOMAS	18094592	Feb 23 1990 12:00:00:000AM	upload\AGW

WITNESS FEES PAID TO WILLLIAM MARSHALL/VO#32213

02/22/1990	VERD	nonspecific	BURNS, ANDREW THOMAS	18094593	Feb 23 1990 12:00:00:000AM	upload\KRS

VERDICT(S) SIGNED, 1

02/22/1990	WFP	nonspecific	BURNS, ANDREW THOMAS	18257211	Feb 23 1990 12:00:00:000AM	upload\AGW

WITNESS FEES PAID TO LEON DAVIS/VO#32233

02/22/1990	WFP	nonspecific	BURNS, ANDREW THOMAS	18272023	Feb 23 1990 12:00:00:000AM	upload\AGW
	WITNESS FEES PAID TO SHARON DELOUZIER/VO#32228					
02/22/1990	VERDU	nonspecific	BURNS, ANDREW THOMAS	18272024	Feb 23 1990 12:00:00:000AM	upload\KRS
	UNSIGNED VERDICT(S) 2					
02/22/1990	WFP	nonspecific	BURNS, ANDREW THOMAS	18360707	Feb 23 1990 12:00:00:000AM	upload\AGW
	WITNESS FEES PAID TO CHERIDA WILSON/VO#32231					
02/22/1990	TEXT	nonspecific	BURNS, ANDREW THOMAS	18366246	Feb 23 1990 12:00:00:000AM	upload\KRS
	INSTRUCTIONS OF THE COURT 1-11					
02/22/1990	WFP	nonspecific	BURNS, ANDREW THOMAS	18416336	Feb 23 1990 12:00:00:000AM	upload\AGW
	WITNESS FEES PAID TO CHAD ADAMS/VO#32230					
03/02/1990	COSTF	nonspecific	BURNS, ANDREW THOMAS	18266532	Mar 5 1990 12:00:00:000AM	upload\RCW
	COURT COSTS ON FELONY					
03/02/1990	CLEET	nonspecific	BURNS, ANDREW THOMAS	18397806	Mar 5 1990 12:00:00:000AM	upload\RCW
	C.L.E.E.T. PENALTY ASSESSMENT					
03/02/1990	TEXT	nonspecific	BURNS, ANDREW THOMAS	18451026	Mar 5 1990 12:00:00:000AM	upload\RCW
	HOPPER CLIFFORD: SENTENCING - DEFENDANT PRESENT, IN CUSTODY, & REPRESENTED BY SID CONWAY, AS ADVISOR ONLY. DEFENDANT REPRESENTED HIMSELF. STATE REPRESENTED BY JOHN KELSON. REPORTER: SALLY SELF. DEFENDANT SENTENCED TO SERVE LIFE WITHOUT PAROLE. DEFEN- DANT TO PAY COURT COSTS UPON RELEASE FROM CUSTODY OF DEPT. OF CORRECTIONS. VCA WAIVED. DEFENDANT ADVISED OF HIS APPEAL RIGHTSAND COMMITMENT FOR PUNISHMENT ISSUED. IMMEDIATE TRANSPORTATION REQUESTED BY DEFENDANT. DOB: 1-28-54. JUDGMENT & SENTENCE IS- SUED.					
03/05/1990	RETJS	nonspecific	BURNS, ANDREW THOMAS	18094573	Mar 20 1990 12:00:00:000AM	upload\KSN
	RETURN JUDGMENT & SENTENCE					
03/05/1990	J&S	nonspecific	BURNS, ANDREW THOMAS	18094575	Mar 6 1990 12:00:00:000AM	upload\KSN
	JUDGEMENT & SENTENCE					
03/06/1990	RETCP	nonspecific	BURNS, ANDREW THOMAS	18094572	Mar 7 1990 12:00:00:000AM	upload\KSN
	RETURN COMMITMENT FOR PUNISHMENT					
04/26/1990	APCR	nonspecific	BURNS, ANDREW THOMAS	18094570	Apr 27 1990 12:00:00:000AM	upload\TME
	APPLICATION FOR POST CONVICTION RELIEF(COPY TO JUDGE HOPPER & DA)					
05/31/1990	LTDOC	nonspecific	BURNS, ANDREW THOMAS	18325718	Jun 1 1990 12:00:00:000AM	upload\KRS
	LETTER FROM D.O.C.					
08/02/1990	TEXT	nonspecific	BURNS, ANDREW THOMAS	18423783	Aug 3 1990 12:00:00:000AM	upload\KRS

MOTION FOR TRANSCRIPTS AT PUBLIC EXPENSE COPY TO JUDGE HOPPER & D.A.

10/12/1990	TEXT	nonspecific	BURNS, ANDREW THOMAS	18266531	Oct 15 1990 12:00:00:000AM	upload\RCW

HOPPER CLIFFORD: APPL FOR & ORDER DENYING POST CONVICTION RELIEF SIGNED.

10/12/1990	ODENY	nonspecific	BURNS, ANDREW THOMAS	18386660	Oct 15 1990 12:00:00:000AM	upload\KSN

ORDER DENYING POST-CONVICTION RELIEF

09/25/1992	MO	nonspecific	BURNS, ANDREW THOMAS	18377457	Sep 28 1992 12:00:00:000AM	upload\KSN

MOTION FOR TRANSCRIPTS AT PUBLIC EXPENSE COPY TO JUDGE HOPPER & D.A.

09/28/1992	RAPPL	nonspecific	BURNS, ANDREW THOMAS	18094560	Sep 29 1992 12:00:00:000AM	upload\KSN

RESPONSE TO MOTION FOR TRANSCRIPTS AT PUBLIC EXPENSE

10/07/1992	ODMO	nonspecific	BURNS, ANDREW THOMAS	18368127	Oct 8 1992 12:00:00:000AM	upload\KSN

ORDER DENYING MOTION FOR TRANSCRIPTS AT PUBLIC EXPENSE

10/07/1992	TEXT	nonspecific	BURNS, ANDREW THOMAS	18489951	Oct 7 1992 12:00:00:000AM	upload\RCW

HOPPER CLIFFORD: ORDER DENYING MOTION FOR TRANSCRIPTS AT PUBLIC EXPENSE SIGNED.

03/25/1993	LETDF	nonspecific	BURNS, ANDREW THOMAS	18242567	Mar 26 1993 12:00:00:000AM	upload\KSN

LETTER FROM DEFENDANT - COPY TO DA & JUDGE HOPPER

03/21/1994	MOTPE	nonspecific	BURNS, ANDREW THOMAS	18331236	Mar 22 1994 12:00:00:000AM	upload\BMD

MOTION FOR TRANSCRIPTS AT PUBLIC EXPENSE (CPY TO DA & JUDGE JENNINGS)

03/25/1994	TEXT	nonspecific	BURNS, ANDREW THOMAS	18094557	Mar 28 1994 12:00:00:000AM	upload\BMD

RESPONSE TO 2ND MOTION FOR TRANSCRIPTS AT PUBLIC EXPENSE

03/30/1994	TEXT	nonspecific	BURNS, ANDREW THOMAS	18547464	Mar 30 1994 12:00:00:000AM	upload\RCW

HOPPER CLIFFORD: ORDER DENYING SECOND MOTION FOR TRANSCRIPTS AT PUBLIC EXPENSE, SIGNED.

03/31/1994	O	nonspecific	BURNS, ANDREW THOMAS	18422098	Apr 4 1994 12:00:00:000AM	upload\BMD

ORDER DENYING 2ND MOTION FOR TRANSCRIPTS AT PUBLIC EXPENSE

08/17/1994	CAP	nonspecific	BURNS, ANDREW THOMAS	18094555	Aug 18 1994 12:00:00:000AM	upload\KP

CERTIFICATE OF APPEAL - C.C.A.#9400897

09/19/1994	O	nonspecific	BURNS, ANDREW THOMAS	18525410	Sep 20 1994 12:00:00:000AM	upload\LLS

ORDER AFFIRMING DENIAL OF APPLICATION FOR POST-CONVICTION RELIEF (COPY TO DA & JUDGE HOPPER)

06/28/1995	T	nonspecific	BURNS, ANDREW THOMAS	18353252	Jun 29 1995 12:00:00:000AM	upload\VJM

ORIGINAL TRANSCRIPT OF FORMAL SENTENCING SET 3-2-90

07/12/1995	PYREQ	nonspecific	BURNS, ANDREW THOMAS	18094552	Jul 13 1995 12:00:00:000AM	upload\JJW
	PAYMENT REQUEST-IN RE: TRANSCRIPTS 3439901#					
08/16/1995	TEXT	nonspecific	BURNS, ANDREW THOMAS	18505498	Aug 16 1995 12:00:00:000AM	upload\VJM
	TOTAL AMT. RECVD. - CHECK (# 95-026559) DOC/SALLY HOWE SMITH ; CHECK NO:6742					
06/25/1996	TEXT	nonspecific	BURNS, ANDREW THOMAS	18489950	Jun 25 1996 12:00:00:000AM	upload\LLS
	TOTAL AMT. RECVD. - CHECK (# 96-027192) DOC/SALLY HOWE SMITH ; CHECK NO:9413					
07/25/1996	TEXT	nonspecific	BURNS, ANDREW THOMAS	18483299	Jul 25 1996 12:00:00:000AM	upload\LLS
	TOTAL AMT. RECVD. - CHECK (# 96-032738) DOC/SALLY HOWE SMITH ; CHECK NO:9772					
07/13/1999	LT	nonspecific	BURNS, ANDREW THOMAS	18308997	Jul 14 1999 12:00:00:000AM	upload\AMM
	LETTER					
10/20/1999	AC01	nonspecific	BURNS, ANDREW THOMAS	21471555	Oct 20 1999 12:00:00:000AM	UPLOAD\AOC
	Account balance- AC01. As of conversion from the mainframe (10/20/1999), The total amount for this account (this defendant) is: $87.00. The total paid on this account is $ 1.52. The balance on this account is $ 85.48.($ 85.48)					
10/20/1999	AC06	nonspecific	BURNS, ANDREW THOMAS	21555614	Oct 20 1999 12:00:00:000AM	UPLOAD\AOC
	Account balance- AC06. As of conversion from the mainframe (10/20/1999), The total amount for this account (this defendant) is: $40.00. The total paid on this account is $ 0.00. The balance on this account is $ 40.00.($ 40.00)					
10/20/1999	AC08	nonspecific	BURNS, ANDREW THOMAS	21559699	Oct 20 1999 12:00:00:000AM	UPLOAD\AOC
	Account balance- AC08. As of conversion from the mainframe (10/20/1999), The total amount for this account (this defendant) is: $100.00. The total paid on this account is $ 0.00. The balance on this account is $ 100.00.($ 100.00)					
10/20/1999	AC09	nonspecific	BURNS, ANDREW THOMAS	21629502	Oct 20 1999 12:00:00:000AM	UPLOAD\AOC
	Account balance- AC09. As of conversion from the mainframe (10/20/1999), The total amount for this account (this defendant) is: $60.00. The total paid on this account is $ 0.00. The balance on this account is $ 60.00.($ 60.00)					
10/20/1999	AC11	nonspecific	BURNS, ANDREW THOMAS	21747012	Oct 20 1999 12:00:00:000AM	UPLOAD\AOC
	Account balance- AC11. As of conversion from the mainframe (10/20/1999), The total amount for this account (this defendant) is: $4.00. The total paid on this account is $ 4.00. The balance on this account is $ 0.00.					
10/20/1999	AC16	nonspecific	BURNS, ANDREW THOMAS	21936993	Oct 20 1999 12:00:00:000AM	UPLOAD\AOC
	Account balance- AC16. As of conversion from the mainframe (10/20/1999), The total amount for this account (this defendant) is: $193.05. The total paid on this account is $ 0.00. The balance on this account is $ 193.05.($ 193.05)					

Balances

Party	Original Balance	Paid to Date	Current Balance
BURNS, ANDREW THOMAS	$ 478.53	$ 0.00	$ 478.53
Not Entered	$ 0.00	$ 0.00	$ 0.00
BALANCE	$ 478.53	$ 0.00	$ 478.53

Report Generated by the Oklahoma Court Information System at February 07, 2000 17:25:40.

End of Transmission.

EXHIBIT "H"
COMPILATION OF OKLAHOMA EXONERATED CASES SHOWING STATE WILLFUL GROSS JUDICIAL MISCONDUCT

Continued List of Oklahoma Exoneree's

YANCEY LYNDELL DOUGLAS, Appellant, -vs- STATE OF OKLAHOMA, Appellee.
COURT OF CRIMINAL APPEALS OF OKLAHOMA
1997 OK CR 79; 951 P.2d 651; 1997 Okla. Crim. App. LEXIS 79; 69 O.B.A.J. 68
No. F-95-834
December 17, 1997, Filed

PARIS LAPRIEST POWELL, Appellant, v. THE STATE OF OKLAHOMA, Appellee.
COURT OF CRIMINAL APPEALS OF OKLAHOMA
2000 OK CR 5; 995 P.2d 510; 2000 Okla. Crim. App. LEXIS 5
Case No. F-97-763
February 2, 2000, Filed

LAW & THE COURTS

Oklahoma's Wretched Record of Wrongful Convictions

By MICHELLE MALKIN | August 9, 2018 6:30 AM

Oklahoma State Capitol (Wikimedia)

The Sooner State has a lot to answer for.

Listen to this article

"Frontier justice" costs too many citizens of all races, creeds, and backgrounds their freedom and their lives. In the old days of the Wild West, vigilantes worked outside the judicial system to punish rivals regardless of their guilt or innocence. Today, outlaws operate inside the bureaucracy to secure criminal convictions at all costs.

Government prosecutors and criminal-defense attorneys routinely cut deals. Judges bend over backward to preserve "harmless errors" caused by flawed investigations, faulty verdicts, and clerical incompetence. Police brass retaliate against whistleblowers. And, according to one veteran cop, Oklahoma City is a hopeless "nest of incestuous nepotism."

Unlike neighboring Texas, where Dallas County prosecutors founded the first conviction-integrity unit in the country (sparking the creation of 30 such agencies nationwide), not a single Oklahoma district-attorney's office has established an official mechanism to review tainted convictions. Nor does Oklahoma have anything like the Texas Forensic Science Commission, which investigates professional misconduct by crime labs and other entities that conduct forensic analyses used in criminal proceedings. The Texas panel was created in the wake of the infamous scandal at the Houston Police Department crime lab a decade ago and its audits led to the more recent shutdown of the Austin PD's mess of a crime lab.

> Silence over this human-rights crisis is complicity.

Meanwhile, no systemic reform ensued after the Macy/Gilchrist disgrace in Oklahoma. In fact, one of Gilchrist's colleagues who admitted destroying rape-kit evidence at her behest was kept on for nearly 15 more years until she mysteriously retired last year amid questions about her DNA testimony.

OCPD crime-lab analyst Elaine Taylor's work (challenged by at least eight independent scientists internationally over the past year) was at the center of illegal secret hearings last summer in the high-profile wrongful conviction of former Oklahoma City police officer Daniel Holtzclaw. He is serving 263 years for sexual-assault allegations solicited by police, who ignored accusers' wild contradictions and discrepancies, long rap sheets, and drug-addled testimony during an out-of-control media feeding frenzy before and during trial. Taylor is

Last December, Jones's appellate lawyers filed an application for post-conviction relief and related motions for discovery and an evidentiary hearing to consider newly discovered evidence of racial animus by a juror. Jones's lawyers included supporting exhibits, which a court clerk instructed the legal team to place in a separate envelope labeled "protected material." Through a chain of bureaucratic mishaps, the key exhibits were somehow lost until Jones's investigator, Kim Marks, personally visited the clerk's office in June and unearthed them. The court, which had rejected Jones's appeal without seeing the missing exhibits, was forced to acknowledge two weeks ago that it couldn't ignore its clerk's "mismanagement of the exhibits" and has been forced to reconsider the case.

ALSO FROM
MICHELLE MALKIN

Stop Mental-Health Data Mining of Our Kids

The De Blasios and NYC's Anti-Cop Anarchy

Anti-Trump Knitters: A Decade-Long Unraveling

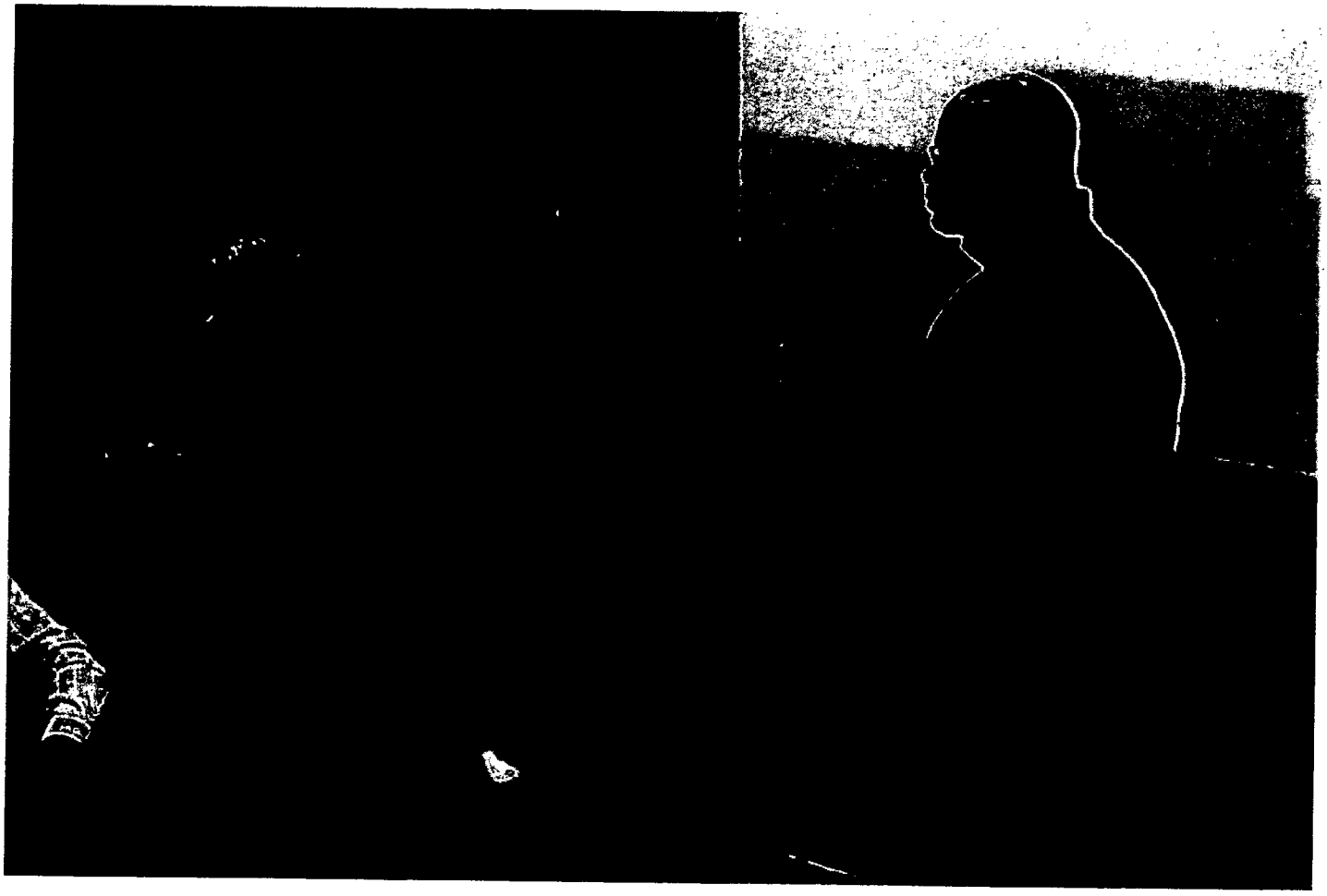
Chilling exit fact: Despite its wretched record on wrongful convictions the past two decades, not to mention three horrific botched executions in the last three years, Oklahoma's incompetent and corrupted criminal-justice system is set to resume putting people to death next year come hell or high water.

Silence over this human-rights crisis is complicity.

https://www.ocolly.com/news/oklahoma-innocence-project-speaks-about-wrongful-convictions/article_3d8523fa-572c-11ea-afc2-4f0f3d910039.html

Oklahoma Innocence Project speaks about wrongful convictions

Chase Congleton, Staff Reporter, @ChaseCongleton
Feb 24, 2020



Executive Director of the Oklahoma Innocence Project Vicki Behanna speaks with exoneree De'Marchoe Carpenter during the Wrongfully Convicted & Exonerated speech held at OSU in Murray Hall on February 20, 2020, in Stillwater.
Joel Devick/O'Colly

De'Marchoe Carpenter and Vicki Behenna spoke at Oklahoma State University about wrongful conviction and exoneration on Thursday night at Murray 035.

Carpenter spent 22 years of his life in prison for a murder he didn't commit. Since being exonerated of his sentence on May 9, 2016, he has dedicated much of his time speaking about wrongful convictions and spreading awareness about the issue.

According to Vicki Behenna, the executive director of the Oklahoma Innocence Project, there have been 36 wrongfully convicted Oklahomans who have been officially exonerated since 1993.

The Oklahoma Innocence Project is an organization dedicated to finding and resolving wrongful conviction cases in the state and currently has more than 800 cases in the queue for review.

Kaitlyn Barnett, an English major at OSU, organized the speaking event after interviewing Carpenter.

"I talked to my professor, and we agreed that his story deserved more than just an interview," Barnett said. "That's when he challenged me with the idea to host the event and bring awareness to campus."

Carpenter was incarcerated along with his friend Malcolm Scott in 1994 for a murder committed by another man named Michael Wilson. Wilson was later convicted of another crime he committed a few years later. After two decades, Wilson confessed to the murder as a final confession before he faced his death penalty.

In the meantime, Carpenter said to the audience that, while he was in prison, he wrote letters to celebrities, talk-show hosts and lawyers. His story eventually reached Vicki Behenna, an attorney in Oklahoma. Once she saw that his trial had no forensic evidence or proof against Carpenter, she agreed to help.

"There's a disparity between the representation that someone gets who can afford to pay for lawyers and investigators and those who have to rely on public defenders," Behenna said. "When [public defenders] have 300 cases to review, it gets kind of hard to do everything you need to do in a case."

While Carpenter was in prison, he never gave up on his hope of leaving prison and always kept writing letters and found hobbies to keep his mind going.

"There were times when it was hard," Carpenter said. "But I kept my faith in God, and it all worked out."

De'Marchoe Carpenter was eventually exonerated after spending 22 years in prison and received a payment of $175,000. He said the money doesn't make up for the time he lost with loved ones.

When asked by an audience member how a poor college student could help out the organization, Behenna said students can volunteer at the Oklahoma Innocence Project. Law students often volunteer to read cases, but other students can vote at elections.

