

No. 21-7217

ORIGINAL

Supreme Court, U.S.  
FILED  
FEB 15 2022  
OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

Thomas Allen Twobabies — PETITIONER  
(Your Name)

vs.

The state of Oklahoma — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Oklahoma Court of Criminal Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Thomas Allen Twobabies  
(Your Name)

DCCC, 129 Conner Road  
(Address)

Hominy, Oklahoma 74035  
(City, State, Zip Code)

(Phone Number)

### **QUESTION(S) PRESENTED**

1. WHETHER THIS COURT'S DECISION IN MCGIRT V. OKLAHOMA APPLIES TO THE CHEYENNE AND ARAPAHO TRIBES FOR MAJOR CRIMES ACT PURPOSES.

2. WHETHER THE OKLAHOMA COURT OF CRIMINAL APPEALS ANNOUNCED IN MCGIRT V. OKLAHOMA AS PROCEDURAL RATHER THAN SUBSTANTIVE IS IN CONFLICT WITH THIS COURTS DECISION IN SCHRIRO V. SUMMERLIN, 542 U.S. 348, 351-52 (2004)

3. WHETHER IN MONTGOMERY V. LOUISIANA 136 S. CT. 718, ANALYSIS IS SUBSTANTIATED IN CASE, WHICH IS IN CONFLICT WITH THIS COURTS DECISION.

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the canadian county District court appears at Appendix 8A-2 to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

2

4

2

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 11-19-21.  
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	5
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	7
STATEMENT OF THE CASE .....	9
REASONS FOR GRANTING THE WRIT .....	12
CONCLUSION.....	14

## INDEX TO APPENDICES

- APPENDIX A-1 Order Affirming Denial of Post-Conviction Relief,  
OCCA, Nov. 19, 2021
- APPENDIX A-2 Order Denying Second Application for Post-Conviction  
Relief, District Court of Canadian County, Aug. 13, 2021
- APPENDIX A-3 Petition in error  
~~Barber in support~~
- APPENDIX A-4 Petitioner's Application to Assume  
original jurisdiction and petition for  
a writ of mandamus
- APPENDIX A-6 Certificate of Indian blood
- APPENDIX A-7 Treaty which was later  
A-8 ratified 1890  
Constitution of Cheyenne & Arapaho  
tribes of Oklahoma
- Appendix A-9 order Dismissing Appeal
- A-10 order Declining Jurisdiction

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

"Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 1

# TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
ATKINS V V.A.,536 U.S. 304 (2002).....	12
CONFEDERATED BANDS AND TRIBES OF THE YAKIMA INDIAN NATION V. WASHINGTON,550 F.2d.443(CA9 1977)AT NOTE 3.....	13
EX PARTE CROW DOG,109 U.S. AT 558.....	10
McCLANAHAN V. ARIZONA STATE TAX COMMISSION, 411 U.S. 164, 93 S. CT 1257-36 L.Ed. 2d.129(1971).....	11
MONTGOMERY V. LOUISIANA 136 S. CT 718.....	12,
MURPHY V. STATE,2005 OK CR ¶8,124 P.3d. 1198.1200-01.....	10
MUSTANG PRODUCTION CO. V. HARRISON,U.S.C.A. 10 <sup>TH</sup> CIR AUGUST 23,1996 94 F.3d. 1382.....	9, 11
MUSTANG FUEL CORP V. HATCH,890 F. SUPP 995(W.D. OKLA 1995).....	10, 13
PENRY V. LYNAUGH,492 U.S. 302,330(1989).....	12
SCHRIRO V. SUMMERLIN,542 U.S. 348.....	12
STATE V. LITTLECHIEF,573 P. 2d. 1978 OK CR.....	10
U.S. V. ARRIETA,436 F.3d. 1246,1248-49(10 <sup>TH</sup> CIR 2006).....	10
STATUTES AND RULES	
M.C.A. TITLE 18.....	9, 10, 12
PUBLIC LAW NO. 83-280-67 STAT. 588(1953).....	11, 13
TITLE IV OF THE CIVIL RIGHTS ACT OF 1968,25 U.S.C. §1321-1326.....	11,
OTHER	
HR.REP NO.848.83d CONG.,1 <sup>ST</sup> SESS. REPRINTED IN (1951) U.S. CODE CONG.& ADMIN.NEWS P. 2409.....	11



## STATEMENT OF THE CASE

PETITIONER, AN ENROLLED MEMBER OF THE CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA WAS CONVICTED OF FIRST DEGREE MURDER IN THE DISTRICT COURT OF CANADIAN COUNTY, AND WAS SENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, CASE NO. CF-2010-500

THE AREA WHERE THE MURDER TOOK PLACE IS INDIAN COUNTRY AS THAT TERM IS DEFINED BY FEDERAL LAW.