"You all are the next generation, and you all are the ones that could change the whole attitude that we have," Behenna said. "Use your voice as young people to make sure that justice prevails."

news.ed@ocolly.com

RONALD CLINTON LOTT, Appellant -vs- STATE OF OKLAHOMA, Appellee
COURT OF CRIMINAL APPEALS OF OKLAHOMA
2004 OK CR 27; 98 P.3d 318; 2004 Okla. Crim. App. LEXIS 31; 75 O.B.A.J. 2385
Case Number: D-2002-88
September 9, 2004, Decided
Editorial Information: Subsequent History

US Supreme Court certiorari denied by Lott v. Oklahoma, 544 U.S. 950, 125 S. Ct. 1699, 161 L. Ed. 2d 528, 2005 U.S. LEXIS 2828 (2005)Writ of habeas corpus denied Lott v. Workman, 2011 U.S. Dist. LEXIS 35636 (W.D. Okla., Mar. 31, 2011)

Editorial Information: Prior History

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY. THE HONORABLE VIRGIL C. BLACK, DISTRICT JUDGE.

Disposition:
Convictions and sentences affirmed.

Counsel APPEARANCES AT TRIAL:
CRAIG CORGAN, WAYNA TYNER, PERRY HUDSON, INDIGENT DEFENSE SYSTEM, NORMAN, OK, JOHN ALBERT, OKLAHOMA CITY, OK, COUNSEL FOR APPELLANT.
WESLEY LANE, DISTRICT ATTORNEY, RICHARD WINTORY, GREG MASHBURN, ASSISTANT DISTRICT ATTORNEYS, OKLAHOMA CITY, OK, COUNSEL FOR THE STATE.
APPEARANCES ON APPEAL:
GRETCHEN GARNER MOSLEY, TRACI J. QUICK, INDIGENT DEFENSE SYSTEM, SAPULPA CAPITAL TRIAL DIVISION, SAPULPA, OK, COUNSEL FOR APPELLANT.
W.A. DREW EDMONDSON, ATTORNEY GENERAL OF OKLAHOMA, DAVID M. BROCKMAN, ROBERT WHITTAKER, ASSISTANT ATTORNEYS GENERAL, OKLAHOMA CITY, OK, COUNSEL FOR THE STATE.

Judges: OPINION BY: LUMPKIN, J.; JOHNSON, P.J.: CONCUR; LILE, V.P.J.: CONCUR; CHAPEL, J.: CONCUR IN RESULT; STRUBHAR, J.: CONCUR IN RESULT.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant sought review of the decision of the District Court of Oklahoma County (Oklahoma), which convicted him of two counts of first-degree murder in violation of Okla. Stat. tit. 21, § 701.7 (Supp. 1985) and sentenced him to death on each count.Defendant's convictions for two counts of first-degree murder and death sentences were proper where his speedy trial rights were not denied and the aggravating circumstances outweighed the mitigating evidence.

OVERVIEW: Defendant was convicted of two counts of first-degree murder for the brutal killings of two elderly women. The jury recommended the sentence of death on each count and the trial court sentenced accordingly. The court affirmed, stating that it could not say that the jury was influenced by passion, prejudice, or any other arbitrary factor contrary to Okla. Stat. tit. 21, § 701.13(C) (2001), in finding that the aggravating circumstances outweighed the mitigating evidence. Further, the court held that defendant was not denied his right to a speedy trial, stating that although continuances resulted in delay, the trial court did not abuse its discretion in granting them because it gave the defense time to investigate evidence recently turned over by the State. The trial court did not err in refusing to sever the two murder charges and try him separately for each offense because the evidence was sufficient to find that proof of each offense overlapped so as to evidence a common scheme or plan. Further, he failed to show any prejudice resulting from the joinder. The trial court did not err on instructing the jury on aiding and abetting because they were warranted by the evidence.

OUTCOME: The judgment was affirmed.

LexisNexis Headnotes

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Speedy Trial

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Impartial Jury

Criminal Law & Procedure > Pretrial Motions > Speedy Trial > General Overview

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Public Trial

See U.S. Const. amend. VI.

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Speedy Trial

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Impartial Jury

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Public Trial

See Okla. Const. art. II, § 20.

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Speedy Trial

See Okla. Const. art. II, § 6.

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Speedy Trial

Criminal Law & Procedure > Pretrial Motions > Speedy Trial > General Overview

Oklahoma does not have a speedy trial act which sets forth a specific period of time for a matter to be brought to trial.

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Speedy Trial

Criminal Law & Procedure > Pretrial Motions > Speedy Trial > General Overview

When reviewing a claim of the denial of the constitutional right to a speedy trial, appellate courts apply the following four balancing factors: (1) length of the delay; (2) reason for the delay; (3) the defendant's assertion of his right, and (4) prejudice to the defendant. These are not absolute factors, but are balanced with other relevant circumstances in making a determination.

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Speedy Trial

Criminal Law & Procedure > Pretrial Motions > Speedy Trial > General Overview

Once charges are dismissed, the speedy trial guarantee is no longer applicable.

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Speedy Trial

Criminal Law & Procedure > Pretrial Motions > Speedy Trial > General Overview

Okla. Stat. tit. 22, § 812.1 (Supp. 1999) indicates that the legislature considers any speedy trial delay beyond one-year to require special review by the district court.

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Speedy Trial

See Okla. Stat. tit. 22, § 812.1(A) (Supp. 1999).

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Speedy Trial

See former Okla. Stat. tit. 22, § 812 (1991) (repealed 1999).

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Speedy Trial

Civil Procedure > Judicial Officers > Judges > General Overview

Civil Procedure > Judicial Officers > Judges > Discretion

Criminal Law & Procedure > Preliminary Proceedings > Preliminary Hearings > Time Limitations

Criminal Law & Procedure > Pretrial Motions > Speedy Trial > General Overview

Under Okla. Stat. tit. 22, § 812.1(A) (Supp. 1999), it is clearly the trial judge's responsibility to manage his or her docket in such a way that ensures the right to speedy trial is being protected.

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Speedy Trial

Okla. Stat. tit. 22, § 812.2(A)(2)(g) and (i) (Supp. 1999) require a court to look at whether a trial delay occurred because the court has other cases pending for trial that are for persons incarcerated prior to the case in question, and the court does not have sufficient time to commence the trial of the case within

the time limitation fixed for trial, and the court, state, accused, or the attorney for the accused is incapable of proceeding to trial due to illness or other reason and it is unreasonable to reassign the case.

Criminal Law & Procedure > Discovery & Inspection > Discovery Misconduct

Criminal Law & Procedure > Trials > Continuances

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion > General Overview

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion > Continuances

Trial courts are empowered to order the appropriate relief for the failure to comply with a discovery order, Okla. Stat. tit. 22, § 2002(E)(2) (Supp. 1996).

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Speedy Trial

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Speedy Trial

Criminal Law & Procedure > Pretrial Motions > Speedy Trial > General Overview

A defendant's assertion of his speedy trial right is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right.

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Speedy Trial

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Speedy Trial

Criminal Law & Procedure > Pretrial Motions > Speedy Trial > General Overview

The United States Supreme Court holds that an affirmative demonstration of prejudice is not a prerequisite to a claim of denial of the right to speedy trial and that prejudice is not limited to detriment to the defense of the accused. Nevertheless, prejudice is one of the factors that must be considered, and the following are three types: Oppressive pretrial incarceration; anxiety and concern of the accused; and impairment of the defense. Of these factors, the Supreme Court considers the third the most serious

because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Speedy Trial

Criminal Law & Procedure > Preliminary Proceedings > Preliminary Hearings > Time Limitations

The prosecution need not be dismissed when a defendant is not brought to trial at the next term of court pursuant to Okla. Stat. tit. 22, § 812 (1991) when "good cause" has been shown for the delay.

Criminal Law & Procedure > Pretrial Motions > Joinder & Severance > Joinder of Offenses

Criminal Law & Procedure > Criminal Offenses > General Overview

Joinder of offenses is permitted pursuant to Okla. Stat. tit. 22, § 438 (2001). This section provides that multiple offenses may be combined for trial if the offenses could have been joined in a single indictment or information. Joinder is allowed for separately punishable offenses allegedly committed by the accused if the separate offenses rise out of one criminal act or transaction, or are part of a series of criminal acts or transactions. Further, with respect to a series of criminal acts or transactions, joinder of offenses is proper where the counts so joined refer to the same type of offenses occurring over a relatively short period of time, in approximately the same location, and proof as to each transaction overlaps so as to evidence a common scheme or plan.

Evidence > Relevance > Prior Acts, Crimes & Wrongs

Criminal Law & Procedure > Trials > Burdens of Proof > Prosecution

Criminal Law & Procedure > Jury Instructions > Limiting Instructions

When one is put on trial, one is to be convicted, if at all, by evidence which shows one guilty of the offense charged; and proof that one is guilty of other offenses not connected with that for which one is on trial must be excluded. However, evidence of other crimes is admissible where it tends to establish absence of mistake or accident, common scheme or plan, motive, opportunity, intent, preparation, knowledge and identity. To be admissible, evidence of other crimes must be probative of a disputed issue of the crime charged, there must be a visible connection between the crimes, evidence of the other crime(s) must be necessary to support the State's burden of proof, proof of the other crime(s) must be clear and convincing, the probative value of the evidence must outweigh the prejudice to the accused and the trial court must issue contemporaneous and final limiting instructions.

Criminal Law & Procedure > Appeals > Reviewability > Preservation for Review > General Overview

Criminal Law & Procedure > Appeals > Standards of Review > General Overview

Evidence > Relevance > Prior Acts, Crimes & Wrongs

Criminal Law & Procedure > Pretrial Motions > Suppression of Evidence

Criminal Law & Procedure > Trials > Burdens of Proof > Prosecution

Evidence > Procedural Considerations > Exclusion & Preservation by Prosecutor

Governments > Legislation > Statutory Remedies & Rights

When other crimes evidence is so prejudicial it denies a defendant his right to be tried only for the offense charged, or where its minimal relevancy suggests the possibility the evidence is being offered to show a defendant is acting in conformity with his true character, the evidence should be suppressed. Where the claim was properly preserved, the State must show on appeal that admission of this evidence did not result in a miscarriage of justice or constitute a substantial violation of a constitutional or statutory right.

Evidence > Relevance > Prior Acts, Crimes & Wrongs

The Court of Criminal Appeals of Oklahoma allows evidence of other crimes or bad acts to be admitted under the "plan" exception of Okla. Stat. tit. 12, § 2404(B) (1991) where the methods of operation were so distinctive as to demonstrate a visible connection between the crimes. Distinctive methods of operation are also relevant to prove the identity of the perpetrator of the crime.

Criminal Law & Procedure > Criminal Offenses > Sex Crimes > Sexual Assault > General Overview

Evidence > Relevance > Prior Acts, Crimes & Wrongs

Criminal Law & Procedure > Criminal Offenses > Sex Crimes > Sexual Assault > Rape > General Overview

Evidence > Relevance > Sex Offenses > General Overview

Evidence > Relevance > Sex Offenses > Similar Crimes > General Overview

Evidence > Relevance > Sex Offenses > Similar Crimes > Sexual Assault Cases

That evidence of the commission of other similar crimes may be given to show the plan or design on the part of the defendant to commit such crimes has often been judicially recognized. The word "design" implies a plan formed in the mind. That an individual who commits or attempts to commit abnormal sex offenses is likely to have such a mental "plan" finds recognition in the fact that when a defendant is charged with the commission of sexual offense the law is more liberal in admitting as proof of his guilt evidence of similar sexual offenses committed by him than it is in admitting evidence of similar offenses when a defendant is charged with the commission of non-sexual crimes. But where the prior rape or attempt is committed under circumstances remarkably similar to the one charged the evidence is admissible to show a plan or scheme to commit the crime in that fashion, even though the prior rape or attempt was committed on a person other than the prosecutrix. In such cases the evidence that defendant committed the prior offense tends to prove that he committed the offense charged.

Criminal Law & Procedure > Appeals > Standards of Review > Plain Error > General Overview

Criminal Law & Procedure > Jury Instructions > Objections

Criminal Law & Procedure > Appeals > Standards of Review > Plain Error > Jury Instructions

Appellate courts review only for plain error as no objection was raised to a jury instruction.

Criminal Law & Procedure > Counsel > Effective Assistance > Tests

Criminal Law & Procedure > Counsel > Effective Assistance > General Overview

The Court of Criminal Appeals of Oklahoma follows the Strickland test for ineffective assistance of counsel. Under Strickland's two-part test, the appellant must overcome the strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance by showing: (1) that trial counsel's performance was deficient; and (2) that he was prejudiced by the deficient performance. Unless the appellant makes both showings, it cannot be said that the conviction resulted from a breakdown in the adversary process that renders the result unreliable. The appellant must demonstrate that counsel's representation was unreasonable under prevailing professional norms and that the challenged action could not be considered sound trial strategy. The burden rests with the appellant to show that there is a reasonable probability that, but for any unprofessional errors by counsel, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. When a claim of ineffectiveness of counsel can be disposed of on the ground of lack of prejudice, that course should be followed. The issue is whether counsel exercised the skill, judgment and diligence of a reasonably competent defense attorney in light of his overall performance.

Criminal Law & Procedure > Counsel > Effective Assistance > Tests

Criminal Law & Procedure > Counsel > Effective Assistance > Trials

A concession of guilt does not amount to ineffective assistance of counsel, per se. A complete concession of guilt is a serious strategic decision that must only be made after consulting with the client and after receiving the client's consent or acquiescence. The burden is placed on the appellant to show that he was not consulted and that he did not agree to or acquiesce in the concession strategy.

Criminal Law & Procedure > Appeals > Standards of Review > General Overview

Criminal Law & Procedure > Jury Instructions > General Overview

Criminal Law & Procedure > Appeals > Reversible Errors > Jury Instructions

Criminal Law & Procedure > Appeals > Standards of Review > Harmless & Invited Errors > General Overview

Criminal Law & Procedure > Appeals > Standards of Review > Harmless & Invited Errors > Jury Instructions

Governments > Legislation > Statutory Remedies & Rights

The uniform jury instructions shall be used unless they do not accurately state the law. However, deviation from the uniform instructions does not require automatic reversal. Appellate courts review the instructions to determine whether the instruction at issue fairly and accurately states the applicable law. Even when error is committed, reversal is not required unless such error results in a miscarriage of justice or constitutes a substantial violation of a constitutional or statutory right, Okla. Stat. tit. 20, § 3001.1 (1991). Deviation from language of the uniform instructions constitutes technical error which is harmless if the instructions given fairly and accurately state the applicable law.

Evidence > Relevance > Relevant Evidence

Relevancy depends on the issues, which must be proven at trial.

Evidence > Hearsay > Exceptions > General Overview

Evidence > Hearsay > Exceptions > State of Mind > General Overview

Evidence > Hearsay > Rule Components > Statements

Okla. Stat. tit. 12, § 2803(3) (1991) provides an exception for the admission of hearsay statements, which reflect the victim's state of mind. However, such statements have been generally found admissible only when they show the victim's state of mind toward the defendant or to supply the motive for killing.

Evidence > Testimony > Lay Witnesses > Opinion Testimony > General Overview

Evidence > Testimony > Lay Witnesses > Ultimate Issue

Evidence > Testimony > Experts > Ultimate Issue

Opinion evidence on ultimate issues is generally admissible, Okla. Stat. tit. 12, § 2704 (1991). However, the "otherwise admissible" language of § 2704 must be read in context with Okla. Stat. tit. 12, §§ 2403, 2701, 2702 (1991). While expert witnesses can suggest the inferences which jurors should draw from the application of specialized knowledge to the facts, opinion testimony which merely tells a jury what result to reach is inadmissible.

Evidence > Testimony > Experts > Criminal Trials

Evidence > Testimony > Lay Witnesses > Opinion Testimony > General Overview

Evidence > Testimony > Experts > General Overview

Evidence > Scientific Evidence > General Overview

Evidence > Testimony > Experts > Daubert Standard

The subject of an expert's opinion testimony need not be limited to only "scientific" evidence, but may include other specialized knowledge.

Evidence > Testimony > Experts > Criminal Trials

Evidence > Testimony > Experts > General Overview

Evidence > Testimony > Experts > Admissibility

See Okla. Stat. tit. 12, § 2702 (2001).

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion > General Overview

Evidence > Testimony > Experts > Criminal Trials

Evidence > Testimony > Experts > General Overview

Criminal Law & Procedure > Appeals > Standards of Review > Clearly Erroneous Review > General Overview

The qualification of a person to testify as an expert is a matter which rests with the sound discretion of the trial court, and that decision will not be disturbed on appeal absent an abuse of that discretion. An "abuse of discretion" has been defined as "clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented in support of and against the application.

Criminal Law & Procedure > Appeals > Standards of Review > Harmless & Invited Errors > General Overview

An appellant will not be permitted to profit by an alleged error that he or his counsel in the first instance invited by opening the subject or by his or her own conduct, and counsel for the defendant may not profit by whatever error was occasioned by the admission of such incompetent evidence.

Criminal Law & Procedure > Sentencing > Imposition > Victim Statements

Victim impact evidence is constitutionally acceptable unless it is so unduly prejudicial that it renders the trial fundamentally unfair.

Criminal Law & Procedure > Sentencing > Imposition > Victim Statements

Criminal Law & Procedure > Sentencing > Imposition > General Overview

Victim impact evidence is set forth in Okla. Stat. art. 22, § 984, 984.1 (2001). The manner in which victim impact evidence is to be presented and used at trial is set forth in Okla. Stat. art. 22, § 984.1. The language limits the persons who may give victim impact evidence to three types of people: 1) the victim; 2) members of the victim's immediate family; or 3) a person designated by the victim or the victim's family. The listing in the disjunctive of the persons who may give victim impact evidence indicates the Legislature's intent to make these three categories of victim impact witnesses mutually exclusive. This restrictive view of who may give victim impact testimony is consistent with the limitations placed on victim impact evidence by the legislature and by the courts. Victim impact evidence is intended to provide a quick glimpse of a victim's characteristics and the effect of the victim's death on survivors.

Criminal Law & Procedure > Sentencing > Imposition > Victim Statements

Criminal Law & Procedure > Sentencing > Imposition > General Overview

See Okla. Stat. tit. 22, § 984.1 (2001).

Criminal Law & Procedure > Sentencing > Imposition > Victim Statements

See Okla. Stat. tit. 22, § 984 (2001).

Criminal Law & Procedure > Sentencing > Imposition > Victim Statements

Criminal Law & Procedure > Sentencing > Imposition > General Overview

See Okla. Stat. tit. 22, § 984.1(A) (2001).

Criminal Law & Procedure > Sentencing > Imposition > Victim Statements

The victim is usually the best person to testify to the effects of a crime perpetrated against him or her. In a homicide case when the victim cannot speak, family members are usually in the best position to give victim impact evidence. However, if family members choose not to take the witness stand or for any reason are unable to testify, they may designate another person to speak for them. The purpose behind a family designee is to give a voice to family members unable to testify in court. It was not intended to provide an opportunity for those family members not listed in the statute and other interested persons to give victim impact testimony.

Evidence > Procedural Considerations > Circumstantial & Direct Evidence

Evidence > Procedural Considerations > Weight & Sufficiency

Criminal Law & Procedure > Sentencing > Capital Punishment > Aggravating Circumstances

Criminal Law & Procedure > Sentencing > Capital Punishment > Mitigating Circumstances

A defendant's intent is critical to this proof and can be inferred from circumstantial evidence. Furthermore, there must be a predicate crime, separate from the murder, for which the defendant seeks to avoid arrest or prosecution. When the sufficiency of the evidence of an aggravating circumstance is challenged on appeal, the proper test is whether there was any competent evidence to support the State's charge that the aggravating circumstance existed. In making this determination, appellate courts should view the evidence in the light most favorable to the State.

Criminal Law & Procedure > Sentencing > Capital Punishment > Aggravating Circumstances

Criminal Law & Procedure > Preliminary Proceedings > General Overview

Okla. Stat. tit. 21, § 701.10 (2001) does not require any type of pre-trial hearing regarding the validity of the State's aggravating circumstances; its provisions are satisfied if evidence in aggravation is made known to the defendant prior to trial.

Criminal Law & Procedure > Appeals > Reviewability > Preservation for Review > General Overview

Criminal Law & Procedure > Appeals > Standards of Review > Plain Error > General Overview

A timely objection must be made on the record to preserve any alleged error for appellate review. A timely objection brings the alleged error to the attention of the trial court and provides an opportunity to correct the error at trial. Appellant's objection at the close of the witnesses' testimony was not timely.

Criminal Law & Procedure > Trials > Examination of Witnesses > Cross-Examination

Evidence > Testimony > Examination > General Overview

Criminal Law & Procedure > Trials > Direct Examinations

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion > General Overview

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion > Witnesses

Evidence > Testimony > General Overview

Evidence > Testimony > Examination > Direct Examination

The extent of cross-examination rests in the discretion of the trial court and reversal is only warranted where there is an abuse of discretion resulting in prejudice to the defendant. As a general rule, any matter is a proper subject of cross examination which is responsive to testimony given on direct examination or which is material or relevant thereto and which tends to elucidate, modify, explain, contradict or rebut testimony given in chief by the witness. When a defendant opens up a field of inquiry on direct examination, he may not complain of subsequent cross-examination of the same subject.

Criminal Law & Procedure > Trials > Examination of Witnesses > Cross-Examination

Evidence > Testimony > Examination > General Overview

Evidence > Testimony > Examination > Leading Questions

Okla. Stat. tit. 12, § 2611(D) (2001) states that the use of leading questions during cross-examination is ordinarily permissible.

Criminal Law & Procedure > Appeals > Standards of Review > General Overview

Criminal Law & Procedure > Counsel > Effective Assistance > Trials

Okla. R. Ct. Crim. App. 3.11(B)(3)(b), Okla. Stat. tit. 22, ch. 18, app. (2001) allows an appellant to request an evidentiary hearing when it is alleged on appeal that trial counsel was ineffective for failing to utilize available evidence which could have been made available during the course of trial. Once an application has been properly submitted along with supporting affidavits, appellate courts review the application to see if it contains sufficient evidence to show the courts by clear and convincing evidence there is a strong possibility trial counsel was ineffective for failing to utilize or identify the complained-of evidence. R. 3.11(B)(3)(b)(i). In order to meet the "clear and convincing" standard, the appellant

must present the court with evidence, not speculation, second guesses or innuendo. This requirement of setting forth evidence does not include requests for more to time to develop and investigate information that was readily available during trial preparation. Under the provisions of Rule 3.11, an appellant is afforded a procedure to have included in the record for review on appeal evidence which was known by trial counsel but not used or evidence which was available but not discovered by counsel. It is not a procedure for post-trial discovery.

Criminal Law & Procedure > Appeals > Briefs

Criminal Law & Procedure > Appeals > Reviewability > Preservation for Review > General Overview

Civil Procedure > Appeals > Records on Appeal

Criminal Law & Procedure > Appeals > General Overview

Criminal Law & Procedure > Appeals > Reviewability > Waiver > General Overview

The failure to raise in an appellate brief an issue within the appellate record waives its consideration, Okla. R. Ct. Crim. App. 3.5(A)(5) and (C) (6), Okla. Stat. tit. 22, ch. 18, app. (2001). The failure to raise an issue within the appellate record not only denies the State the opportunity of responding to the allegation, but also gives the impression of an attempt to violate the page limits set for briefs in capital cases, Okla. R. Ct. Crim. App. 9.3(A), Okla. Stat. tit. 22, ch. 18, app. (2001). In contrast, a Okla. R. Ct. Crim. App. 3.11, Okla. Stat. tit. 22, ch. 18, app. (2001) hearing is reserved for issues outside of the appellate record. In the future, the failure to fully raise and support by authority in the brief in chief those issues contained within the appellate record will constitute waiver of those issues on appeal.

Criminal Law & Procedure > Sentencing > Capital Punishment > Aggravating Circumstances

Criminal Law & Procedure > Sentencing > Capital Punishment > Mitigating Circumstances

Appellate courts hold that when a competent defendant intends to completely forego the presentation of any mitigating evidence during second stage of a capital punishment proceeding, counsel must obtain a knowing waiver to that effect. That need has not been extended where some mitigation evidence is offered.

Criminal Law & Procedure > Counsel > General Overview

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Counsel > General Overview

It is the (competent) client's case, not the lawyer's. While, counsel has the responsibility to advise, inform, and consult with the client, the defendant has the right be involved in the decision process that will affect his or her life.

Criminal Law & Procedure > Appeals > General Overview

Criminal Law & Procedure > Sentencing > Consecutive Sentences

Criminal Law & Procedure > Sentencing > Corrections, Modifications & Reductions > General Overview

Criminal Law & Procedure > Appeals > Reversible Errors > Cumulative Errors

A cumulative error argument has no merit when appellate courts fail to sustain any of the other errors raised by an appellant.

Criminal Law & Procedure > Appeals > Briefs

Civil Procedure > Appeals > Briefs

Okla. R. Ct. Crim. App. 3.5(A)(5), Okla. Stat. tit. 22, ch. 18, app. (2003) requires an appellate brief to state an argument, containing the contentions of the appellant, which sets forth all assignment of error, supported by citations to the authorities, statutes and parts of the record. Appellate courts will not review allegations of error that are neither supported in the record or by legal authority.

Criminal Law & Procedure > Sentencing > Appeals > General Overview

Criminal Law & Procedure > Sentencing > Capital Punishment > General Overview

Criminal Law & Procedure > Sentencing > Capital Punishment > Cruel & Unusual Punishment

Pursuant to Okla. Stat. tit. 21, § 701.13(C) (2001, appellate courts must determine (1) whether the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor, and (2) whether the evidence supports the jury's finding of the aggravating circumstances as enumerated in Okla. Stat. tit. 21, § 701.12 (2001).To support a finding that the murder was especially

heinous, atrocious, or cruel requires proof that the death was preceded by torture or serious physical abuse. This includes evidence that shows the infliction of either great physical anguish or extreme mental cruelty. After making the above determination, the attitude of the killer and the pitiless nature of the crime can also be considered.

Opinion

Opinion by: LUMPKIN

Opinion

{98 P.3d 326} LUMPKIN, JUDGE:

P1 Appellant Ronald Clinton Lott was tried by jury and convicted of two counts of First Degree Murder (21 O.S.Supp. 1985, § 701.7), Case No. CF-87-963, in the District Court of Oklahoma County. The jury found the existence of two aggravating circumstances {98 P.3d 327} in each count and recommended the punishment of death for each count. The trial court sentenced accordingly. From this judgment and sentence Appellant has perfected this appeal. 1

P2 Sometime after 10:30 p.m., September 2, 1986, Anna Laura Fowler was attacked in her home, raped and murdered. Mrs. Fowler was 83 years old and lived alone. As a result of the attack, Mrs. Fowler suffered severe contusions on her face, arms and legs, and multiple rib fractures. She died from asphyxiation.

P3 Zelma Cutler lived across the street from Mrs. Fowler. Mrs. Cutler was 93 years old and lived alone. During the early morning hours of January 11, 1987, Mrs. Cutler was attacked, raped and murdered in her home. Mrs. Cutler suffered severe contusions on her arms and legs as a result of the attack. She also suffered multiple rib fractures. Mrs. Cutler died from asphyxiation.

P5 In approximately 1992, during Robert Miller's appeal period, Miller was excluded as the source of semen in the Fowler/Cutler cases through DNA testing. DNA testing subsequently implicated Appellant as the source of the semen. While Appellant was incarcerated for the Marshall/Foster crimes, he was charged with two counts of malice aforethought murder or in the alternative first degree felony murder for the murders of Mrs. Fowler and Mrs. Cutler.

SHAUN MICHAEL BOSSE, Petitioner v. STATE OF OKLAHOMA, Respondent.
COURT OF CRIMINAL APPEALS OF OKLAHOMA
2021 OK CR 3; 484 P.3d 286; 2021 Okla. Crim. App. LEXIS 3
Case Number: PCD-2019-124
March 11, 2021, Decided
Editorial Information: Subsequent History

Stay granted by Oklahoma v. Bosse, 210 L. Ed. 2d 855, 2021 U.S. LEXIS 2736, 2021 WL 2123824 (U.S., May 26, 2021)Petition for certiorari filed at, 08/06/2021

Editorial Information: Prior History

AN APPEAL FROM THE DISTRICT COURT OF McCLAIN COUNTY. THE HONORABLE LEAH EDWARDS, DISTRICT JUDGE.Bosse v. State, 2015 OK CR 14, 360 P.3d 1203, 2015 Okla. Crim. App. LEXIS 14 (Okla. Crim. App., Oct. 16, 2015)

Counsel MICHAEL W. LEIBERMAN, SARAH M. JERNIGAN, ASST. FEDERAL PUBLIC DEFENDERS, WESTERN DISTRICT OF OKLAHOMA, OKLAHOMA CITY, OK, COUNSEL FOR PETITIONER.

MIKE HUNTER, ATTORNEY GENERAL OF OKLAHOMA, MITHUN MANSINGHANI, SOLICITOR GENERAL OF OKLAHOMA, JENNIFER L. CRABB, CAROLINE E.J. HUNT, ASST. ATTORNEYS GENERAL, OKLAHOMA CITY, OK, COUNSEL FOR RESPONDENT.

STEPHEN GREETHAM, DEBRA GEE, OKLAHOMA CITY, OK; FRANK S. HOLLEMAN, DOUGLAS B.L. ENDRESON, SONOSKY, CHAMBERS, SACHSE, ENDRESON & PERRY, LLP, WASHINGTON, DC, ATTORNEYS FOR AMICUS CURIAE CHICKASAW NATION.

Judges: OPINION BY KUEHN, P.J. ROWLAND, V.P.J.: CONCUR IN RESULTS. LUMPKIN, J.: CONCUR IN RESULTS. LEWIS, J.: SPECIALLY CONCUR. HUDSON, J.: CONCUR IN RESULTS.

CASE SUMMARYDefendant's victims were Indian, and the crime was committed in Indian Country, and as such, state jurisdiction over those crimes were preempted by federal law. The federal government, not the State of Oklahoma, had jurisdiction to prosecute defendant.

OVERVIEW: HOLDINGS: [1]-The parties stipulated that all three victims of the crime were members of the Chickasaw Nation, which was a federally recognized tribe; [2]-Congress did not disestablish the Chickasaw Nation Reservation, and the crimes at issue occurred in Indian Country; [3]-It was inappropriate for the appellate court to be in the business of deciding who was Indian, and the district court correctly determined that the victims had some Indian blood; [4]-Absent any law, compact, or treaty allowing for jurisdiction in state, federal or tribal courts, federal and tribal governments had

jurisdiction over crimes committed by or against Indians in Indian Country, and state jurisdiction over those crimes was preempted by federal law, and the State of Oklahoma did not have concurrent jurisdiction to prosecute defendant.

OUTCOME: Judgment reversed and remanded.

LexisNexis Headnotes

Governments > Native Americans > Property Rights

Congress must clearly express its intent to disestablish a reservation, commonly with an explicit reference to cession or other language evidencing the present and total surrender of all tribal interests.

Governments > Legislation > Interpretation

The question of whether Congress has disestablished a reservation is primarily established by the language of the law -- statutes and treaties -- concerning relations between the United States and a tribe. There is no need to consult extratextual sources when the meaning of a statute's terms is clear. Nor may extratextual sources overcome those terms. Neither historical practices, nor demographics, nor contemporary events, are useful measures of Congress's intent unless there is some ambiguity in statute or treaty language.

Governments > Native Americans > Authority & Jurisdiction

Each tribe's treaties must be considered on their own terms.

Governments > Native Americans > Property Rights

After Congress has established a reservation, only Congress may disestablish it, by clearly expressing its intent to do so; usually this will require an explicit reference to cession or other language evidencing the present and total surrender of all tribal interests.

Governments > Native Americans > Major Crimes Act

Governments > Native Americans > Authority & Jurisdiction

Governments > Native Americans > Civil Rights

As sovereigns, tribes have the authority to determine tribal citizenship. Some tribes have a blood quantum requirement, and some do not. Of those that do, the percentage differs among individual tribes. If a person charged with a crime has some Indian blood, and they are recognized as being an Indian by a tribe or the federal government, the appellate court need not second-guess that recognition based on an arbitrary mathematical formula.

Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction

It is settled law that subject-matter jurisdiction can never be waived or forfeited. The District Attorney admits that generally litigants cannot waive the argument that the district court lacks subject-matter jurisdiction. The appellate court has repeatedly held that the limitations of post-conviction or subsequent post-conviction statutes do not apply to claims of lack of jurisdiction.

Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction

Subject-matter jurisdiction may -- indeed, must -- be raised at any time.

Governments > Native Americans > Major Crimes Act

Governments > Native Americans > Authority & Jurisdiction

Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction

Constitutional Law > Supremacy Clause > Federal Preemption

The General Crimes Act and the Major Crimes Act give federal courts jurisdiction over crimes committed by or against Indians in Indian Country, 18 U.S.C.S. §§ 1152, 1153. Congress provides that crimes committed in certain locations or under some specific circumstances are within the sole and exclusive jurisdiction of the United States. Section 1152, the General Crimes Act, brings crimes committed in Indian Country within that jurisdiction, unless they lie within the jurisdiction of tribal courts or jurisdiction is otherwise expressly provided by federal law, 18 U.S.C.S. § 1152; 18 U.S.C.S. § 1153. This gives federal courts jurisdiction over Indians and non-Indians who commit crimes against Indians in Indian Country. By explicitly noting that it may expressly provide otherwise, Congress has preempted jurisdiction over these crimes in state courts. Indeed, this Court has held that federal law preempts state jurisdiction over crimes committed by or against an Indian in Indian Country. State courts retain jurisdiction over non-Indians who commit crimes against non-Indians in Indian Country.

Constitutional Law > Supremacy Clause > Federal Preemption

Where federal jurisdiction lies under 18 U.S.C.S. § 1153, it preempts state jurisdiction.

Governments > Native Americans > Major Crimes Act

Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction

Governments > Native Americans > Authority & Jurisdiction

The General Crimes Act provides that federal jurisdiction may be changed by law, 18 U.S.C.S. § 1152. And Congress has done so, giving the State of Kansas criminal jurisdiction on Indian reservations in that state. The Kansas Act conferred jurisdiction on Kansas courts for offenses of state law committed by or against Indians on reservations in Kansas, 18 U.S.C.S. § 3243. The Supreme Court determined that this Act confers concurrent jurisdiction on State courts only to the extent that the State of Kansas may prosecute people for state law offenses that are also punishable as offenses under federal law; otherwise, the jurisdiction to prosecute federal crimes committed on Kansas reservations lies with the federal government.

Governments > Native Americans > Major Crimes Act

Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction

Governments > Native Americans > Authority & Jurisdiction

In a separate provision, P.L. 280 created a framework for other states to assume jurisdiction over crimes committed in Indian Country, with the consent of the affected tribe; the state and the federal government may have concurrent jurisdiction if the affected tribe requests it and with the consent of the Attorney General. 25 U.S.C.S. § 1321(a).

Governments > Native Americans > Major Crimes Act

Governments > Native Americans > Authority & Jurisdiction

Constitutional Law > Supremacy Clause > Federal Preemption

Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction

Absent any law, compact, or treaty allowing for jurisdiction in state, federal or tribal courts, federal and tribal governments have jurisdiction over crimes committed by or against Indians in Indian Country, and state jurisdiction over those crimes is preempted by federal law.

Opinion

Opinion by: KUEHN

Opinion

{484 P.3d 288} OPINION GRANTING POST-CONVICTION RELIEF

KUEHN, PRESIDING JUDGE:

P1 Shaun Michael Bosse was tried by jury and convicted of three counts of First Degree Murder and one count of First Degree Arson in the District Court of McClain County, Case No. CR-2010-213. He was sentenced to death on the murder counts and to thirty-five (35) years imprisonment and a $25,000.00 fine for the arson count.

P2 On direct appeal, this Court upheld Petitioner's convictions and sentences.1 Petitioner's first Application for Post-Conviction Relief in this Court was denied.2 Petitioner filed this Successive Application for Post-Conviction Relief on February 20, 2019. The crux of Petitioner's Application lies in his jurisdictional challenge.

P3 In Proposition I Petitioner claims the District Court lacked jurisdiction to try him. Petitioner argues that his victims were citizens of the Chickasaw Nation, and the crime occurred within the boundaries of the Chickasaw Nation. He relies on McGirt v. Oklahoma, 140 S.Ct. 2452, 207 L. Ed. 2d 985 (2020) in which the United States Supreme Court reaffirms the basic law regarding federal, state and tribal jurisdiction over crimes, which is based on the location of the crimes themselves and the Indian status of the parties. The Court first determined that Congress, through treaty and statute, established a reservation for the Muscogee Creek Nation. Id., 140 S.Ct. at 2460-62. Having established the reservation, only Congress may disestablish it. Id., 140 S.Ct. at 2463; Solem v. Bartlett, 465 U.S. 463, 470, 104 S. Ct. 1161, 79 L. Ed. 2d 443 (1984). Congress must clearly express its intent to disestablish a reservation, commonly with an "explicit reference to cession or other

language evidencing the present and total surrender of all tribal interests." McGirt, 140 S.Ct. at 2462 (quoting Nebraska v. Parker, 577 U.S. 481, 136 S.Ct. 1072, 1079, 194 L. Ed. 2d 152 (2016)). The Court concluded that Congress had not disestablished the {484 P.3d 289} Muscogee Creek Reservation. McGirt, 140 S.Ct. at 2468. Consequently, the federal and tribal governments, not the State of Oklahoma, have jurisdiction to prosecute crimes committed by or against Indians on the Muscogee Creek Reservation. 18 U.S.C. §§ 1152, 1153.

P4 The question of whether Congress has disestablished a reservation is primarily established by the language of the law -- statutes and treaties -- concerning relations between the United States and a tribe. McGirt, 140 S.Ct. at 2468. "There is no need to consult extratextual sources when the meaning of a statute's terms is clear. Nor may extratextual sources overcome those terms." McGirt, 140 S.Ct. at 2469. Neither historical practices, nor demographics, nor contemporary events, are useful measures of Congress's intent unless there is some ambiguity in statute or treaty language. Id. at 2468-69; see also Oneida Nation v. Village of Hobart, 968 F.3d 664, 675 n.4 (7th Cir. 2020) (McGirt "establish[ed] statutory ambiguity as a threshold for any consideration of context and later history."). Thus our analysis begins, and in the case of the Chickasaw Nation, ends, with the plain language of the treaties.

P5 McGirt itself concerns only the prosecution of crimes on the Muscogee Creek Reservation. However, its reasoning applies to every claim that the State lacks jurisdiction to prosecute a defendant under 18 U.S.C. §§ 1152, 1153. Of course, not every tribe will be found to have a reservation; nor will every reservation continue to the present. "Each tribe's treaties must be considered on their own terms. . . ." McGirt, 140 S.Ct. at 2479. The treaties concerning the Five Tribes which were resettled in Oklahoma in the mid-1800s (the Muscogee Creek, Cherokee, Chickasaw, Choctaw, and Seminole) have significantly similar provisions; indeed, several of the same treaties applied to more than one of those tribes. It is in that context that we review Petitioner's claim.

P6 On August 12, 2020, this Court remanded this case to the District Court of McClain County for an evidentiary hearing. The District Court was directed to make findings of fact and conclusions of law on two issues: (a) the victims' status as Indians; and (b) whether the crime occurred in Indian Country, within the boundaries of the Chickasaw Nation Reservation. Our Order provided that the parties could enter into written stipulations. On October 13, 2020, the District Court filed its Findings of Fact and Conclusions of Law in the District Court.

Stipulations regarding victims' Indian status

P7 The parties stipulated that all three victims of the crime, Katrina and Christian Griffin and Chasity Hammer, were members of the Chickasaw Nation. This stipulation included recognition that the Chickasaw Nation is a federally recognized tribe. The District Court concluded as a matter of law that all three victims had some Indian blood and were recognized as Indian by a tribe or the federal government. We adopt these findings and conclusions, and find that the victims in this case were members of the Chickasaw Nation.

District Court Findings of Fact

P8 The District Court found that Congress established a reservation for the Chickasaw Nation of Oklahoma. The District Court found these facts:

(1) The Indian Removal Act of 1830 authorized the federal government to negotiate with Native American tribes for their removal to territory west of the Mississippi River in exchange for the tribes' ancestral lands. Indian Removal Act of 1830, § 3, 4 Stat. 411, 412.

(2) The 1830 Treaty of Dancing Rabbit Creek (1830 Treaty) granted citizens of the Choctaw Nation and their descendants specific land in fee simple, "while they shall exist as a nation and live on it," in exchange for cession of the Choctaw Nation lands east of the Mississippi River. Treaty of Dancing Rabbit Creek, art. 2, Sept. 27, 1830, 7 Stat 333. The Treaty provided that any territory or state should have neither the right to pass laws governing the Choctaw Nation nor embrace any part of the land granted the Choctaw {484 P.3d 290} Nation by the treaty. Id. art. 4. The land boundaries were:

[B]eginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork; if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning.Id. art. 2.

(3) The 1837 Treaty of Doaksville (1837 Treaty) granted the Chickasaw Nation a district within the boundaries of the 1830 Treaty of Dancing Rabbit Creek, to be held by the Chickasaw Nation on the same terms as were granted to the Choctaw Nation. 1837 Treaty of Doaksville, art. 1, Jan. 17, 1837, 11 Stat 573.

(4) Congress modified the western boundary of the Chickasaw Nation in the 1855 Treaty of Washington (1855 Treaty), pledging to "forever secure and guarantee" the land to those tribes, and reserving them from sale without both tribes' consent. 1855 Treaty of Washington with the Choctaw and the Chickasaw, art. 1, 2, June 22, 1855, 11 Stat. 611. This Treaty also reaffirmed the Chickasaw Nation's right of self-government. Id. art. 7.

(5) In 1866, the United States entered into the 1866 Treaty of Washington (1866 Treaty), which reaffirmed both the boundaries of the Chickasaw Nation and its right to self-governance. 1866 Treaty of Washington with the Chickasaw and Choctaw, art. 10, Apr. 28, 1866, 14 Stat. 699.

(6) The parties stipulated that the location of the crime, 15634 212th St., Purcell, OK, is within the boundaries of the Chickasaw Nation set forth in the 1855 and 1866 Treaties.

(7) The property at which the crime occurred was transferred directly in 1905 from the Choctaw and Chickasaw Nations to George Roberts, in a Homestead Patent. Title may be traced directly to the

Reservation lands granted the Choctaw and Chickasaw Nations, and subsequently allotted to individuals, and was never owned by the State of Oklahoma.

(8) The Chickasaw Nation is a federally recognized Indian tribe, exercising sovereign authority under a constitution approved by the United States Secretary of the Interior.

(9) No evidence before the District Court showed that the treaties were formally nullified or modified in any way to reduce or cede Chickasaw lands to the United States or to any other state or territory.

(10) The parties stipulated that if the District Court determined the treaties established a reservation, and if the District Court concluded that Congress never explicitly erased the boundaries and disestablished the reservation, then the crime occurred within Indian Country as defined by 18 U.S.C. § 1151(a).

District Court Conclusions of Law

P9 The District Court first found, and this Court agrees, that the absence of the word "reservation" in the 1855 and 1866 Treaties is not dispositive. McGirt, 140 S.Ct. at 2461. The court emphasized the language in the 1830 Treaty that granted the land "in fee simple to them and their descendants, to inure to them while they shall exist as a nation." 1830 Treaty, art. 2. The 1830 Treaty secured rights of self-government and jurisdiction over all persons and property with Treaty territory, promising that no state should interfere with the rights granted under the Treaty. Id. art. 4. That treaty applies to the Chickasaw Nation under the 1837 Treaty of Doaksville, which guaranteed the Chickasaw Nation the same privileges, rights of homeland ownership and occupancy granted the Choctaw Nation by the 1830 Treaty. 1837 Treaty, art. 1. In the 1855 Treaty, the United States promised to "forever secure and guarantee" specific lands to the Choctaw and Chickasaw Nations, and reaffirmed those tribes' rights to self-government and full jurisdiction over persons and property within{484 P.3d 291} their limits. 1855 Treaty arts. 1, 7. This was reaffirmed in the 1866 Treaty, by which the Chickasaw and Choctaw Nations agreed to cede defined lands to the United States for a sum certain. 1866 Treaty, art. 3. Thus, the District Court concluded, the treaty promises to the Chickasaw Nation were not gratuitous. McGirt, 140 S.Ct. at 2460.

P10 Based on this law, the District Court concluded that Congress established a reservation for the Chickasaw Nation. We adopt this conclusion of law.

P11 The District Court found that Congress has not disestablished the Chickasaw Nation Reservation. After Congress has established a reservation, only Congress may disestablish it, by clearly expressing its intent to do so; usually this will require "an explicit reference to cession or other language evidencing the present and total surrender of all tribal interests." McGirt, 140 S.Ct. at 2463 (quoting Parker, 136 S.Ct. at 1079). The District Court found no explicit indication or expression of Congressional intent to disestablish the Chickasaw Reservation. The Court specifically stated, "No evidence was presented that the Chickasaw reservation was 'restored to public domain,' 'discontinued,

abolished or vacated.' Without, [sic] explicit evidence of a present and total surrender of all tribal interests, the Court cannot find the Chickasaw reservation was disestablished." Findings of Fact and Conclusions of Law, CF-2010-213, PCD-2019-124, Oct. 13, 2020 at 9-10 (internal citations omitted).

P12 Based on the evidence, the District Court concluded that Congress never erased the boundaries and disestablished the Chickasaw Nation Reservation. The Court further concluded that the crimes at issue occurred in Indian Country. We adopt these conclusions.

The State's Arguments

P13 After the evidentiary hearing, a supplemental brief was filed on behalf of the State of Oklahoma by the District Attorney for McClain County. The Attorney General and District Attorney ask this Court to find that the State of Oklahoma has concurrent jurisdiction with the federal and tribal governments where, as here, a non-Indian commits a crime against Indian victims in Indian Country. The Attorney General and the District Attorney suggest that various procedural defenses should apply. The District Attorney also raises a separate claim, arguing that this Court should alter its definition of Indian status, an argument not raised by the Attorney General.

Blood Quantum

P14 The District Attorney states that the District Judge avoided the issue of blood quantum when making her findings and conclusions.3 He now requests that this Court require a specific blood quantum to meet the definition of Indian status to avoid a "jurisdictional loophole". In the Remand Order, and in the numerous similar Orders in which we remanded other cases for consideration of the jurisdictional question, this Court clearly set out the definition of Indian it expected lower courts to use. We directed the District Court to "determine whether (1) the victims had some Indian blood, and (2) were recognized as an Indian by a tribe or by the federal government." This test, often referred to as the Rogers4 test, is used in a majority of jurisdictions, including in cases cited by the District Attorney.

P15 In stating this test we cited two cases from the Tenth Circuit, 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).5 The references {484 P.3d 292} clearly state the test to be used in determining Indian status.
Prentiss discusses the history, wide acceptance, and application of the Rogers test. The opinion notes that the first prong of the test may be proved by a variety of evidence, which may include a certificate of tribal enrollment which sets forth the person's degree of Indian blood, or a listing on a tribal roll which requires a certain degree of Indian blood. Prentiss, 273 F.3d at 1282-83. Diaz states that the Tenth Circuit uses a "totality-of-the-evidence approach," which may include proof of blood quantum, but only if a particular tribe requires it. Diaz, 679 F.3d at 1187.

P16 The District Attorney correctly observes that a minority of courts have chosen to impose a particular blood quantum, or to state in individual cases whether a specific blood quantum meets the threshold of "some blood." The State of Oklahoma is within the jurisdictional boundaries of the Tenth

Circuit. If the jurisdictional test is met and it is determined that a particular case must be prosecuted in a federal district court, the Tenth Circuit definition will govern in that court. There is simply no rhyme nor reason to require a test for Indian status in our Oklahoma state courts that is significantly different from that used in the comparable federal courts.6 Consistency and economy of judicial resources compel us to adopt the same definition as that used by the Tenth Circuit.7

P17 Without any foundation in law, the District Attorney speculates that, without a precise blood quantum requirement, a defendant might claim he is Indian in a state court -- thus defeating state court jurisdiction -- and yet be found not Indian in federal court, escaping criminal prosecution altogether. He cites no relevant or persuasive law to support this speculation. The District Attorney relies on a single case from the State of Washington, State v. Dennis, 67 Wn. App. 863, 840 P.2d 909 (Wash. App. 1992). Blood quantum was not an issue in that case and is not mentioned in the opinion. The defendant, a member of a Canadian tribe, was charged in state court with murdering his wife. In state court, defendant successfully argued that he was an Indian under the Major Crimes Act, Section 1153, and thus not subject to State jurisdiction. Of course, the federal district court found otherwise, since defendant was not a member of a federally recognized tribe. Id., 840 P.2d at 910. The State never appealed the initial dismissal in state district court. After federal charges were dismissed, the State of Washington attempted to reinstate the charges. The Washington Court of Appeals found that, given the State's failure to appeal the initial state court ruling, the State was precluded by statute from reinstating the case. Id. at 910-11. The appellate court specifically noted that the problem in this case was not the defendant's claim, but that the trial court made a mistake of law in concluding defendant was Indian under the Major Crimes Act. Id. If anything, this case underscores the utility and flexibility of the Rogers test, when correctly applied. It is clear that, using that test, jurisdiction always lay with the State of Washington.

P18 There simply is no jurisdictional loophole as described by the District Attorney. To cure this nonexistent problem, the State would have this Court adopt a test which is different from, and potentially more restrictive than, the test used in our corresponding federal system. This would be far more likely {484 P.3d 293} to result in the kind of confusion the District Attorney warns against. Say this Court were to adopt a particular blood quantum number. A defendant could be a member of a federally recognized tribe, with Indian blood less than that quantum. He would not be Indian in state court, and the State would retain jurisdiction. However, when the convicted defendant filed a writ of habeas corpus in federal court, because he had some Indian blood, he would meet the Rogers test. The federal court would find that the State had no jurisdiction, and the defendant should have been tried in federal court to begin with -- just like McGirt. Consistency and economy of judicial resources compel us to adopt the same definition as that used by the Tenth Circuit.

P19 Furthermore, we find it inappropriate for this Court to be in the business of deciding who is Indian. As sovereigns, tribes have the authority to determine tribal citizenship. Plains Commerce Bank v. Long Family Land & Cattle Co., 554 U.S. 316, 327, 128 S. Ct. 2709, 171 L. Ed. 2d 457 (2008); see also United States v. Antelope, 430 U.S. 641, 646, 97 S. Ct. 1395, 51 L. Ed. 2d 701 (1977) (Indian status determined by recognition by tribe acting as separate sovereign, not by racial classification). Some tribes have a blood quantum requirement, and some do not. Of those that do, the percentage differs among individual tribes. If a person charged with a crime has some Indian blood, and they are recognized as being an Indian by a tribe or the federal government, this Court need not second-guess that recognition based on an arbitrary mathematical formula. The District Court correctly

followed this Court's instructions in the Order remanding this case, determining that the victims had some Indian blood.

Procedural Defenses

P20 Both the Attorney General and the District Court ask this Court to consider this case barred for a variety of procedural reasons: waiver under the successive capital post-conviction statute, 22 O.S.2011, § 1089(D), and waiver of the jurisdictional challenge; failure to meet the sixty-day filing deadline to raise a previously unavailable legal or factual basis in subsequent post-conviction applications under Rule 9.7(G)(3), Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, App. (2021); and the doctrine of laches. Through the District Attorney, the State admits that this Court has resolved these issues in this case in our Order remanding for an evidentiary hearing:

Under the particular facts and circumstances of this case, and based on the pleadings in this case before the Court, we find that Petitioner's claim is properly before this court. The issue could not have been previously presented because the legal basis for the claim was unavailable. 22 O.S. §§ 1089(D)(8)(a), 1089(D)(9)(a); McGirt v. Oklahoma, 140 S.Ct. 2452, 207 L. Ed. 2d 985 (2020).Bosse v. State, PCD-2019-124, Order Remanding for Evidentiary Hearing at 2 (Okl.Cr. Aug. 12, 2020). The State asks us to reconsider this determination, but offers no compelling arguments in support.8

P21 It is settled law that "[s]ubject-matter jurisdiction can never be waived or forfeited." Gonzalez v. Thaler, 565 U.S. 134, 141, 132 S. Ct. 641, 181 L. Ed. 2d 619 (2012). The District Attorney admits that generally litigants "cannot waive the argument that the district court lacks subject-matter jurisdiction," citing United States v. Green, 886 F.3d 1300, 1304 (10th Cir. 2018); see also United States v. Garcia, 936 F.3d 1128, 1140-41 (10th Cir. 2019) (parties can neither waive subject-matter jurisdiction nor consent to trial in a court without jurisdiction). This Court has repeatedly held that the limitations of post-conviction or subsequent post-conviction statutes do not apply to claims of lack of jurisdiction. Wackerly v. {484 P.3d 294} State, 2010 OK CR 16, ¶ 4, 237 P.3d 795, 797; Wallace v. State, 1997 OK CR 18, ¶ 15, 935 P.2d 366, 372; see also Murphy v. State, 2005 OK CR 25, ¶¶ 5-7, 124 P.3d 1198, 1200 (recognizing limited scope of post-conviction review, then addressing newly raised jurisdictional claim on the merits). In Wackerly, we also held the time limit on newly raised issues in Rule 9.7 did not apply to jurisdictional questions. Wackerly, 2010 OK CR 16, ¶ 4, 237 P.3d at 797.9

P22 McGirt provides a previously unavailable legal basis for this claim. Subject-matter jurisdiction may -- indeed, must -- be raised at any time. No procedural bar applies, and this issue is properly before us. 22 O.S. §§ 1089(D)(8)(a), 1089(D)(9)(a).

There is no concurrent jurisdiction.

P23 The General Crimes Act and the Major Crimes Act give federal courts jurisdiction over crimes committed by or against Indians in Indian Country. 18 U.S.C. §§ 1152, 1153. Congress provides that

crimes committed in certain locations or under some specific circumstances are within the sole and exclusive jurisdiction of the United States. Section 1152, the General Crimes Act, brings crimes committed in Indian Country within that jurisdiction, unless they lie within the jurisdiction of tribal courts or jurisdiction is otherwise expressly provided by federal law. 18 U.S.C. § 1152; see also 18 U.S.C. § 1153 (Major Crimes Act). This gives federal courts jurisdiction over Indians and non-Indians who commit crimes against Indians in Indian Country. By explicitly noting that it may expressly provide otherwise, Congress has preempted jurisdiction over these crimes in state courts. Indeed, this Court has held that federal law preempts state jurisdiction over crimes committed by or against an Indian in Indian Country. Cravatt v. State, 1992 OK CR 6, ¶ 20, 825 P.2d 277, 280. State courts retain jurisdiction over non-Indians who commit crimes against non-Indians in Indian Country. Id.; Solem, 465 U.S. at 465 n.2; Williams v. United States, 327 U.S. 711, 714, 66 S. Ct. 778, 90 L. Ed. 962 & n.10 (1946).

P24 The State argues that, despite the clear language of both statute and case law, federal and state courts have concurrent jurisdiction over non-Indians under the General Crimes Act. The law does not support this argument. The Attorney General relies in part on United States v. McBratney, 104 U.S. 621, 26 L. Ed. 869 (1881) to support his argument. However, in McBratney, a non-Indian murdered another non-Indian within the boundaries of the Ute Reservation. The Supreme Court held that the federal government had no jurisdiction to prosecute a crime committed in Indian Country where neither the perpetrator nor the victim were Indian. Id., 104 U.S. at 624. Nothing in that opinion supports a conclusion that, where federal jurisdiction exists by statute, states have concurrent jurisdiction as well. And the Supreme Court itself later refuted any such interpretation. In Donnelly v. United States, the Court held that McBratney did not apply to "offenses committed by or against Indians," which were subject to federal jurisdiction. Donnelly, 228 U.S. 243, 271-72, 33 S. Ct. 449, 57 L. Ed. 820 (1913). In the context of federal criminal jurisprudence and Indian Country, Donnelly reaffirmed Congress's preemption of state jurisdiction over crimes by or against Indians.10 More recently, the Court has noted that where federal jurisdiction lies under Section 1153, it preempts state jurisdiction. United States v. John, 437 U.S. 634, 651, 98 S. Ct. 2541, 57 L. Ed. 2d 489{484 P.3d 295} (1978); see also Goforth v. State, 1982 OK CR 48, ¶ 5, 644 P.2d 114, 115-16 (federal jurisdiction under §§ 1152, 1153 preempts state jurisdiction except as to crimes among non-Indians).

P25 The General Crimes Act provides that federal jurisdiction may be changed by law. 18 U.S.C. § 1152. And Congress has done so, giving the State of Kansas criminal jurisdiction on Indian reservations in that state. The Kansas Act conferred jurisdiction on Kansas courts for offenses of state law committed by or against Indians on reservations in Kansas. 18 U.S.C. § 3243. The Supreme Court determined that this Act confers concurrent jurisdiction on State courts only to the extent that the State of Kansas may prosecute people for state law offenses that are also punishable as offenses under federal law; otherwise, the jurisdiction to prosecute federal crimes committed on Kansas reservations lies with the federal government. Negonsott v. Samuels, 507 U.S. 99, 105--106, 113 S. Ct. 1119, 122 L. Ed. 2d 457 (1993).

P26 Congress also created the opportunity for six specific states to exercise jurisdiction over crimes committed in Indian Country by enacting Public Law 280. Act of Aug. 15, 1953, Pub. L. No. 67, Stat. 588, codified at 18 U.S.C. § 1162, 25 U.S.C. § 1321-26; 18 U.S.C. § 1162(a). In a separate provision, P.L. 280 created a framework for other states to assume jurisdiction over crimes committed in Indian Country, with the consent of the affected tribe; the state and the federal government may have

concurrent jurisdiction if the affected tribe requests it and with the consent of the Attorney General. 25 U.S.C. § 1321(a). Oklahoma has not exercised the options for criminal jurisdiction afforded by P.L. 280. Cravatt, ¶ 15, 825 P.2d at 279.

P27 The Kansas Act and P.L. 280 would have been unnecessary if, as the State argues, state and federal governments already have concurrent jurisdiction over non-Indians who commit crimes in Indian Country. Rather, these Acts are examples of how Congress may implement the provision in Section 1152, allowing for an exception to federal jurisdiction. Congress has written no law similarly conferring jurisdiction on Oklahoma courts, or otherwise modifying the statutory provisions granting jurisdiction for prosecution of crimes in Indian Country to federal courts in Oklahoma. Respondent does not suggest it has.

P28 Absent any law, compact, or treaty allowing for jurisdiction in state, federal or tribal courts, federal and tribal governments have jurisdiction over crimes committed by or against Indians in Indian Country, and state jurisdiction over those crimes is preempted by federal law. The State of Oklahoma does not have concurrent jurisdiction to prosecute Petitioner.

Conclusion

P29 Petitioner's victims were Indian, and this crime was committed in Indian Country. The federal government, not the State of Oklahoma, has jurisdiction to prosecute Petitioner. Proposition I is granted. Propositions II and III are moot.

DECISION

P30 The Judgment and Sentence of the District Court of McClain County is REVERSED and the case is 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 McCLAIN COUNTY

THE HONORABLE LEAH EDWARDS, DISTRICT JUDGE

OPINION BY KUEHN, P.J.

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

LUMPKIN, J.: CONCUR IN RESULTS

LEWIS, J.: SPECIALLY CONCUR

HUDSON, J.: CONCUR IN RESULTS

Concur

Concur by: ROWLAND; LUMPKIN; LEWIS; HUDSON

ROWLAND, VICE PRESIDING JUDGE, CONCURRING IN RESULTS:

P1 I concur in the result of the majority opinion, but write separately to relate my views on two of the issues discussed therein, namely the test for Indian status and the use of the term subject matter jurisdiction.

P2 My first objection with the majority opinion is its dismissal of the thought that this Court should decide who is Indian. Making a finding on the defendant's Indian status is precisely what we must do in order to determine whether the State of Oklahoma has jurisdiction since federal jurisdiction applies only to Indians. One question before us is what test we should employ to decide this particular component of Bosse's claim. In that regard, I agree fully with the majority that our test for Indian status must be identical to that used by the United States Court of Appeals for the Tenth Circuit.

P3 The Major Crimes Act is pre-emptive of state criminal jurisdiction "when it applies...." United States v. John, 437 U.S. 634, 651, 98 S. Ct. 2541, 57 L. Ed. 2d 489 (1978) (emphasis added). If the Indian Country Crimes Act or Major Crimes Act do not apply, then the State of Oklahoma, as a sovereign with general police powers, has obvious authority to prosecute and punish crimes within its borders. Adopting a test different from that used by federal courts risks this Court dismissing a case where the crime was committed in Indian country on the basis that a defendant is Indian and the federal court, under a different test, determining the defendant is not Indian and thus there is no federal jurisdiction.1 That is the type of jurisdictional void this Court warned of in Goforth v. State, 1982 OK CR 48, 644 P.2d 114, where we interpreted Article 1, Section 3 of the Oklahoma Constitution to disclaim jurisdiction over Indian lands only when federal jurisdiction is apparent. "[W]here federal law does not purport to confer jurisdiction on the United States courts, the Oklahoma Constitution does not deprive Oklahoma courts from obtaining jurisdiction over the matter." Id. 1982 OK CR 48, ¶ 8, 644 P.2d at 116.

P4 The other portion of today's majority opinion with which I do not agree is that the federal criminal statutes involved here deprive Oklahoma courts of subject matter jurisdiction. "Subject matter jurisdiction defines the court's authority to hear a given type of case." Carlsbad Tech., Inc. v. HIF Bio, Inc., 556 U.S. 635, 639, 129 S. Ct. 1862, 173 L. Ed. 2d 843 (2009). Our cases recognize three components to jurisdiction: "(1) jurisdiction over the subject matter--the subject matter in this connection was the criminal offense of murder, (2) jurisdiction over the person, and (3) the authority under law to pronounce the particular judgment and sentence herein rendered." Petition of Dare, 1962 OK CR 35, ¶ 5, 370 P.2d 846, 850--51. Like Dare, the subject matter in this case is a murder prosecution. The subject matter jurisdiction of Oklahoma courts is established by Article 7 of our State Constitution and Title 20 of our statutes which grant general jurisdiction, including over murder cases, to our district trial courts. Basic rules of federalism dictate that Congress has no power to expand or diminish that jurisdiction except where Congress has created a federal cause of action and allowed state courts to assume jurisdiction. See Simard v. Resolution Tr. Corp., 639 A.2d 540, 545 (D.C. 1994)

(noting presumption of concurrent jurisdiction among federal and state courts is rebutted only by a clear expression by Congress vesting federal courts with exclusive jurisdiction). Were it otherwise, Congress could legislatively tinker with the authority of state courts to hear all type of state crimes or civil causes of action.

P5 What Congress can do and has done is exercise its own territorial jurisdiction over Indians in Indian Country by virtue of its plenary power to regulate affairs with Indian tribes. "Congress possesses plenary power over Indian affairs, including the power to modify or eliminate tribal rights." South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 343, 118 S. Ct. 789, 139 L. Ed. 2d 773 (1998). Federal criminal authority over so-called "federal enclaves" is found at 18 U.S.C. § 7, which begins with the words, "The term 'special maritime and territorial jurisdiction of the United States', as used in this title, includes...."{484 P.3d 297} (emphasis added). The Indian Country Crimes Act, 18 U.S.C. § 1152, with exceptions, "extends the general criminal laws of federal maritime and enclave jurisdiction to Indian country...." Negonsott v. Samuels, 507 U.S. 99, 102, 113 S. Ct. 1119, 122 L. Ed. 2d 457 (1993). Thus a plain reading of Negonsott in tandem with Section 7 makes clear that it is territorial jurisdiction, not subject matter jurisdiction, which is at issue. See also United States v. Smith, 925 F.3d 410, 415 (9th Cir.), cert. denied, 140 S. Ct. 407, 205 L. Ed. 2d 231 (2019) (finding Indian Country is a federal enclave for purposes of 18 U.S.C. § 7). This is likely why none of the cases cited in the majority opinion hold that the state lacks subject matter jurisdiction over crimes by or against Indians in Indian Country. In United States v. Langford, 641 F.3d 1195, 1197 n.1 (10th Cir. 2011), the Tenth Circuit stated explicitly that the federal jurisdiction under these statutes is not subject matter jurisdiction:

When we speak of jurisdiction, we mean sovereign authority, not subject matter jurisdiction. Cf. Prentiss, 256 F.3d at 982 (disclaiming the application of subject matter jurisdiction analysis to cases involving an inquiry under the ICCA). This is consistent with use of the term in United States v. McBratney, 104 U.S. 621, 623--4, 26 L.Ed. 869 (1881).(Emphasis added).

P6 This is an important distinction, because as the majority makes clear, the lack of subject matter jurisdiction cannot be waived or forfeited and may be raised at any point in the litigation. Conversely, territorial jurisdiction may be subject to waiver. See Application of Poston, 1955 OK CR 39, ¶ 35, 281 P.2d 776, 785 (request for relief on ground that district court did not have territorial jurisdiction was denied; claim was deemed waived because it was not raised below). See also State v. Randle, 2002 WI App 116, ¶ 14, 252 Wis. 2d 743, 751, 647 N.W.2d 324, 329 (concluding territorial jurisdiction subject to waiver in some instances); Porter v. Commonwealth, 276 Va. 203, 229, 661 S.E.2d 415, 427 (Va.2008) (territorial jurisdiction is waived if not properly and timely raised); In re Teagan K.-O., 335 Conn. 745, 765 n. 22, 242 A.3d 59, 73 n. 22 (Conn.2020) (territorial jurisdiction may be subject to waiver). But see State v. Dudley, 364 S.C. 578, 582, 614 S.E.2d 623, 625-26 (2005) ("Although territorial jurisdiction is not a component of subject matter jurisdiction, we hold that it is a fundamental issue that may be raised by a party or by a court at any point in the proceeding.... The exercise of extraterritorial jurisdiction implicates the state's sovereignty, a question so elemental that we hold it cannot be waived by conduct or by consent." (Citation and footnote omitted.)).

P7 Characterizing Sections 1152 and 1153 as implicating subject matter jurisdiction would allow a defendant, knowing he is Indian and that his crimes fall within the Major Crimes Act, to forum shop, by rolling the dice at a state trial and then wiping that slate clean if he receives an unsatisfactory verdict by asserting his Indian status. Viewing it as territorial jurisdiction avoids this absurdity, and would allow the possibility that procedural bars, laches, etc. might preclude some McGirt claims.2

P8 In this case, however, I agree with the majority that our earlier ruling in our Remand Order--that Bosse timely met the requirements for raising a claim based on new law under the Capital Post-Conviction Act--resolved any claim that Bosse is procedurally barred from asserting this claim on post-

conviction. Accordingly, I concur in the result.

LUMPKIN, JUDGE: CONCURRING IN RESULTS:

P1 Bound by my oath and the Federal-State relationships dictated by the U.S. Constitution, I must at a minimum concur in the {484 P.3d 298} 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, 207 L. Ed. 2d 985 (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.

P2 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 of the solid precedents the Court has established over the last 100 years or more.

P3 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?

P4 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.

{484 P.3d 299} LEWIS, JUDGE, SPECIALLY CONCURRING:

P1 I write separately to address the notion that McGirt v. Oklahoma, 140 S.Ct. 2452, 207 L. Ed. 2d 985 (2020) addresses something less than subject matter jurisdiction over an Indian who commits a crime in Indian Country or over any person who commits a crime against an Indian in Indian Country. McGirt, of course, serves as the latest waypoint for our discussion on the treatment of criminal cases arising within the historic boundaries of Indian reservations which were granted by the United States Government many years ago. McGirt, 140 S.Ct. at 2460, 2480. The main issue in McGirt was whether those reservations were disestablished by legislative action at any point after being granted.

P2 McGirt deals specifically, and exclusively, with the boundaries of the reservation granted to the Muscogee (Creek) Nation. McGirt, 140 S.Ct. at 2459, 2479. However, the other Indian Nations comprising the Five Civilized Tribes have historical treaties with language indistinct from the treaty between the Muscogee (Creek) Nation and the federal government. Therefore, this case involving a crime occurring within the historical boundaries of the Chickasaw Nation Reservation must be analyzed in the same manner as the boundaries of the Muscogee (Creek) Nation Reservation. The District Court below conducted a thorough analysis and concluded that the reservation was not

disestablished. I agree with this conclusion.

P3 McGirt was also clear that if the reservation was not disestablished by the U.S. Congress, Oklahoma has no right to prosecute Indians for crimes committed within the historical boundaries of the Indian reservations. McGirt, 140 S.Ct. at 2460. Therefore, because the Chickasaw Nation Reservation was not disestablished, the State of Oklahoma has no authority to prosecute Indians for crimes committed within the boundaries of the Chickasaw Nation Reservation, nor does Oklahoma have jurisdiction over any person who commits a crime against an Indian within the boundaries of the Chickasaw Nation Reservation as was the case here. The federal government has exclusive jurisdiction over those cases. 18 U.S.C. § 1153(a).

P4 A lack of subject matter jurisdiction leaves a court without authority to adjudicate a matter. This Court has held that subject matter jurisdiction cannot be conferred by consent, nor can it be waived, and it may be raised at any time. Armstrong v. State, 1926 OK CR 259, 35 Okla. Crim. 116, 248 P. 877, 878; Cravatt v. State, 1992 OK CR 6, ¶ 7, 825 P.2d 277, 280; Magnan v. State, 2009 OK CR 16, ¶¶ 9 & 12, 207 P.3d 397, 402 (holding that jurisdiction over major crimes in Indian Country is exclusively federal).

P5 Because the issue in this case is one of subject matter jurisdiction, I concur that this case must be reversed and remanded with instructions to dismiss.

HUDSON, J., CONCURRING IN RESULTS:

P1 Today's decision applies McGirt v. Oklahoma, 140 S. Ct. 2452, 207 L. Ed. 2d 985 (2020) to the facts of this case. I concur in the result of the majority's opinion based on the stipulations below concerning the victims' Indian status and the location of these crimes within the historic boundaries of the Chickasaw Reservation. Under McGirt, the State cannot prosecute Petitioner because of the Indian status of the victims and the location of this crime within Indian Country as defined by federal law. I therefore as a matter of stare decisis fully concur in today's decision.

P2 I disagree, however, with the majority's adoption as binding precedent of the District Court's finding that Congress never disestablished the Chickasaw Reservation. Here, the State took no position below on whether the Chickasaw Nation has, or had, a reservation. The State's tactic of passivity has created a legal void in this Court's ability to adjudicate properly the facts underlying Petitioner's argument. This Court is left with only the trial court's conclusions of law to review for an abuse of discretion. We should find no abuse of discretion based on the record evidence presented. But we should not establish as binding precedent that the Chickasaw Nation was never disestablished based on this record.

{484 P.3d 300} P3 I also fully join Judge Rowland's special writing concerning the test for Indian status and the use of the term subject matter jurisdiction.

P4 Finally, I write separately to note that McGirt resurrects an odd sort of Indian reservation. One where a vast network of cities and towns dominate the regional economy and provide modern cultural, social, educational and employment opportunities for all people on the reservation. Where the landscape is blanketed by modern roads and highways. Where non-Indians own property (lots of it), run businesses and make up the vast majority of inhabitants. On its face, this reservation looks like any other slice of the American heartland--one dotted with large urban centers, small rural towns and suburbs all linked by a modern infrastructure that connects its inhabitants, regardless of race (or creed), and drives a surprisingly diverse economy. This is an impressive place--a modern marvel in some ways--where Indians and non-Indians have lived and worked together since at least statehood, over a century.

P5 McGirt orders us to forget all of that and instead focus on whether Congress expressly disestablished the reservation. We are told this is a cut-and-dried legal matter. One resolved by reference to treaties made with the Five Civilized Tribes dating back to the nineteenth century. Ignore that Oklahoma has continuously asserted jurisdiction over this land since statehood, let alone the modern demographics of the area.

P6 The immediate effect under federal law is to prevent state courts from exercising criminal jurisdiction over a large swath of Greater Tulsa and much of eastern Oklahoma. Yet the effects of McGirt range much further. The present case illuminates some of that decision's consequences. Crime victims and their family members in this and a myriad of other cases previously prosecuted by the State can look forward to a do-over in federal court of the criminal proceedings where McGirt applies. And they are the lucky ones. Some cases may not be prosecuted at all by federal authorities because of issues with the statute of limitations, the loss of evidence, missing witnesses or simply the passage of time. All of this foreshadows a hugely destabilizing force to public safety in eastern Oklahoma.

P7 McGirt must seem like a cruel joke for those victims and their family members who are forced to endure such extreme consequences in their case. One can certainly be forgiven for having difficulty seeing where--or even when--the reservation begins and ends in this new legal landscape. Today's decision on its face does little to vindicate tribal sovereignty and even less to persuade that a reservation in name only is necessary for anybody's well-being. The latter point has become painfully obvious from the growing number of cases like this one that come before this Court where non-Indian defendants are challenging their state convictions using McGirt because their victims were Indian.

P8 Congress may have the final say on McGirt. In McGirt, the court recognized that Congress has the authority to take corrective action, up to and including disestablishment of the reservation. We shall see if any practical solution is reached as one is surely needed. In the meantime, cases like Petitioner's remain in limbo until federal authorities can work them out. Crime victims and their families are left to run the gauntlet of the criminal justice system once again, this time in federal court. And the clock is running on whether the federal system can keep up with the large volume of new cases undoubtedly heading their way from state court.

Footnotes

1

Bosse v. State, 2017 OK CR 10, 400 P.3d 834, reh'g granted and relief denied, 2017 OK CR 19, 406 P.3d 26, cert. denied, 138 S. Ct. 1264, 200 L. Ed. 2d 421 (2018).

2

Bosse v. State, No. PCD-2013-360 (Okl.Cr. Dec. 16, 2015) (not for publication).

3

The Judge did not avoid the issue. She refused to set a quantum amount as requested by the District Attorney and followed this Court's Remand Order directing her to find "some" Indian blood under the definitions recognized by the Tenth Circuit opinions referenced.

4

United States v. Rogers, 45 U.S. 567, 572-73, 11 L. Ed. 1105 (1846).

5

In support of his claim that more than "some" Indian blood is required, Respondent cites dicta in Goforth v. State, 1982 OK CR 48, ¶ 6, 644 P.2d 114, 116. With almost a quarter blood quantum, the defendant easily met the requirement of the first prong, and this Court did not further analyze that issue. However, in referring to the two-part test, this Court in a 1982 decision, used the word "significant" rather than "some." Id. This single word, describing an issue not the focus of the appeal, does not substitute for the entire body of state and federal jurisprudence correctly stating the test.
6

Interestingly, the District Attorney argues instead that a "loophole" will exist if we do not have the same standard as the Tenth Circuit.
7

In addition, to require a specific blood quantum would be out of step with other recent developments. In 2018, Congress amended the Stigler Act. Enacted in 1947, that Act was one of several Acts restricting the conveyance of lands that were allotted to citizens of the Five Tribes, if the owner had one-half or more of Indian blood. The restrictions on conveyance were designed to protect tribal citizens. As time passed, requiring such a high blood quantum stripped those protections from many owners and reduced the amount of restricted land. The recent amendment struck this provision, replacing it with the phrase "of whatever degree of Indian blood." Stigler Act Amendments of 2018, P.L. 115-399, Sec. 2(1)(a). We will not disregard this clear statement of Congressional intent regarding a blood quantum requirement for the Five Tribes.
8

The State argues both that application of McGirt will have significant consequences for criminal prosecutions, and that waiver should apply because there is really nothing new about the claim. Taken as a whole, the arguments advanced by the State in both its Response and Supplemental Brief support a conclusion that, although similar claims may have been raised in the past in other cases, the primacy of State jurisdiction was considered settled and those claims had not been expected to prevail. The legal basis for this claim was unavailable under Section 1089(D).
9

The principle that subject-matter jurisdiction may not be waived also settles the State's argument based on laches -- that Petitioner waited too long to raise his claim, and the passage of time makes resolution of the issue, or a grant of relief, difficult to determine or implement. None of the cases on which the State relies concern a claim of lack of jurisdiction.
10

Respondent also misunderstands the discussion in Ex parte Wilson, 140 U.S. 575, 11 S. Ct. 870, 35 L. Ed. 513 (1891). There, the defendant and victim were non-Indian. The defendant argued that the federal government could not retain jurisdiction over crimes committed by and against Indians while allowing state jurisdiction over crimes involving non-Indians committed on a reservation; he claimed that either the federal government had sole and exclusive jurisdiction over every crime, or it had none at all. Id. at 577. The Court rejected this argument, noting that Congress had the power to grant and

limit jurisdiction in federal courts. Id. at 578.

1

Because, as explained later in this writing, I do not think subject matter jurisdiction is implicated, I see no reason the State could not refile its charges in such an instance, but that is, of course, not before the Court at this time.

2

The McGirt opinion tacitly acknowledges potential procedural bars, noting the State of Oklahoma had "put aside whatever procedural defenses it might have." McGirt, 140 S.Ct. at 2460. Those defenses would not be relevant if subject matter jurisdiction, which is non-waivable, were concerned.

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).

JIMCY McGIRT, Petitioner v. OKLAHOMA
SUPREME COURT OF THE UNITED STATES
140 S. Ct. 2452; 207 L. Ed. 2d 985; 2020 U.S. LEXIS 3554; 28 Fla. L. Weekly Fed. S 537
No. 18-9526.
July 9, 2020, Decided
May 11, 2020, Argued
Notice:

The LEXIS pagination of this document is subject to change pending release of the final published version.

Editorial Information: Prior History

{2020 U.S. LEXIS 1}ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMAMcGirt v. Oklahoma, 140 S. Ct. 659, 205 L. Ed. 2d 417, 2019 U.S. LEXIS 7526 (U.S., Dec. 13, 2019)

Disposition:
Reversed.

DECISION
{207 L. Ed. 2d 985} State of Oklahoma lacked jurisdiction to prosecute state crimes that occurred on Creek Reservation; for purposes of Major Crimes Act, 18 U.S.C.S. § 1153, land reserved for Creek Nation remained ``Indian country."

CASE SUMMARYState of Oklahoma lacked jurisdiction to prosecute an enrolled member of the Seminole Nation whose crimes took place on the Creek Reservation because under the Major Crimes Act, land reserved for the Creek Nation remained Indian country, and only the federal government could prosecute Indians for major crimes committed in Indian country.

OVERVIEW: HOLDINGS: [1]-State of Oklahoma lacked jurisdiction to prosecute an enrolled member of the Seminole Nation whose crimes took place on the Creek Reservation because for purposes of the Major Crimes Act, land reserved for the Creek Nation since the 19th century remained Indian country under 18 U.S.C.S. § 1153(a), and only the federal government could prosecute Indians for major crimes committed in Indian country; [2]-Once a reservation was established, it retained that status until Congress explicitly indicated otherwise, and Congress' actions during the allotment era did not end the Creek reservation. Nor were historical practices and demographics enough by themselves to prove disestablishment.

OUTCOME: Judgment reversed. 5-4 decision; 2 dissents.

LAWYERS EDITION HEADNOTES:

INDIAN COUNTRY -- JURISDICTION
Headnote: 1.
The Major Crimes Act provides that, within the Indian country, any Indian who commits certain enumerated offenses against the person or property of another Indian or any other person shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States. 18 U.S.C.S. § 1153(a). (Gorsuch, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

INDIAN COUNTRY -- JURISDICTION
Headnote: 2.
State courts generally have no jurisdiction to try Indians for conduct committed in Indian country. (Gorsuch, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

INDIAN COUNTRY -- DEFINITION
Headnote: 3.
A neighboring provision to 18 U.S.C.S. § 1153(a) of the Major Crimes Act defines the term Indian country to include, among other things, all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation. 18 U.S.C.S. § 1151(a). (Gorsuch, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

TRIBAL RELATIONS -- RESERVATIONS
Headnote: 4.
To determine whether a tribe continues to hold a reservation, there is only one place a court may look: the Acts of Congress. The Legislature wields significant constitutional authority when it comes to tribal relations, possessing even the authority to breach its own promises and treaties. But that power belongs to Congress alone. Nor will a court lightly infer such a breach once Congress has established a reservation. (Gorsuch, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

REDUCING RESERVATIONS
Headnote: 5.
Under the United States Constitution, States have no authority to reduce federal reservations lying within their borders. The Constitution entrusts Congress with the authority to regulate commerce with Native Americans, and directs that federal treaties and statutes are the supreme law of the land. U.S. Const. Art. I, § 8; U.S. Const. Art. VI, cl. 2. Likewise, courts have no proper role in the adjustment of reservation borders. (Gorsuch, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

CONGRESS -- DISESTABLISHING RESERVATIONS
Headnote: 6.
Only Congress can divest a reservation of its land and diminish its boundaries. So it's no matter how many other promises to a tribe the Federal Government has already broken. If Congress wishes to break the promise of a reservation, it must say so. History shows that Congress knows how to withdraw a reservation when it can muster the will. Sometimes, legislation has provided an explicit reference to cession or an unconditional commitment to compensate the Indian tribe for its opened land. Other times, Congress has directed that tribal lands shall be restored to the public domain. Likewise, Congress might speak of a reservation as being discontinued, abolished, or vacated. Disestablishment has never required any particular form of words. But it does require that Congress clearly express its intent to do so, commonly with an explicit reference to cession or other language evidencing the present and total surrender of all tribal interests. (Gorsuch, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

INDIAN COUNTRY -- LAND OWNERSHIP -- DISESTABLISHMENT
Headnote: 7.
Congress has defined Indian country to include all land within the limits of any Indian reservation, notwithstanding the issuance of any pat-ent, and, including any rights-of-way running through the reservation. 18 U.S.C.S. § 1151(a). So the relevant statute expressly contemplates private land ownership within reservation boundaries. Nor under the statute's terms does it matter whether these individual parcels have passed hands to non-Indians. To the contrary, it is repeatedly explained that Congress does not disestablish a reservation simply by allowing the transfer of individual plots, whether to Native Americans or others. (Gorsuch, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

DISESTABLISHMENT -- STATUTORY INTERPRETATION
Headnote: 8.
When interpreting Congress' work in the arena of disestablishment, no less than any other, a court's charge is usually to ascertain and follow the original meaning of the law before it. That is the only step proper for a court of law. To be sure, if during the course of a court's work an ambiguous statutory term or phrase emerges, the court will sometimes consult contemporaneous usages, customs, and practices to the extent they shed light on the meaning of the language in question at the time of enactment. Nor may a court favor contemporaneous or later practices instead of the laws Congress passed. (Gorsuch, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

RESERVATIONS -- CONGRESS
Headnote: 9.
Once a block of land is set aside for an Indian reservation and no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise. (Gorsuch, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

DIMINISHING RESERVATIONS -- CONGRESS
Headnote: 10.
There is no need to consult extratextual sources when the meaning of a statute's terms is clear. Nor may extratextual sources overcome those terms. The only role such materials can properly play is to help

clear up, not create ambiguity about a statute's original meaning. As said time and again, once a reservation is established, it retains that status until Congress explicitly indicates otherwise. Only Congress can alter the terms of an Indian treaty by diminishing a reservation, and its intent to do so must be clear and plain. (Gorsuch, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

INDIAN COUNTRY -- JURISDICTION
Headnote: 11.
In conjunction with the Major Crimes Act, 18 U.S.C.S. § 1151(a) not only sends to federal court certain major crimes committed by Indians on reservations. Two doors down, in 18 U.S.C.S. § 1151(c), the statute does the same for major crimes committed by Indians on Indian allotments, the Indian titles of which have not been extinguished. (Gorsuch, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

INDIAN COUNTRY -- JURISDICTION
Headnote: 12.
Reservations and Indian allotments, the Indian titles to which have not been extinguished, qualify as Indian country under 18 U.S.C.S. § 1151(a) and (c). But dependent Indian communities also qualify as In-dian country under § 1151(b). So a state lacks jurisdiction to prosecute a tribal member whether the tribal lands happen to fall in one category or another. (Gorsuch, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

DISESTABLISHMENT
Headnote: 13.
Just as the United States Supreme Court has never insisted on any particular form of words when it comes to disestablishing a reservation, the Court has never done so when it comes to establishing one. (Gorsuch, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

INDIAN LANDS -- JURISDICTION
Headnote: 14.
The United States Supreme Court has long required a clear expression of the intention of Congress before the state or Federal Government may try Indians for conduct on their lands. (Gorsuch, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

INDIAN LANDS -- JURISDICTION
Headnote: 15.
Oklahoma doesn't claim to have complied with the requirements to assume jurisdiction voluntarily over Creek lands. Nor has Congress ever passed a law conferring jurisdiction on Oklahoma. As a result, the Major Crimes Act applies to Oklahoma according to its usual terms: Only the Federal Government, not the State, may prosecute Indians for major crimes committed in Indian country. (Gorsuch, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

INDIAN LANDS -- CRIMES
Headnote: 16.

The Major Crimes Act applies only to certain crimes committed in Indian country by Indian defendants. A neighboring statute provides that federal law applies to a broader range of crimes by or against Indians in Indian country. 18 U.S.C.S. § 1152. States are otherwise free to apply their criminal laws in cases of non-Indian victims and defendants, including within Indian country. (Gorsuch, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

Syllabus

{140 S. Ct. 2456}The Major Crimes Act (MCA) provides that, within ``the Indian country," ``[a]ny Indian who commits" certain enumerated offenses ``shall be subject to the same law and penalties as all other persons committing any of [those] offenses, within the exclusive jurisdiction of the United States." 18 U. S. C. § 1153(a). ``Indian country" includes ``all land within the limits of any Indian reservation under the jurisdiction of the United States Government." § 1151. Petitioner Jimcy McGirt was convicted by an Oklahoma state court of three serious sexual offenses. He unsuccessfully argued in state postconviction{140 S. Ct. 2457} proceedings that the State lacked jurisdiction to prosecute him because he is an enrolled member of the Seminole Nation and his crimes took place on the Creek Reservation. He seeks a new trial, which, he contends, must take place in federal court.

Held: For MCA purposes, land reserved for the Creek Nation since the 19th century remains ``Indian country." Pp. ___ - ___, 207 L. Ed. 2d, at 993-1017.

(a) Congress established a reservation for the Creek Nation. An 1833 Treaty fixed borders for a ``permanent home to the whole Creek Nation of Indians," 2 KAPP 388, 7 Stat. 418, and promised that the United States{2020 U.S. LEXIS 2} would ``grant a patent, in fee simple, to the Creek nation of Indians for the [assigned] land" to continue ``so long as they shall exist as a nation, and continue to occupy the country hereby assigned to them," id., at 419. The patent formally issued in 1852.

Though the early treaties did not refer to the Creek lands as a ``reservation," similar language in treaties from the same era has been held sufficient to create a reservation, see, e.g., Menominee Tribe v. United States, 391 U. S. 404, 405, 88 S. Ct. 1705, 20 L. Ed. 2d 697, and later Acts of Congress--referring to the ``Creek reservation"--leave no room for doubt, see, e.g., 17 Stat. 626. In addition, an 1856 Treaty promised that ``no portion" of Creek lands ``would ever be embraced or included within, or annexed to, any Territory or State," 11 Stat. 700, and that the Creeks {207 L. Ed. 2d 990}would have the ``unrestricted right of self-government," with ``full jurisdiction" over enrolled Tribe members and their property, id., at 704. Pp. ___ - ___, 207 L. Ed. 2d, at 993-994.

(b) Congress has since broken more than a few promises to the Tribe. Nevertheless, the Creek Reservation persists today. Pp. ___ - ___, 207 L. Ed. 2d, at 994-1008.

(1) Once a federal reservation is established, only Congress can diminish or disestablish it. Doing so requires a clear expression of congressional intent. Pp. ___ - ___, 207 L. Ed. 2d, at 994-995.

(2) Oklahoma claims that Congress ended the Creek Reservation{2020 U.S. LEXIS 3} during the so-called ``allotment era''--a period when Congress sought to pressure many tribes to abandon their communal lifestyles and parcel their lands into smaller lots owned by individual tribal members. Missing from the allotment-era agreement with the Creek, see 31 Stat. 862-864, however, is any statute evincing anything like the ``present and total surrender of all tribal interests'' in the affected lands. And this Court has already rejected the argument that allotments automatically ended reservations. Pp. ___ - ___, 207 L. Ed. 2d, at 995-998.

(3) Oklahoma points to other ways Congress intruded on the Creeks' promised right to self-governance during the allotment era, including abolishing the Creeks' tribal courts, 30 Stat. 504-505, and requiring Presidential approval for certain tribal ordinances, 31 Stat. 872. But these laws fall short of eliminating all tribal interest in the contested lands. Pp. ___ - ___, 207 L. Ed. 2d, at 998-1001.

(4) Oklahoma ultimately claims that historical practice and demographics are enough by themselves to prove disestablishment. This Court has consulted contemporaneous usages, customs, and practices to the extent they shed light on the meaning of ambiguous statutory terms, but Oklahoma points to no ambiguous language in any of the relevant statutes that could{2020 U.S. LEXIS 4} plausibly be read as an act of cession. Such extratextual considerations are of `` 'limited interpretive value,' '' Nebraska v. Parker, 577 U. S. 481, 136 S. Ct. 1072, 194 L. Ed. 2d 152, and the ``least compelling'' form of evidence, South Dakota v. Yankton Sioux Tribe, 522 U. S. 329, 356, 118 S. Ct. 789, 139 L. Ed. 2d 773. In the end,{140 S. Ct. 2458} Oklahoma resorts to the State's long historical practice of prosecuting Indians in state court for serious crimes on the contested lands, various statements made during the allotment era, and the speedy and persistent movement of white settlers into the area. But these supply little help with the law's meaning and much potential for mischief. Pp. ___ - ___, 207 L. Ed. 2d, at 1001-1008.

(c) In the alternative, Oklahoma contends that Congress never established a reservation but instead created a ``dependent Indian community.'' To hold that the Creek never had a reservation would require willful blindness to the statutory language and a belief that the land patent the Creek received somehow made their tribal sovereignty easier to divest. Congress established a reservation, not a dependent Indian com-{207 L. Ed. 2d 991}munity, for the Creek Nation. Pp. ___ - ___, 207 L. Ed. 2d, at 1008-1010.

(d) Even assuming that the Creek land is a reservation, Oklahoma argues that the MCA has never applied in eastern Oklahoma. It claims that the Oklahoma Enabling Act, which transferred all non-federal cases pending in{2020 U.S. LEXIS 5} the territorial courts to Oklahoma's state courts, made the State's courts the successors to the federal territorial courts' sweeping authority to try Indians for crimes committed on reservations. That argument, however, rests on state prosecutorial practices that defy the MCA, rather than on the law's plain terms. Pp. ___ - ___, 207 L. Ed. 2d, at 1010-1013.

(e) Finally, Oklahoma warns of the potential consequences that will follow a ruling against it, such as unsettling an untold number of convictions and frustrating the State's ability to prosecute crimes in the future. This Court is aware of the potential for cost and conflict around jurisdictional boundaries. But

Oklahoma and its tribes have proven time and again that they can work successfully together as partners, and Congress remains free to supplement its statutory directions about the lands in question at any time. Pp. ___ - ___, 207 L. Ed. 2d, at 1013-1017.

Reversed.

Counsel Ian H. Gershengorn argued the cause for petitioner.

Riyaz A. Kanji argued the cause for Muscogee (Creek) Nation, as amicus curiae, by special leave of court.

Mithun Mansinghani argued the cause for respondent.

Edwin S. Kneedlerargued the cause for the United States, as amicus curiae, by special leave of court.

Judges: Gorsuch, J., delivered the opinion of the Court, in which Ginsburg, Breyer, Sotomayor, and Kagan, JJ., joined. Roberts, C. J., filed a dissenting opinion, in which Alito and Kavanaugh, JJ., joined, and in which Thomas, J., joined, except as to footnote 9. Thomas, J., filed a dissenting opinion.

Opinion

Opinion by: GORSUCH

Opinion

{140 S. Ct. 2459} Justice Gorsuch delivered{2020 U.S. LEXIS 6} the opinion of the Court.

On the far end of the Trail of Tears was a promise. Forced to leave their ancestral lands in Georgia and Alabama, the Creek Nation received assurances that their new lands in the West would be secure forever. In exchange for ceding ``all their land, East of the Mississippi river," the U. S. government agreed by treaty that ``[t]he Creek country west of the Mississippi shall be solemnly guarantied to the Creek Indians." Treaty With the Creeks, Arts. I, XIV, Mar. 24, 1832, 7 Stat. 366, 368 (1832 Treaty). Both parties settled on boundary lines for a new and ``permanent home to the whole Creek nation," located in what is now Oklahoma. Treaty With the Creeks, preamble, Feb. 14, 1833, 7 Stat. 418 (1833 Treaty). The government further promised that ``[no] State or Territory [shall] ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves." 1832 Treaty, Art. XIV, 7 Stat. 368.

Today we are asked whether the land these treaties promised remains an Indian reservation for purposes of federal criminal law. Because Congress has not said otherwise, we hold the government to its word.

I

At one level, the question before us concerns Jimcy McGirt. Years ago, an{2020 U.S. LEXIS 7} Oklahoma state court convicted him of three serious sexual offenses. Since then, he has argued in postconviction proceedings that the State lacked jurisdiction {207 L. Ed. 2d 992} to prosecute him because he is an enrolled member of the Seminole Nation of Oklahoma and his crimes took place on the Creek Reservation. A new trial for his conduct, he has contended, must take place in federal court. The Oklahoma state courts hearing Mr. McGirt's arguments rejected them, so he now brings them here.

Mr. McGirt's appeal rests on the federal Major Crimes Act (MCA). {LEdHR1}[1] The statute provides that, within ``the Indian country,'' ``[a]ny Indian who commits'' certain enumerated offenses ``against the person or property of another Indian or any other person'' ``shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.'' 18 U. S. C. § 1153(a). By subjecting Indians to federal trials for crimes committed on tribal lands, Congress may have breached its promises to tribes like the Creek that they would be free to govern themselves. But this particular incursion has its limits-applying only to certain enumerated crimes and allowing only the federal government{2020 U.S. LEXIS 8} to try Indians. {LEdHR2}[2] State courts generally have no jurisdiction to try Indians for conduct committed in ``Indian country.'' Negonsott v. Samuels, 507 U. S. 99, 102-103, 113 S. Ct. 1119, 122 L. Ed. 2d 457 (1993).

The key question Mr. McGirt faces concerns that last qualification: Did he commit his crimes in Indian country? {LEdHR3}[3] A neighboring provision of the MCA defines the term to include, among other things, ``all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.'' § 1151(a). Mr. McGirt submits he can satisfy {140 S. Ct. 2460} this condition because he committed his crimes on land reserved for the Creek since the 19th century.

The Creek Nation has joined Mr. McGirt as amicus curiae. Not because the Tribe is interested in shielding Mr. McGirt from responsibility for his crimes. Instead, the Creek Nation participates because Mr. McGirt's personal interests wind up implicating the Tribe's. No one disputes that Mr. McGirt's crimes were committed on lands described as the Creek Reservation in an 1866 treaty and federal statute. But, in seeking to defend the state-court judgment below, Oklahoma has put aside whatever procedural defenses it might have and{2020 U.S. LEXIS 9} asked us to confirm that the land once given to the Creeks is no longer a reservation today.

At another level, then, Mr. McGirt's case winds up as a contest between State and Tribe. The scope of their dispute is limited; nothing we might say today could unsettle Oklahoma's authority to try non-Indians for crimes against non-Indians on the lands in question. See United States v. McBratney, 104 U. S. 621, 624, 26 L. Ed. 869 (1882). Still, the stakes are not insignificant. If Mr. McGirt and the Tribe are right, the State has no right to prosecute Indians for crimes committed in a portion of Northeastern Oklahoma that includes most of the city of Tulsa. Responsibility to try these matters would fall instead to the federal government and Tribe. Recently, the question has taken on more salience too. While Oklahoma state courts have rejected any suggestion that the lands in question remain a reservation, the Tenth Circuit has {207 L. Ed. 2d 993} reached the opposite conclusion. Murphy v. Royal, 875 F.3d 896, 907-909, 966 (2017). We granted certiorari to settle the question. 589 U. S. ___ (2019).

II

Start with what should be obvious: Congress established a reservation for the Creeks. In a series of treaties, Congress not only ``solemnly guarantied" the land but also ``establish[ed] boundary lines which will secure a country and permanent home to the{2020 U.S. LEXIS 10} whole Creek Nation of Indians." 1832 Treaty, Art. XIV, 7 Stat. 368; 1833 Treaty, preamble, 7 Stat. 418. The government's promises weren't made gratuitously. Rather, the 1832 Treaty acknowledged that ``[t]he United States are desirous that the Creeks should remove to the country west of the Mississippi" and, in service of that goal, required the Creeks to cede all lands in the East. Arts. I, XII, 7 Stat. 366, 367. Nor were the government's promises meant to be delusory. Congress twice assured the Creeks that ``[the] Treaty shall be obligatory on the contracting parties, as soon as the same shall be ratified by the United States." 1832 Treaty, Art. XV, id., at 368; see 1833 Treaty, Art. IX, 7 Stat. 420 (``agreement shall be binding and obligatory" upon ratification). Both treaties were duly ratified and enacted as law.

Because the Tribe's move west was ostensibly voluntary, Congress held out another assurance as well. In the statute that precipitated these negotiations, Congress authorized the President ``to assure the tribe . . . that the United States will forever secure and guaranty to them . . . the country so exchanged with them." Indian Removal Act of 1830, § 3, 4 Stat. 412. ``[A]nd if they prefer it," the bill continued, ``the United States will cause a patent or grant to be made{2020 U.S. LEXIS 11} and executed to them for the same; Provided always, that such lands shall revert to the United States, if the Indians become extinct, or abandon the same." Ibid. If agreeable to all sides, a tribe would not only enjoy the government's solemn treaty promises; it would hold legal title to its lands.

{140 S. Ct. 2461} It was an offer the Creek accepted. The 1833 Treaty fixed borders for what was to be a ``permanent home to the whole Creek nation of Indians." 1833 Treaty, preamble, 7 Stat. 418. It also established that the ``United States will grant a patent, in fee simple, to the Creek nation of Indians for the land assigned said nation by this treaty." Art. III, id., at 419. That grant came with the caveat that ``the right thus guaranteed by the United States shall be continued to said tribe of Indians, so long as they shall exist as a nation, and continue to occupy the country hereby assigned to them." Ibid. The promised patent formally issued in 1852. See Woodward v. De Graffenried, 238 U. S. 284, 293-294, 35 S. Ct. 764, 59 L. Ed. 1310 (1915).

These early treaties did not refer to the Creek lands as a ``reservation"-perhaps because that word had not yet acquired such distinctive significance in federal Indian law. But we have found similar language in treaties from the same era sufficient to create a reservation.{2020 U.S. LEXIS 12} See Menominee Tribe v. United States, 391 U. S. 404, 405, 88 S. Ct. 1705, 20 L. Ed. 2d 697 (1968) (grant of land ``'for a home, to be held as Indian lands are held,'" established a reservation). And later Acts of Congress left no room for doubt. In 1866, the United States entered yet another treaty with the {207 L. Ed. 2d 994} Creek Nation. This agreement reduced the size of the land set aside for the Creek, compensating the Tribe at a price of 30 cents an acre. Treaty Between the United States and the Creek Nation of Indians, Art. III, June 14, 1866, 14 Stat. 786. But Congress explicitly restated its commitment that the remaining land would ``be forever set apart as a home for said Creek Nation," which it now referred to as ``the reduced Creek reservation." Arts. III, IX, id., at 786, 788. 1 Throughout the late 19th century, many other federal laws also expressly referred to the Creek Reservation. See, e.g., Treaty Between United States and Cherokee Nation of Indians, Art. IV, July 19, 1866, 14 Stat. 800 (``Creek reservation"); Act of Mar. 3, 1873, ch. 322, 17 Stat. 626; (multiple references to the ``Creek reservation" and ``Creek India[n] Reservation"); 11 Cong. Rec. 2351 (1881) (discussing ``the dividing line between the Creek reservation and their ceded lands"); Act of Feb. 13, 1891, 26 Stat. 750 (describing a cession by referencing the ``West boundary line of{2020 U.S. LEXIS 13} the Creek Reservation").

There is a final set of assurances that bear mention, too. In the Treaty of 1856, Congress promised that ``no portion" of the Creek Reservation ``shall ever be embraced or included within, or annexed to, any Territory or State." Art. IV, 11 Stat. 700. And within their lands, with exceptions, the Creeks were to be ``secured in the unrestricted right of self-government," with ``full jurisdiction" over enrolled Tribe members and their property. Art. XV, id., at 704. So the Creek were promised not only a ``permanent home" that would be {140 S. Ct. 2462} ``forever set apart"; they were also assured a right to self-government on lands that would lie outside both the legal jurisdiction and geographic boundaries of any State. Under any definition, this was a reservation.

III

A

While there can be no question that Congress established a reservation for the Creek Nation, it's equally clear that Congress has since broken more than a few of its promises to the Tribe. Not least, the land described in the parties' treaties, once undivided and held by the Tribe, is now fractured into pieces. While these pieces were initially distributed to Tribe members, many were sold and now belong to persons unaffiliated with the Nation.{2020 U.S. LEXIS 14} So in what sense, if any, can we say that the Creek Reservation persists today?

{LEdHR4}[4] To determine whether a tribe continues to hold a reservation, there is only one place we may look: the Acts of Congress. This Court long ago held that the Legislature wields significant constitutional authority {207 L. Ed. 2d 995} when it comes to tribal relations, possessing even the authority to breach its own promises and treaties. Lone Wolf v. Hitchcock, 187 U. S. 553, 566-568, 23 S. Ct. 216, 47 L. Ed. 299 (1903). But that power, this Court has cautioned, belongs to Congress alone. Nor will this Court lightly infer such a breach once Congress has established a reservation. Solem v. Bartlett, 465 U. S. 463, 470, 104 S. Ct. 1161, 79 L. Ed. 2d 443 (1984).

{LEdHR5}[5] Under our Constitution, States have no authority to reduce federal reservations lying within their borders. Just imagine if they did. A State could encroach on the tribal boundaries or legal rights Congress provided, and, with enough time and patience, nullify the promises made in the name of the United States. That would be at odds with the Constitution, which entrusts Congress with the authority to regulate commerce with Native Americans, and directs that federal treaties and statutes are the ``supreme Law of the Land." Art. I, § 8; Art. VI, cl. 2. It would also leave tribal rights in the hands of the very neighbors who might be least{2020 U.S. LEXIS 15} inclined to respect them.

Likewise, courts have no proper role in the adjustment of reservation borders. Mustering the broad social consensus required to pass new legislation is a deliberately hard business under our Constitution. Faced with this daunting task, Congress sometimes might wish an inconvenient reservation would simply disappear. Short of that, legislators might seek to pass laws that tiptoe to the edge of disestablishment and hope that judges-facing no possibility of electoral consequences themselves-will deliver the final push. But wishes don't make for laws, and saving the political branches the embarrassment of disestablishing a reservation is not one of our constitutionally assigned prerogatives. ``{LEdHR6}[6] [O]nly Congress can divest a reservation of its land and diminish its boundaries." Solem, 465 U. S., at 470, 104 S. Ct. 1161, 79 L. Ed. 2d 443. So it's no matter how many other promises to a tribe the federal government has already broken. If Congress wishes to break the promise of a reservation, it must say so. History shows that Congress knows how to withdraw a reservation when it can muster the will. Sometimes, legislation has provided an ``[e]xplicit reference to cession" or an ``unconditional commitment . . . to compensate the{2020 U.S. LEXIS 16} Indian tribe for its opened land." Ibid. Other times, Congress has directed that tribal lands shall be ``'restored to the public domain.'" Hagen v. Utah, 510 U. S. 399, 412, 114 S. Ct. 958, 127 L. Ed. 2d 252 (1994) (emphasis deleted). {140 S. Ct. 2463} Likewise, Congress might speak of a reservation as being ``'discontinued,'" ``'abolished,'" or ``'vacated.'" Mattz v. Arnett, 412 U. S. 481, 504, n. 22, 93 S. Ct. 2245, 37 L. Ed. 2d 92 (1973). Disestablishment has ``never required any particular form of words," Hagen, 510 U. S., at 411, 114 S. Ct. 958, 127 L. Ed. 2d 252. But it does require that Congress clearly express its intent to do so, ``[c]ommon[ly with an] '[e]xplicit reference to cession or other language evidencing the present and total surrender of all tribal interests.'" Nebraska v. Parker, 577 U. S. 481, ___-___, 136 S. Ct. 1072, 194 L. Ed. 2d 152 (2016).

B

In an effort to show Congress has done just that with the Creek Reservation, Oklahoma points to events {207 L. Ed. 2d 996} during the so-called ``allotment era." Starting in the 1880s, Congress sought to pressure many tribes to abandon their communal lifestyles and parcel their lands into smaller lots owned by individual tribe members. See 1 F. Cohen, Handbook of Federal Indian Law § 1.04 (2012) (Cohen), discussing General Allotment Act of 1887, ch. 119, 24 Stat. 388. Some allotment advocates hoped that the policy would create a class of assimilated, landowning, agrarian Native Americans. See Cohen § 1.04; F. Hoxie, A Final Promise: The Campaign To Assimilate 18-19 (2001). Others may{2020 U.S. LEXIS 17} have hoped that, with lands in individual hands and (eventually) freely alienable, white settlers would have more space of their own. See id., at 14-15; cf. General Allotment Act of 1887, § 5, 24 Stat. 389-390.

The Creek were hardly exempt from the pressures of the allotment era. In 1893, Congress charged the Dawes Commission with negotiating changes to the Creek Reservation. Congress identified two goals: Either persuade the Creek to cede territory to the United States, as it had before, or agree to allot its lands to Tribe members. Act of Mar. 3, 1893, ch. 209, § 16, 27 Stat. 645-646. A year later, the Commission reported back that the Tribe ``would not, under any circumstances, agree to cede any portion of their lands." S. Misc. Doc. No. 24, 53d Cong., 3d Sess., 7 (1894). At that time, before this Court's decision in Lone Wolf, Congress may not have been entirely sure of its power to terminate an established reservation unilaterally. Perhaps for that reason, perhaps for others, the Commission and Congress took this report seriously and turned their attention to allotment rather than cession. 2

The Commission's work culminated in an allotment agreement with the Tribe in 1901. Creek Allotment Agreement, ch. 676, 31 Stat. 861. With exceptions for certain{2020 U.S. LEXIS 18} pre-existing town sites and other special matters, the Agreement established procedures for allotting 160-acre parcels to individual Tribe members who could not sell, transfer, or otherwise encumber their allotments for a number of years. §§ 3, 7, id., at 862-864 (5 years for any portion, 21 years for the designated ``homestead" portion). Tribe members were given deeds for their parcels that ``convey[ed] to [them] all right, title, and interest of the Creek Nation." § 23, id., at 867-868. In 1908, Congress relaxed these alienation restrictions in some ways, and even allowed the Secretary of the Interior to waive them. Act of May 27, 1908, ch. 199, § 1, 35 Stat. 312. One way or the other, individual Tribe members were eventually free to sell their land to Indians and non-Indians alike.

{140 S. Ct. 2464} Missing in all this, however, is a statute evincing anything like the ``present and total surrender of all tribal interests" in the affected lands. Without doubt, in 1832 the Creek ``cede[d]" their original homelands east of the Mississippi for a reservation promised in what is now Oklahoma. 1832 Treaty, Art. I, 7 Stat. 366. And in 1866, they ``cede[d] and convey[ed]" a portion of that reservation to the United States. Treaty With the {207 L. Ed. 2d 997} Creek, Art. III, 14 Stat. 786. But because there exists{2020 U.S. LEXIS 19} no equivalent law terminating what remained, the Creek Reservation survived allotment.

In saying this we say nothing new. For years, States have sought to suggest that allotments automatically ended reservations, and for years courts have rejected the argument. Remember, {LEdHR7}[7] Congress has defined ``Indian country" to include ``all land within the limits of any Indian reservation . . . notwithstanding the issuance of any patent, and, including any rights-of-way running through the reservation." 18 U. S. C. § 1151(a). So the relevant statute expressly contemplates

private land ownership within reservation boundaries. Nor under the statute's terms does it matter whether these individual parcels have passed hands to non-Indians. To the contrary, this Court has explained repeatedly that Congress does not disestablish a reservation simply by allowing the transfer of individual plots, whether to Native Americans or others. See Mattz, 412 U. S., at 497, 93 S. Ct. 2245, 37 L. Ed. 2d 92 (``[A]llotment under the . . . Act is completely consistent with continued reservation status''); Seymour v. Superintendent of Wash. State Penitentiary, 368 U. S. 351, 356-358, 82 S. Ct. 424, 7 L. Ed. 2d 346 (1962) (holding that allotment act ``did no more than open the way for non-Indian settlers to own land on the reservation''); Parker, 577 U. S., at ___, 136 S. Ct. 1072, 194 L. Ed. 2d 152 (``[T]he 1882 Act falls into another category of surplus land Acts: those that{2020 U.S. LEXIS 20} merely opened reservation land to settlement. . . . Such schemes allow non-Indian settlers to own land on the reservation'' (internal quotation marks omitted)).

It isn't so hard to see why. The federal government issued its own land patents to many homesteaders throughout the West. These patents transferred legal title and are the basis for much of the private land ownership in a number of States today. But no one thinks any of this diminished the United States's claim to sovereignty over any land. To accomplish that would require an act of cession, the transfer of a sovereign claim from one nation to another. 3 E. Washburn, American Law of Real Property *521-*524. And there is no reason why Congress cannot reserve land for tribes in much the same way, allowing them to continue to exercise governmental functions over land even if they no longer own it communally. Indeed, such an arrangement seems to be contemplated by § 1151(a)'s plain terms. Cf. Seymour, 368 U. S., at 357-358, 82 S. Ct. 424, 7 L. Ed. 2d 346. 3

Oklahoma reminds us that allotment was often the first step in a plan ultimately aimed at disestablishment. As this Court explained in Mattz, Congress's expressed policy at the time ``was to continue the reservation system and the trust status of Indian{2020 U.S. LEXIS 21} lands, but to allot tracts to individual Indians for agriculture and grazing.'' 412 U. S., at 496, 93 S. Ct. 2245, 37 L. Ed. 2d 92. {207 L. Ed. 2d 998} Then, ``[w]hen all the lands had been allotted and {140 S. Ct. 2465} the trust expired, the reservation could be abolished.'' Ibid. This plan was set in motion nationally in the General Allotment Act of 1887, and for the Creek specifically in 1901. No doubt, this is why Congress at the turn of the 20th century ``believed to a man'' that ``the reservation system would cease'' ``within a generation at most.'' Solem, 465 U. S., at 468, 104 S. Ct. 1161, 79 L. Ed. 2d 443. Still, just as wishes are not laws, future plans aren't either. Congress may have passed allotment laws to create the conditions for disestablishment. But to equate allotment with disestablishment would confuse the first step of a march with arrival at its destination. 4

Ignoring this distinction would run roughshod over many other statutes as well. In some cases, Congress chose not to wait for allotment to run its course before disestablishing a reservation. When it deemed that approach appropriate, Congress included additional language expressly ending reservation status. So, for example, in 1904, Congress allotted reservations belonging to the Ponca and Otoe Tribes, reservations also lying within modern-day Oklahoma,{2020 U.S. LEXIS 22} and then provided ``further, That the reservation lines of the said . . . reservations . . . are hereby abolished.'' Act of Apr. 21, 1904, § 8, 33 Stat. 217-218 (emphasis deleted); see also DeCoteau v. District County Court for Tenth Judicial Dist., 420 U. S. 425, 439-440, n. 22, 95 S. Ct. 1082, 43 L. Ed. 2d 300 (1975) (collecting other examples). Tellingly, however, nothing like that can be found in the nearly contemporary 1901 Creek Allotment Agreement or the 1908 Act. That doesn't make these laws special.

Rather, in using the language that they did, these allotment laws tracked others of the period, parceling out individual tracts, while saving the ultimate fate of the land's reservation status for another day. 5

C

If allotment by itself won't work, Oklahoma seeks to prove disestablishment by pointing to other ways Congress intruded on the Creek's promised right to self-governance during the allotment era. It turns out there were many. For example, just a few years before the 1901 Creek Allotment {207 L. Ed. 2d 999} Agreement, and perhaps in an effort to pressure the Tribe to the negotiating table, Congress abolished the Creeks' tribal courts and transferred all pending civil and criminal cases to the U. S. Courts of the Indian Territory. Curtis Act of 1898, § 28, 30 Stat. 504-505. Separately, {140 S. Ct. 2466} the Creek Allotment Agreement provided that tribal ordinances ``affecting{2020 U.S. LEXIS 23} the lands of the Tribe, or of individuals after allotment, or the moneys or other property of the Tribe, or of the citizens thereof " would not be valid until approved by the President of the United States. § 42, 31 Stat. 872.

Plainly, these laws represented serious blows to the Creek. But, just as plainly, they left the Tribe with significant sovereign functions over the lands in question. For example, the Creek Nation retained the power to collect taxes, operate schools, legislate through tribal ordinances, and, soon, oversee the federally mandated allotment process. §§ 39, 40, 42, id., at 871-872; Buster v. Wright, 135 F. 947, 949-950, 953-954 (CA8 1905). And, in its own way, the congressional incursion on tribal legislative processes only served to prove the power: Congress would have had no need to subject tribal legislation to Presidential review if the Tribe lacked any authority to legislate. Grave though they were, these congressional intrusions on pre-existing treaty rights fell short of eliminating all tribal interests in the land.

Much more ominously, the 1901 allotment agreement ended by announcing that the Creek tribal government ``shall not continue" past 1906, although the agreement quickly qualified that statement, adding the proviso ``subject to such further legislation{2020 U.S. LEXIS 24} as Congress may deem proper." § 46, 31 Stat. 872. Thus, while suggesting that the tribal government might end in 1906, Congress also necessarily understood it had not ended in 1901. All of which was consistent with the Legislature's general practice of taking allotment as a first, not final, step toward disestablishment and dissolution.

When 1906 finally arrived, Congress adopted the Five Civilized Tribes Act. But instead of dissolving the tribal government as some may have expected, Congress ``deem[ed] proper" a different course, simply cutting away further at the Tribe's autonomy. Congress empowered the President to remove and replace the principal chief of the Creek, prohibited the tribal council from meeting more than 30 days a year, and directed the Secretary of the Interior to assume control of tribal schools. §§ 6, 10, 28, 34 Stat. 139-140, 148. The Act also provided for the handling of the Tribe's funds, land, and legal liabilities in the event of dissolution. §§ 11, 27, id., at 141, 148. Despite these additional incursions on tribal authority, however, Congress expressly recognized the Creek's ``tribal existence and present

tribal governmen[t]" and ``continued [them] in full force and effect for all purposes authorized by law." § 28, id., at 148.

In the years that{2020 U.S. LEXIS 25} followed, Congress continued to adjust its arrangements with the Tribe. For example, in 1908, the Legislature required Creek officials to turn over all ``tribal properties" to the Secretary of the Interior. Act of May 27, 1908, § 13, 35 Stat. 316. The next year, Congress sought the Creek National Council's release of certain money claims against the U. S. government. Act of Mar. 3, 1909, ch. 263, 35 Stat. 781, 805. And, further {207 L. Ed. 2d 1000} still, Congress offered the Creek Nation a one-time opportunity to file suit in the federal Court of Claims for ``any and all legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Creek Indian Nation." Act of May 24, 1924, ch. 181, 43 Stat. 139; see, e.g., United States v. Creek Nation, 295 U. S. 103, 55 S. Ct. 681, 79 L. Ed. 1331, 81 Ct. Cl. 973 (1935). But Congress never withdrew its recognition of the tribal government, and none of its adjustments would have made any sense if Congress thought it had already completed that job.

{140 S. Ct. 2467} Indeed, with time, Congress changed course completely. Beginning in the 1920s, the federal outlook toward Native Americans shifted ``away from assimilation policies and toward more tolerance and respect for traditional aspects of Indian culture." 1 Cohen § 1.05. Few in 1900 might have foreseen such a profound ``reversal of{2020 U.S. LEXIS 26} attitude" was in the making or expected that ``new protections for Indian rights," including renewed ``support for federally defined tribalism," lurked around the corner. Ibid.; see also M. Scherer, Imperfect Victories: The Legal Tenacity of the Omaha Tribe, 1945-1995, pp. 2-4 (1999). But that is exactly what happened. Pursuant to this new national policy, in 1936, Congress authorized the Creek to adopt a constitution and bylaws, see Act of June 26, 1936, § 3, 49 Stat. 1967, enabling the Creek government to resume many of its previously suspended functions. Muscogee (Creek) Nation v. Hodel, 851 F.2d 1439, 1442-1447, 271 U.S. App. D.C. 212 (CADC 1988). 6

The Creek Nation has done exactly that. In the intervening years, it has ratified a new constitution and established three separate branches of government. Ibid.; see Muscogee Creek Nation (MCN) Const., Arts. V, VI, and VII. Today the Nation is led by a democratically elected Principal Chief, Second Chief, and National Council; operates a police force and three hospitals; commands an annual budget of more than $350 million; and employs over 2,000 people. Brief for Muscogee (Creek) Nation as Amicus Curiae 36-39. In 1982, the Nation passed an ordinance reestablishing the criminal and civil jurisdiction of its courts. See Hodel, 851 F.2d, at 1442, 1446-1447 (confirming Tribe's authority{2020 U.S. LEXIS 27} to do so). The territorial jurisdiction of these courts extends to any Indian country within the Tribe's territory as defined by the Treaty of 1866. MCN Stat. 27, § 1-102(A). And the State of Oklahoma has afforded full faith and credit to its judgments since at least 1994. See Barrett v. {207 L. Ed. 2d 1001} Barrett, 1994 OK 92, 878 P. 2d 1051, 1054 (Okla. 1994); Full Faith and Credit of Tribal Courts, Okla. State Cts. Network (Apr. 18, 2019), https://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=458214.

Maybe some of these changes happened for altruistic reasons, maybe some for other reasons. It seems, for example, that at least certain Members of Congress hesitated about disestablishment in 1906 because they feared any reversion of the Creek lands to the public domain would trigger a statutory commitment to hand over portions of these lands to already powerful railroad interests. See, e.g., 40

Cong. Rec. 2976 (1906) (Sen. McCumber); Id., at 3053 (Sen. Aldrich). Many of those who advanced the reorganization efforts of the 1930s may have done so more out of frustration with efforts to assimilate Native Americans than any disaffection with assimilation {140 S. Ct. 2468} as the ultimate goal. See 1 Cohen § 1.05; Scherer, Imperfect Victories, at 2-4. But whatever the confluence of reasons, in all this history there simply arrived no moment when any Act of Congress{2020 U.S. LEXIS 28} dissolved the Creek Tribe or disestablished its reservation. In the end, Congress moved in the opposite direction. 7

D

Ultimately, Oklahoma is left to pursue a very different sort of argument. Now, the State points to historical practices and demographics, both around the time of and long after the enactment of all the relevant legislation. These facts, the State submits, are enough by themselves to prove disestablishment. Oklahoma even classifies and categorizes how we should approach the question of disestablishment into three ``steps." It reads Solem as requiring us to examine the laws passed by Congress at the first step, contemporary events at the second, and even later events and demographics at the third. On the State's account, we have so far finished only the first step; two more await.

{LEdHR8}[8] This is mistaken. When interpreting Congress's work in this arena, no less than any other, our charge is usually to ascertain and follow the original meaning of the law before us. New Prime Inc. v. Oliveira, 586 U. S. ___, ___, 139 S. Ct. 532, 202 L. Ed. 2d 536 (2019). That is the only ``step" proper for a court of law. To be sure, if during the course of our work an ambiguous statutory term or phrase emerges, we will sometimes consult contemporaneous usages, customs, and practices{2020 U.S. LEXIS 29} to the extent they shed light on the meaning of the language in question at the time of enactment. Ibid. But Oklahoma does not point to any ambiguous language in any of the relevant statutes that could plausibly be read as an Act of disestablishment. Nor may a court favor contemporaneous or later practices instead of the laws Congress passed. As Solem explained, {LEdHR9}[9] ``[o]nce a block of land is set aside for an Indian reservation and no matter what happens to the {207 L. Ed. 2d 1002} title of individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise." 465 U. S., at 470, 104 S. Ct. 1161, 79 L. Ed. 2d 443 (citing United States v. Celestine, 215 U. S. 278, 285, 30 S. Ct. 93, 54 L. Ed. 195 (1909)).

Still, Oklahoma reminds us that other language in Solem isn't so constrained. In particular, the State highlights a passage suggesting that ``[w]here non-Indian settlers flooded into the opened portion of a reservation and the area has long since lost its Indian character, we have acknowledged that de facto, if not de jure, diminishment may have occurred." 465 U. S., at 471, 104 S. Ct. 1161, 79 L. Ed. 2d 443. While acknowledging that resort to subsequent demographics was ``an unorthodox and potentially unreliable method of statutory interpretation," the Court seemed nonetheless taken by its ``obvious practical advantages." Id., at 472, n. 13, 471, 104 S. Ct. 1161, 79 L. Ed. 2d 443.

Out of context,{2020 U.S. LEXIS 30} statements like these might suggest historical practices or current demographics can suffice to disestablish or diminish reservations in the way Oklahoma envisions. But, in the end, Solem itself found these kinds of arguments provided ``no help" in resolving the dispute {140 S. Ct. 2469} before it. Id., at 478, 104 S. Ct. 1161, 79 L. Ed. 2d 443. Notably, too, Solem suggested that whatever utility historical practice or demographics might have was ``demonstrated" by this Court's earlier decision in Rosebud Sioux Tribe v. Kneip, 430 U. S. 584, 97 S. Ct. 1361, 51 L. Ed. 2d 660 (1977). See Solem, 465 U. S., at 470, 104 S. Ct. 1161, 79 L. Ed. 2d 443, n. 10. And Rosebud Sioux hardly endorsed the use of such sources to find disestablishment. Instead, based on the statute at issue there, the Court came ``to the firm conclusion that congressional intent" was to diminish the reservation in question. 430 U. S., at 603, 97 S. Ct. 1361, 51 L. Ed. 2d 660. At that point, the Tribe sought to cast doubt on the clear import of the text by citing subsequent historical events-and the Court rejected the Tribe's argument exactly because this kind of evidence could not overcome congressional intent as expressed in a statute. Id., at 604-605, 97 S. Ct. 1361, 51 L. Ed. 2d 660.

This Court has already sought to clarify that extratextual considerations hardly supply the blank check Oklahoma supposes. In Parker, for example, we explained that ``[e]vidence of the subsequent treatment of the disputed land . . . has 'limited{2020 U.S. LEXIS 31} interpretive value.'" 577 U. S., at ___, 136 S. Ct. 1072, 194 L. Ed. 2d 152 (quoting South Dakota v. Yankton Sioux Tribe, 522 U. S. 329, 355, 118 S. Ct. 789, 139 L. Ed. 2d 773 (1998)). 8 Yankton Sioux called it the ``least compelling" {207 L. Ed. 2d 1003} form of evidence. Id., at 356, 118 S. Ct. 789, 139 L. Ed. 2d 773. Both cases emphasized that what value such evidence has can only be interpretative-evidence that, at best, might be used to the extent it sheds light on what the terms found in a statute meant at the time of the law's adoption, not as an alternative means of proving disestablishment or diminishment.

To avoid further confusion, we restate the point. {LEdHR10}[10] There is no need to consult extratextual sources when the meaning of a statute's terms is clear. Nor may extratextual sources overcome those terms. The only role such materials can properly play is to help ``clear up . . . not create" ambiguity about a statute's original meaning. Milner v. Dep't of the Navy, 562 U. S. 562, 574 (2011), 131 S. Ct. 1259, 179 L. Ed. 2d 268. And, as we have said time and again, once a reservation is established, it retains that status ``until Congress explicitly indicates otherwise." Solem, 465 U. S., at 470, 104 S. Ct. 1161, 79 L. Ed. 2d 443 (citing Celestine, 215 U. S., at 285, 30 S. Ct. 93, 54 L. Ed. 195); see also Yankton Sioux, 522 U. S., at 343, 118 S. Ct. 789, 139 L. Ed. 2d 773 (``[O]nly Congress can alter the terms of an Indian treaty by diminishing a reservation, and its intent to do so must be clear and plain") (citation and internal quotation marks omitted).

The dissent charges that we have failed to take account of the ``compelling reasons" for{2020 U.S. LEXIS 32} considering extratextual evidence {140 S. Ct. 2470} as a matter of course. Post, at ___ - ___, 207 L. Ed. 2d, at 1024. But Oklahoma and the dissent have cited no case in which this Court has found a reservation disestablished without first concluding that a statute required that result. Perhaps they wish this case to be the first. To follow Oklahoma and the dissent down that path, though, would only serve to allow States and courts to finish work Congress has left undone, usurp the legislative function in the process, and treat Native American claims of statutory right as less valuable than others. None of that can be reconciled with our normal interpretive rules, let alone our rule that disestablishment may not be lightly inferred and treaty rights are to be construed in favor, not against, tribal rights. Solem, 465 U. S., at 472, 104 S. Ct. 1161, 79 L. Ed. 2d 443. 9

To see the perils of substituting stories for statutes, we need look no further than the stories we are offered in the case before us. Put aside that the Tribe could tell more than a few {207 L. Ed. 2d 1004} stories of its own: Take just the evidence on which Oklahoma and the dissent wish to rest their case. First, they point to Oklahoma's long historical prosecutorial practice of asserting jurisdiction over Indians in state court, even for serious{2020 U.S. LEXIS 33} crimes on the contested lands. If the Creek lands really were part of a reservation, the argument goes, all of these cases should have been tried in federal court pursuant to the MCA. Yet, until the Tenth Circuit's Murphy decision a few years ago, no court embraced that possibility. See Murphy, 875 F.3d 896. Second, they offer statements from various sources to show that ``everyone'' in the late 19th and early 20th century thought the reservation system-and the Creek Nation-would be disbanded soon. Third, they stress that non-Indians swiftly moved on to the reservation in the early part of the last century, that Tribe members today constitute a small fraction of those now residing on the land, and that the area now includes a ``vibrant city with expanding aerospace, healthcare, technology, manufacturing, and transportation sectors.'' Brief for Petitioner in Carpenter v. Murphy, O. T. 2018, No. 17-1107, p. 15. All this history, we are told, supplies ``compelling'' evidence about the lands in question.

Maybe so, but even taken on its own terms none of this evidence tells the story we are promised. Start with the State's argument about its longstanding practice of asserting jurisdiction over Native Americans. Oklahoma{2020 U.S. LEXIS 34} proceeds on the implicit premise that its historical practices are unlikely to have defied the mandates of the federal MCA. That premise, though, appears more than a little shaky. {LEdHR11}[11] In conjunction with the MCA, § 1151(a) not only sends to federal court certain major crimes committed by Indians on reservations. Two doors down, in § 1151(c), the statute does the same for major crimes committed by Indians on ``Indian allotments, the Indian titles of which have not been extinguished.'' Despite this direction, however, Oklahoma state courts erroneously entertained prosecutions for major crimes by Indians on Indian allotments for decades, {140 S. Ct. 2471} until state courts finally disavowed the practice in 1989. See State v. Klindt, 1989 OK CR 75, 782 P. 2d 401, 404 (Okla. Crim. App. 1989) (overruling Ex parte Nowabbi, 1936 OK CR 123, 60 Okla. Crim. 111, 61 P.2d 1139 (1936); see also United States v. Sands, 968 F.2d 1058, 1062-1063 (CA10 1992). And if the State's prosecution practices disregarded § 1151(c) for so long, it's unclear why we should take those same practices as a reliable guide to the meaning and application of § 1151(a).

Things only get worse from there. Why did Oklahoma historically think it could try Native Americans for any crime committed on restricted allotments or anywhere else? Part of the explanation, Oklahoma tells us, is that it thought the eastern half of the State was always categorically exempt from the{2020 U.S. LEXIS 35} terms of the federal MCA. So whether a crime was committed on a restricted allotment, a reservation, or land that wasn't Indian country at all, to Oklahoma it just didn't matter. In the State's view, when Congress adopted the Oklahoma Enabling Act that paved the way for its admission to the Union, it carved out a special exception to the MCA for the eastern half of the State where the Creek lands can be found. By Oklahoma's own admission, then, for decades its historical practices in {207 L. Ed. 2d 1005} the area in question didn't even try to conform to the MCA, all of which makes the State's past prosecutions a meaningless guide for determining what counted as Indian country. As it turns out, too, Oklahoma's claim to a special exemption was itself mistaken, yet one more error in historical practice that even the dissent does not attempt to defend. See Part V, infra. 10

To be fair, Oklahoma is far from the only State that has overstepped its authority in Indian country. Perhaps often in good faith, perhaps sometimes not, others made similar mistakes in the past. But all that only underscores further the danger of relying on state practices to determine the meaning of the federal MCA. See, e.g.{2020 U.S. LEXIS 36}, Negonsett, 507 U. S., at 106-107, 113 S. Ct. 1119, 122 L. Ed. 2d 457 (``[I]n practice, Kansas had exercised jurisdiction over all offenses committed on Indian reservations involving Indians" (quoting memorandum from Secretary of the Interior, H. R. Rep. No. 1999, 76th Cong., 3d Sess., 4 (1940)); Scherer, Imperfect Victories, at 18 (describing ``nationwide jurisdictional confusion" as a result of the MCA); Cohen § 6.04(4)(a) (``Before 1942 the state of New York regularly exercised or claimed the right to exercise jurisdiction over the New York reservations, but a federal court decision in that year raised questions about the validity of state jurisdiction"); Brief for United States as Amicus Curiae in Carpenter v. Murphy, O. T. 2018, No. 17-1107, pp. 7a-8a (Letter from Secretary of the Interior, Mar. 27, 1963) (noting that many States have asserted criminal jurisdiction over Indians without an apparent basis in a federal law). 11

{140 S. Ct. 2472} Oklahoma next points to various statements during the allotment era which, it says, show that even the Creek understood their reservation was under threat. And there's no doubt about that. By 1893, the leadership of the Creek Nation saw what the federal government had in mind: ``They [the federal government] do not deny any of our rights under treaty, but say they{2020 U.S. LEXIS 37} will go to the people themselves and confer with them and urge upon them the necessity of a change in their present condition, and upon their refusal will force a change upon them." P. Porter & A. McKellop, Printed Statement of Creek Delegates, reprinted in Creek Delegation Documents 8-9 (Feb. 9, 1893). Not a decade later, and as a result of these forced changes, the leadership recognized that ```[i]t would be difficult, if {207 L. Ed. 2d 1006} not impossible to successfully operate the Creek government now.''' App. to Brief for Respondent 8a (Message to Creek National Council (May 7, 1901), reprinted in The Indian Journal (May 10, 1901)). Surely, too, the future looked even bleaker: ```The remnant of a government now accorded to us can be expected to be maintained only until all settlements of our landed and other interests growing out of treaty stipulations with the government of the United States shall have been settled.''' Ibid.

But note the nature of these statements. The Creek Nation recognized that the federal government will seek to get popular support or otherwise would force change. Likewise, the Tribe's government would continue for only so long. These were prophesies, and hardly groundbreaking{2020 U.S. LEXIS 38} ones at that. After all, the 1901 Creek Allotment Agreement explicitly said that the tribal government ``shall not continue" past 1906. § 46, 31 Stat. 872. So what might statements like these tell us that isn't already evident from the statutes themselves? Oklahoma doesn't suggest they shed light on the meaning of some disputed and ambiguous statutory direction. More nearly, the State seeks to render the Creek's fears self-fulfilling. 12

We are also asked to consider commentary from those outside the Tribe. In particular, the dissent reports that the federal government ``operated" on the ``understanding" that the reservation was disestablished. Post, at ___, 207 L. Ed. 2d, at 1036. In support of its claim, the dissent highlights a 1941 statement from Felix Cohen. Then serving as an official at the Interior Department, Cohen opined that ```all offenses by or against Indians' in the former Indian Territory 'are subject to State laws.'''
Ibid. (quoting App. to Supp. Reply Brief for Petitioner in Carpenter v. Murphy, O. T. 2018, No. 17-1107, p. 1a (Memorandum for Commissioner of Indian Affairs (July 11, 1941)). But that statement is

incorrect. As we have just seen, Oklahoma's courts acknowledge that the State lacks jurisdiction over Indian crimes{2020 U.S. LEXIS 39} on Indian allotments. See Klindt, 782 P. 2d, at 403-404. And the dissent does not dispute that Oklahoma is {140 S. Ct. 2473} without authority under the MCA to try Indians for crimes committed on restricted allotments and any reservation. All of which highlights the pitfalls of elevating commentary over the law. 13

{207 L. Ed. 2d 1007} Finally, Oklahoma points to the speedy and persistent movement of white settlers onto Creek lands throughout the late 19th and early 20th centuries. But this history proves no more helpful in discerning statutory meaning. Maybe, as Oklahoma supposes, it suggests that some white settlers in good faith thought the Creek lands no longer constituted a reservation. But maybe, too, some didn't care and others never paused to think about the question. Certain historians have argued, for example, that the loss of Creek land ownership was accelerated by the discovery of oil in the region during the period at issue here. A number of the federal officials charged with implementing the laws of Congress were apparently openly conflicted, holding shares or board positions in the very oil companies who sought to deprive Indians of their lands. A. Debo, And Still the Waters Run 86-87, 117-118 (1940).{2020 U.S. LEXIS 40} And for a time Oklahoma's courts appear to have entertained sham competency and guardianship proceedings that divested Tribe members of oil rich allotments. Id., at 104-106, 233-234; Brief for Historians et al. as Amici Curiae 26-30. Whatever else might be said about the history and demographics placed before us, they hardly tell a story of unalloyed respect for tribal interests. 14

{140 S. Ct. 2474} In the end, only one message rings true. Even the carefully selected history Oklahoma and the dissent recite is not nearly as tidy as they suggest. It supplies us with little help in discerning the law's meaning and much potential for mischief. If anything, the persistent if unspoken message here seems to be that we should be taken by the ``practical advantages" of ignoring the written law. How much easier it would be, after all, to let the State proceed as it has always assumed it might. But just imagine what it would mean to indulge that path. A State exercises jurisdiction over Native Americans with such persistence that {207 L. Ed. 2d 1008} the practice seems normal. Indian landowners lose their titles by fraud or otherwise in sufficient volume that no one remembers whose land it once was. All this continues for long enough that a reservation{2020 U.S. LEXIS 41} that was once beyond doubt becomes questionable, and then even farfetched. Sprinkle in a few predictions here, some contestable commentary there, and the job is done, a reservation is disestablished. None of these moves would be permitted in any other area of statutory interpretation, and there is no reason why they should be permitted here. That would be the rule of the strong, not the rule of law.

IV

Unable to show that Congress disestablished the Creek Reservation, Oklahoma next tries to turn the tables in a completely different way. Now, it contends, Congress never established a reservation in the first place. Over all the years, from the federal government's first guarantees of land and self-government in 1832 and through the litany of promises that followed, the Tribe never received a reservation. Instead, what the Tribe has had all this time qualifies only as a ``dependent Indian community."

Even if we were to accept Oklahoma's bold feat of reclassification, however, it's hardly clear the State would win this case. {LEdHR12}[12] ``Reservation[s]" and ``Indian allotments, the Indian titles to which have not been extinguished," qualify as Indian country under subsections (a) and (c) of § 1151. But ``dependent Indian communities"{2020 U.S. LEXIS 42} also qualify as Indian country under subsection (b). So Oklahoma lacks jurisdiction to prosecute Mr. McGirt whether the Creek lands happen to fall in one category or another.

About this, Oklahoma is at least candid. It admits the entire point of its reclassification exercise is to avoid Solem's rule that only Congress may disestablish a reservation. And to achieve that, the State has to persuade us not only that the Creek lands constitute a ``dependent Indian community" rather than a reservation. It also has to convince us that we should announce a rule that dependent Indian community status can be lost more easily than reservation status, maybe even by the happenstance of shifting demographics.

To answer this argument, it's enough to address its first essential premise. Holding that the Creek never had a reservation would require us to stand willfully blind before a host of federal statutes. Perhaps that is why the Solicitor General, who supports Oklahoma's disestablishment argument, refuses to endorse this alternative effort. It also may be why Oklahoma introduced this argument for affirmance only for the first time in this Court. And it may be why the dissent makes no attempt to defend Oklahoma{2020 U.S. LEXIS 43} here. What are we to make of the federal government's repeated treaty promises that the land would be ``solemnly guarantied to the Creek Indians," that it would be a ``permanent home," ``forever set apart," in which the Creek would be ``secured in the unrestricted right of self-government"? What about Congress's repeated references to a {140 S. Ct. 2475} ``Creek reservation" in its statutes? No one doubts that this kind of language normally suffices to establish a federal reservation. So what could possibly make this case different?

{207 L. Ed. 2d 1009} Oklahoma's answer only gets more surprising. The reason that the Creek's lands are not a reservation, we're told, is that the Creek Nation originally held fee title. Recall that the Indian Removal Act authorized the President not only to ``solemnly . . . assure the tribe . . . that the United States will forever secure and guaranty to them . . . the country so exchanged with them," but also, ``if they prefer it, . . . the United States will cause a patent or grant to be made and executed to them for the same." 4 Stat. 412. Recall that the Creek insisted on this additional protection when negotiating the Treaty of 1833, and in fact received a land patent pursuant to that treaty some 19 years{2020 U.S. LEXIS 44} later. In the eyes of Oklahoma, the Tribe's choice on this score was a fateful one. By asking for (and receiving) fee title to their lands, the Creek inadvertently made their tribal sovereignty easier to divest rather than harder.

The core of Oklahoma's argument is that a reservation must be land ``reserved from sale." Celestine, 215 U. S., at 285, 30 S. Ct. 93, 54 L. Ed. 195. Often, that condition is satisfied when the federal government promises to hold aside a particular piece of federally owned land in trust for the benefit of the Tribe. And, admittedly, the Creek's arrangement was different, because the Tribe held ``fee simple title, not the usual Indian right of occupancy." United States v. Creek Nation, 295 U. S. 103, 109, 55 S. Ct. 681, 79 L. Ed. 1331, 81 Ct. Cl. 973 (1935). Still, as we explained in Part II, the land was reserved

from sale in the very real sense that the government could not ``give the tribal lands to others, or to appropriate them to its own purposes," without engaging in ``'an act of confiscation.'" Id., at 110, 55 S. Ct. 681, 79 L. Ed. 1331.

It's hard to see, too, how any difference between these two arrangements might work to the detriment of the Tribe. {LEdHR13}[13] Just as we have never insisted on any particular form of words when it comes to disestablishing a reservation, we have never done so when it comes to establishing one. See Minnesota v. Hitchcock, 185 U. S. 373, 390, 22 S. Ct. 650, 46 L. Ed. 954 (1902) (``[I]n order to create a reservation{2020 U.S. LEXIS 45} it is not necessary that there should be a formal cession or a formal act setting apart a particular tract. It is enough that from what has been there results a certain defined tract appropriated to certain purposes"). As long as 120 years ago, the federal court for the Indian Territory recognized all this and rightly rejected the notion that fee title is somehow inherently incompatible with reservation status. Maxey v. Wright, 3 Indian Terr. 243, 54 S. W. 807, 810 (Indian Terr. 1900).

By now, Oklahoma's next move will seem familiar. Seeking to sow doubt around express treaty promises, it cites some stray language from a statute that does not control here, a piece of congressional testimony there, and the scattered opinions of agency officials everywhere in between. See, e.g., Act of July 31, 1882, ch. 360, 22 Stat. 179 (referring to Creek land as ``Indian country" as opposed to an ``Indian reservation"); S. Doc. No. 143, 59th Cong., 1st. Sess., 33 (1906) (Chief of Choctaw Nation-which had an arrangement similar to the Creek's-testified that both Tribes ``object to being classified with the reservation Indians"); Dept. of Interior, Census Office, Report on Indians Taxed and Indians Not Taxed in the U. S. 284 (1894) (Creeks and neighboring {207 L. Ed. 2d 1010} Tribes were ``not on the ordinary{2020 U.S. LEXIS 46} Indian reservation, but on lands patented to them by the United States"). Oklahoma stresses that this Court even once called the Creek lands a ``dependent Indian community," {140 S. Ct. 2476} though it used that phrase in passing and only to show that the Tribe's ``property and affairs were subject to the control and management of that government"-a point that would also be true if the lands were a reservation. Creek Nation, 295 U. S., at 109, 55 S. Ct. 681, 79 L. Ed. 1331. Unsurprisingly given the Creek Nation's nearly 200-year occupancy of these lands, both sides have turned up a few clues suggesting the label ``reservation" either did or did not apply. One thing everyone can agree on is this history is long and messy.

But the most authoritative evidence of the Creek's relationship to the land lies not in these scattered references; it lies in the treaties and statutes that promised the land to the Tribe in the first place. And, if not for the Tribe's fee title to its land, no one would question that these treaties and statutes created a reservation. So the State's argument inescapably boils down to the untenable suggestion that, when the federal government agreed to offer more protection for tribal lands, it really provided less. All this time, fee title was nothing{2020 U.S. LEXIS 47} more than another trap for the wary.

V

That leaves Oklahoma to attempt yet another argument in the alternative. We alluded to it earlier in Part III. Now, the State accepts for argument's sake that the Creek land is a reservation and thus ``Indian country'' for purposes of the Major Crimes Act. It accepts, too, that this would normally mean serious crimes by Indians on the Creek Reservation would have to be tried in federal court. But, the State tells us, none of that matters; everything the parties have briefed and argued so far is beside the point. It's all irrelevant because it turns out the MCA just doesn't apply to the eastern half of Oklahoma, and it never has. That federal law may apply to other States, even to the western half of Oklahoma itself. But eastern Oklahoma is and has always been exempt. So whether or not the Creek have a reservation, the State's historic practices have always been correct and it remains free to try individuals like Mr. McGirt in its own courts.

Notably, the dissent again declines to join Oklahoma in its latest twist. And, it turns out, for good reason. In support of its argument, Oklahoma points to statutory artifacts from its territorial history. The{2020 U.S. LEXIS 48} State of Oklahoma was formed from two territories: the Oklahoma Territory in the west and Indian Territory in the east. Originally, it seems criminal prosecutions in the Indian Territory were split between tribal and federal courts. See Act of May 2, 1890, § 30, 26 Stat. 94. But, in 1897, Congress abolished that scheme, granting the U. S. Courts of the Indian Territory ``exclusive jurisdiction'' to try ``all criminal causes for the punishment of any offense.'' Act of June 7, 1897, 30 Stat. 83. These federal territorial courts applied federal law and state law borrowed from Arkansas ``to all persons . . . irrespective of race.'' Ibid. A year later, Congress abolished tribal courts and transferred all pending criminal cases to U. S. courts of the Indian Territory. Curtis Act of 1898, § 28, 30 Stat. 504-505. And, {207 L. Ed. 2d 1011} Oklahoma says, sending Indians to federal court and all others to state court would be inconsistent with this established and enlightened policy of applying the same law in the same courts to everyone.

Here again, however, arguments along these and similar lines have been ``frequently raised'' but rarely ``accepted.'' United States v. Sands, 968 F.2d 1058, 1061 (CA10 1992) (Kelly, J.). ``The policy of leaving Indians free from state jurisdiction and control is deeply rooted in this Nation's{2020 U.S. LEXIS 49} history.'' Rice v. Olson, 324 U. S. 786, 789, 65 S. Ct. 989, 89 L. Ed. 1367 (1945). Chief Justice Marshall, for example, {140 S. Ct. 2477} held that Indian Tribes were ``distinct political communities, having territorial boundaries, within which their authority is exclusive . . . which is not only acknowledged, but guarantied by the United States,'' a power dependent on and subject to no state authority. Worcester v. Georgia, 31 U.S. 515, 6 Pet. 515, 557, 8 L. Ed. 483 (1832); see also McClanahan v. Arizona Tax Comm'n, 411 U. S. 164, 168-169, 93 S. Ct. 1257, 36 L. Ed. 2d 129 (1973). And in many treaties, like those now before us, the federal government promised Indian Tribes the right to continue to govern themselves. {LEdHR14}[14] For all these reasons, this Court has long ``require[d] a clear expression of the intention of Congress'' before the state or federal government may try Indians for conduct on their lands. Ex parte Crow Dog, 109 U. S. 556, 572, 3 S. Ct. 396, 27 L. Ed. 1030 (1883).

Oklahoma cannot come close to satisfying this standard. In fact, the only law that speaks expressly here speaks against the State. When Oklahoma won statehood in 1907, the MCA applied immediately according to its plain terms. That statute, as phrased at the time, provided exclusive federal jurisdiction over qualifying crimes by Indians in ``any Indian reservation'' located within ``the boundaries of any State.'' Act of Mar. 3, 1885, ch. 341, § 9, 23 Stat. 385 (emphasis added); see also 18 U. S. C. § 1151 (defining ``Indian country'' even more broadly).{2020 U.S. LEXIS 50} By contrast, every one of the

statutes the State directs us to merely discusses the assignment of cases among courts in the Indian Territory. They say nothing about the division of responsibilities between federal and state authorities after Oklahoma entered the Union. And however enlightened the State may think it was for territorial law to apply to all persons irrespective of race, some Tribe members may see things differently, given that the same policy entailed the forcible closure of tribal courts in defiance of treaty terms.

Left to hunt for some statute that might have rendered the MCA inapplicable in Oklahoma after statehood, the best the State can find is the Oklahoma Enabling Act. Congress adopted that law in preparation for Oklahoma's admission in 1907. Among its many provisions sorting out the details associated with Oklahoma's transition to statehood, the Enabling Act transferred all nonfederal cases pending in territorial courts to Oklahoma's new state courts. Act of June 16, 1906, § 20, 34 Stat. 277; see also Act of Mar. 4, 1907, § 3, 34 Stat. 1287 (clarifying treatment of cases to which United States was a party). The State says this transfer made its courts the inheritors of the federal territorial courts'{2020 U.S. LEXIS 51} sweeping authority to try Indians for crimes committed on reservations.

But, at best, this tells only half the story. The Enabling Act not only sent {207 L. Ed. 2d 1012} all nonfederal cases pending in territorial courts to state court. It also transferred pending cases that arose ``under the Constitution, laws, or treaties of the United States" to federal district courts. § 16, 34 Stat. 277. Pending criminal cases were thus transferred to federal court if the prosecution would have belonged there had the Territory been a State at the time of the crime. § 1, 34 Stat. 1287 (amending the Enabling Act). Nor did the statute make any distinction between cases arising in the former eastern (Indian) and western (Oklahoma) territories. So, simply put, the Enabling Act sent state-law cases to state court and federal-law cases to federal court. And serious crimes by Indians in Indian country were matters that arose under the federal MCA and thus properly belonged in federal court from day one, wherever they arose within the new State.

Maybe that's right, Oklahoma acknowledges, but that's not what happened. Instead, {140 S. Ct. 2478} for many years the State continued to try Indians for crimes committed anywhere within its borders. But what can that tell us? The State{2020 U.S. LEXIS 52} identifies not a single ambiguous statutory term in the MCA that its actions might illuminate. And, as we have seen, its own courts have acknowledged that the State's historic practices deviated in meaningful ways from the MCA's terms. See supra, at ___ - ___, 207 L. Ed. 2d, at 1004-1005. So, once more, it seems Oklahoma asks us to defer to its usual practices instead of federal law, something we will not and may never do.

That takes Oklahoma down to its last straw when it comes to the MCA. If Oklahoma lacks the jurisdiction to try Native Americans it has historically claimed, that means at the time of its entry into the Union no one had the power to try minor Indian-on-Indian crimes committed in Indian country. This much follows, Oklahoma reminds us, because the MCA provides federal jurisdiction only for major crimes, and no tribal forum existed to try lesser cases after Congress abolished the tribal courts in 1898. Curtis Act, § 28, 30 Stat. 504-505. Whatever one thinks about the plausibility of other discontinuities between federal law and state practice, the State says, it is unthinkable that Congress would have allowed such a significant ``jurisdictional gap" to open at the moment Oklahoma achieved statehood.

But what the State considers unthinkable{2020 U.S. LEXIS 53} turns out to be easily imagined. Jurisdictional gaps are hardly foreign to this area of the law. See, e.g., Duro v. Reina, 495 U. S. 676, 704-706, 110 S. Ct. 2053, 109 L. Ed. 2d 693 (1990) (Brennan, J., dissenting). Many tribal courts across the country were absent or ineffective during the early part of the last century, yielding just the sort of gaps Oklahoma would have us believe impossible. Indeed, this might be why so many States joined Oklahoma in prosecuting Indians without proper jurisdiction. The judicial mind abhors a vacuum, and the temptation for state prosecutors to step into the void was surely strong. See supra, at ___ - ___, 207 L. Ed. 2d, at 1005.

With time, too, Congress has filled many of the gaps Oklahoma worries about. One way Congress has done so is by reauthorizing tribal courts to hear minor crimes in Indian country. Congress chose exactly this course for the Creeks and others in 1936. Act of {207 L. Ed. 2d 1013} June 26, 1936, § 3, 49 Stat. 1967; see also Hodel, 851 F.2d, at 1442-1446. Another option Congress has employed is to allow affected Indian tribes to consent to state criminal jurisdiction. 25 U. S. C. §§ 1321(a), 1326. Finally, Congress has sometimes expressly expanded state criminal jurisdiction in targeted bills addressing specific States. See, e.g., 18 U. S. C. § 3243 (creating jurisdiction for Kansas); Act of May 31, 1946, ch. 279, 60 Stat. 229 (same for a reservation in North Dakota); Act{2020 U.S. LEXIS 54} of June 30, 1948, ch. 759, 62 Stat. 1161 (same for certain reservations in Iowa); 18 U. S. C. § 1162 (creating jurisdiction for six additional States). But {LEdHR15}[15] Oklahoma doesn't claim to have complied with the requirements to assume jurisdiction voluntarily over Creek lands. Nor has Congress ever passed a law conferring jurisdiction on Oklahoma. As a result, the MCA applies to Oklahoma according to its usual terms: Only the federal government, not the State, may prosecute Indians for major crimes committed in Indian country.

VI

[redacted] Brief for Respondent 43. Here, at least, the State is finally rejoined by the dissent. If we dared to recognize that the Creek Reservation was never disestablished, Oklahoma and dissent {140 S. Ct. 2479} warn, our holding might be used by other tribes to vindicate similar treaty promises. Ultimately, Oklahoma fears that perhaps as much as half its land and roughly 1.8 million of its residents could wind up within Indian country.

It's hard to know what to make of this self-defeating argument. Each tribe's treaties must be considered on their own terms, and the only question before us{2020 U.S. LEXIS 55} concerns the Creek. Of course, the Creek Reservation alone is hardly insignificant, taking in most of Tulsa and certain neighboring communities in Northeastern Oklahoma. But neither is it unheard of for significant non-Indian populations to live successfully in or near reservations today. See, e.g., Brief for National Congress of American Indians Fund as Amicus Curiae 26-28 (describing success of Tacoma, Washington, and Mount Pleasant, Michigan); see also Parker, 577 U. S., at ___-___, 136 S. Ct. 1072, 194 L. Ed. 2d 152 (holding Pender, Nebraska, to be within Indian country despite tribe's absence from the disputed territory for more than 120 years). Oklahoma replies that its situation is different because

the affected population here is large and many of its residents will be surprised to find out they have been living in Indian country this whole time. But we imagine some members of the 1832 Creek Tribe would be just as surprised to find them there.

What are the consequences the State and dissent worry might follow from an adverse ruling anyway? Primarily, they argue that recognizing the continued existence of the Creek Reservation could unsettle an untold number of convictions and frustrate the State's ability to prosecute crimes in the future.{2020 U.S. LEXIS 56} But {LEdHR16}[16] the MCA applies only to certain crimes committed in Indian country by Indian defendants. A neighboring statute provides that federal law applies to a broader range of crimes by or against Indians in Indian country. See 18 U. S. C. § 1152. States are otherwise free to apply their criminal laws in cases of {207 L. Ed. 2d 1014} non-Indian victims and defendants, including within Indian country. See McBratney, 104 U. S., at 624, 26 L. Ed. 869. And Oklahoma tells us that somewhere between 10% and 15% of its citizens identify as Native American. Given all this, even Oklahoma admits that the vast majority of its prosecutions will be unaffected whatever we decide today.

Still, Oklahoma and the dissent fear, ``[t]housands" of Native Americans like Mr. McGirt ``wait in the wings" to challenge the jurisdictional basis of their state-court convictions. Brief for Respondent 3. But this number is admittedly speculative, because many defendants may choose to finish their state sentences rather than risk reprosecution in federal court where sentences can be graver. Other defendants who do try to challenge their state convictions may face significant procedural obstacles, thanks to well-known state and federal limitations on postconviction review in criminal proceedings. 15

When Congress adopted the MCA, it broke many treaty promises that had once allowed tribes like the Creek to try their own members. But, in return, Congress allowed only the federal government, not the States, to try tribal members for major crimes. All our decision today does is vindicate that replacement promise. And if the threat of unsettling convictions cannot save a precedent of this Court, see Ramos v. Louisiana, 590 U. S. ___, ___-___, 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020) (plurality opinion), it certainly cannot force us to ignore a statutory promise when no precedent stands before us at all.

What's more, a decision for either party today risks upsetting some convictions. Accepting the State's argument that the MCA never applied in Oklahoma would preserve the state-court convictions of people like Mr. McGirt, but simultaneously call into question every federal conviction obtained for crimes committed on trust lands and restricted Indian allotments since Oklahoma recognized its jurisdictional error more than 30 years ago. See supra, at ___, 207 L. Ed. 2d, at 1004. It's a consequence of their own arguments that Oklahoma and the dissent choose to ignore, but one which cannot help but illustrate the difficulty of trying to{2020 U.S. LEXIS 58} guess how a ruling one way or the other might affect past cases rather than simply proceeding to apply the law as written.

Looking to the future, Oklahoma warns of the burdens federal and tribal courts will experience with a wider jurisdiction and increased caseload. But, again, for every jurisdictional reaction there seems to be

an {207 L. Ed. 2d 1015} opposite reaction: recognizing that cases like Mr. McGirt's belong in federal court simultaneously takes them out of state court. So while the federal prosecutors might be initially understaffed and Oklahoma prosecutors initially overstaffed, it doesn't take a lot of imagination to see how things could work out in the end.

Finally, the State worries that our decision will have significant consequences for civil and regulatory law. The only question before us, however, concerns the statutory definition of ``Indian country'' as it applies in federal criminal law under the MCA, and often nothing requires other civil statutes or regulations to rely on definitions found in the criminal law. Of course, many federal civil laws and regulations do currently borrow from § 1151 when defining the scope of Indian country. But it is far from obvious why this collateral drafting{2020 U.S. LEXIS 59} choice should be allowed to skew our interpretation of the MCA, or deny its promised benefits of a federal criminal forum to tribal members.

It isn't even clear what the real upshot of this borrowing into civil law may be. Oklahoma reports that recognizing the existence of the Creek Reservation for purposes of the MCA might potentially trigger a variety of federal civil statutes and rules, including ones making the region eligible for assistance with homeland security, 6 U. S. C. §§ 601, 606, historical preservation, 54 U. S. C. § 302704, schools, 20 U. S. C. § 1443, highways, 23 U. S. C. § 120, roads, § 202, primary care clinics, 25 U. S. C. § 1616e-1, housing assistance, § 4131, nutritional programs, 7 U. S. C. §§ 2012, 2013, disability programs, 20 U. S. C. § 1411, and more. But what are we to make of this? Some may find developments like these unwelcome, but from what we are told others may celebrate them.

The dissent isn't so sanguine-it assures us, without further elaboration, that the {140 S. Ct. 2481} consequences will be ``drastic precisely because they depart from . . . more than a century [of] settled understanding.'' Post, at ___, 207 L. Ed. 2d, at 1039. The prediction is a familiar one. Thirty years ago the Solicitor General warned that ``[l]aw enforcement would be rendered very difficult'' and there would be ``grave uncertainty regarding the application'' of state law if courts{2020 U.S. LEXIS 60} departed from decades of ``long-held understanding'' and recognized that the federal MCA applies to restricted allotments in Oklahoma. Brief for United States as Amicus Curiae in Oklahoma v. Brooks, O.T. 1988, No. 88-1147, pp. 2, 9, 18, 19. Yet, during the intervening decades none of these predictions panned out, and that fact stands as a note of caution against too readily crediting identical warnings today.

More importantly, dire warnings are just that, and not a license for us to disregard the law. By suggesting that our interpretation of Acts of Congress adopted a century ago should be inflected based on the costs of enforcing them today, the dissent tips its hand. Yet again, the point of looking at subsequent developments seems not to be determining the meaning of the laws Congress wrote in 1901 or 1906, but emphasizing the costs of taking them at their word.

Still, we do not disregard the dissent's concern for reliance interests. It only seems to us that the concern is misplaced. Many other legal doctrines-procedural bars, res judicata, statutes of repose, and laches, to {207 L. Ed. 2d 1016} name a few-are designed to protect those who have reasonably labored under a mistaken understanding of the law.{2020 U.S. LEXIS 61} And it is precisely because those doctrines exist that we are ``fre[e] to say what we know to be true . . . today, while leaving questions

SHAUN MICHAEL BOSSE, Petitioner v. THE STATE OF OKLAHOMA, Respondent.
COURT OF CRIMINAL APPEALS OF OKLAHOMA
2021 OK CR 23; 2021 Okla. Crim. App. LEXIS 25
Case Number: PCD-2019-124
August 31, 2021, Decided
Editorial Information: Prior History

Bosse v. State, 2021 OK CR 3, 484 P.3d 286, 2021 Okla. Crim. App. LEXIS 3, 2021 WL 958372 (Okla. Crim. App., Mar. 11, 2021)

Judges: SCOTT ROWLAND, Presiding Judge, ROBERT L. HUDSON, Vice Presiding Judge, GARY L. LUMPKIN, Judge, DAVID B. LEWIS, Judge.

Opinion

ORDER VACATING PREVIOUS ORDER AND JUDGMENT GRANTING POST-CONVICTION RELIEF AND WITHDRAWING OPINION FROM PUBLICATION

P1 Based on the Court's decision in State ex rel. Matloff v. Wallace, 2021 OK CR 21, P.3d , the previous order and judgment granting post-conviction relief in this case are hereby VACATED and SET ASIDE. The issuance of the mandate in this case was previously stayed by this Court on April 15, 2021, and no mandate has issued. The opinion in Bosse v. State, 2021 OK CR 3, 484 P.3d 286 is WITHDRAWN. The Court will issue a separate order addressing Petitioner's claims for post-conviction relief at a later time.

P2 IT IS SO ORDERED.

P3 WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 31st day of August, 2021.

/s/ SCOTT ROWLAND, Presiding Judge

/s/ ROBERT L. HUDSON, Vice Presiding Judge

/s/ GARY L. LUMPKIN, Judge

/s/ DAVID B. LEWIS, Judge

Andrew T. Burns Sr.

ANDREW THOMAS BURNS, SR.
LAW TON CORRECTIONAL FACILITY
8607 S.E. FLOWERMOUND ROAD
LAW TON, OKLAHOMA 73501