THE HISTORICAL TREATY WHICH INCLUDED THE LANDS AND LANDS WHERE CRIME COMMITTED FIT THE DESCRIPTION WITHIN IN LANDS IN AND AROUND THE M.C.A. ACT. THE CHEYENNE AND ARAPAHO TRIBES STILL MAINTAIN A TRIBAL GOVERNMENT AND ALL ACTS AND TREATIES ARE STILL FOREVER MORE INTACT, WHICH THE TREATY SPECIFIES WHICH SHOULD NEVER BE CONVEYED. IN ARTICLE 3. OF THE HISTORICAL TREATY WHICH WAS RATIFIED BY GRANT IN 1891, PROVIDED, FURTHER, THAT THEY SAID INDIANS, SHALL AND WILL AT ALL TIMES DURING SUCH OCCUPANCY, WITHOUT DELAY, REPORT TO THE COMMANDER OF THE NEAREST POST, WHICH IS THE FEDERAL GOVERNMENT WHO HOLDS EXCLUSIVE JURISDICTION OVER ALL OF CHEYENNE AND ARAPAHO TRIBES. SEE PETITIONERS MAP ATTACHED OF THE 1890 TO HIS APPLICATION THAT DESCRIBES THE LAND OF THE CHEYENNE AND ARAPAHO, IT ENCOMPASSES THE AREA OF CANADIAN COUNTY. BUT STATE COURT CONVENIENTLY DOES NOT MENTION PETITIONER'S 1890 MAP OR ATTEMPT TO DISPUTE WHAT IT SHOWS. THE 1890 MAP MORE ACCURATELY DESCRIBES THE AREA OF LAND MENTIONED IN THE 1870 EXECUTIVE ORDER. THE CHEYENNE AND ARAPAHO NEVER RELINQUISHED ANY LAND IN CANADIAN COUNTY IN THE 1867 OR 1870. SEE ALSO MUSTANG PRODUCTION CO. V. HARRISON, U.S.C.A., 10<sup>TH</sup> CIR. AUGUST 23, 1996 94 F.3d.1382

BECAUSE THE STATE DID NOT ALLEGE ANY "SPECIFIC" FACTS PROVING THAT THE CHEYENNE AND ARAPAHO TRIBES LOCATED IN EL RENO, COUNTY OF CANADIAN COUNTY, STATE OF OKLAHOMA HAS BEEN "DISESTABLISHED," THE HISTORICAL RECORDS OF THE CHEYENNE AND ARAPAHO TRIBES CONCLUDE OTHERWISE.

## ARGUMENTS AND AUTHORITIES

PETITIONER, AN ENROLLED MEMBER OF THE CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA WAS CONVICTED OF FIRST DEGREE MURDER IN THE DISTRICT COURT OF CANADIAN COUNTY, AND WAS SENTENCED TO LIFE WITHOUT PAROLE, CASE NO. CF-2010-500 ON MARCH 20TH, 2012.

PETITIONERS PRONOUNCEMENT OF GUILT WAS MADE BY A JURY IN THE TRIAL COURT WAS REPRESENTED BY MARY S. BRUEHL, APPOINTED BY THE COURT.

ACCORDING TO THE RECENT MCGIRT DECISION OF THE UNITED STATES, WHICH IN FACT STILL APPLIES THE M.C.A. WITHIN AND FOR THE HISTORICAL CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA. THE HISTORICAL TREATY WHICH INCLUDED THE LANDS AND LANDS WHERE CRIME COMMITTED FIT THE DESCRIPTION WITHIN LANDS AND AROUND THE M.C.A. ACT.

THE CHEYENNE AND ARAPAHO TRIBES STILL MAINTAIN A TRIBAL GOVERNMENT AND SOVEREIGNTY OF ALL ALL ACTS AND TREATIES ARE STILL FOREVER MORE INTACT, WHICH THE TREATY SPECIFIES WHICH SHOULD NEVER BE CONVEYED IN ARTICLE 3 OF THE HISTORICAL TREATY WHICH WAS RATTIFIED BY GRANT IN 1891, PROVIDED, FURTHER, THAT THEY THE INDIANS, SHALL AND WILL AT ALL TIMES DURING SUCH OCCUPANCY, WITHOUT DELAY, REPORT TO THE FEDERAL GOVERNMENT, WHO HOLDS EXCLUSIVE JURISDICTION OVER ALL OF CHEYENNE AND ARAPAHO TRIBES. UNDER 18 U.S.C. §1151(a) SEE EX PARTE CROW DOG, 109 U.S. AT 558. OFFENSES ENUMERATED AND DEFINED UNDER THE GENERAL LAWS OF THE UNITED STATES WHICH WERE COMMITTED IN "THE INDIAN COUNTRY" BY INDIANS AGAINST "WHITE PERSONS," AND BY "WHITE PERSONS" AGAINST INDIANS WERE FEDERAL OFFENSES, AND THOSE COMMITTED BY INDIANS AGAINST EACH OTHER IN "THE INDIAN COUNTRY" WERE LEFT TO EACH TRIBE ACCORDING TO LOCAL CUSTOM. *Id.*, 109 U.S. AT 571-72 (MURDER OF INDIAN BY ANOTHER INDIAN ON SIOUX RESERVATION SUBJECT TO TRIBAL, RATHER THAN FEDERAL, JURISDICTION UNDER §2146) SEE STATE V. LITTLECHIEF, 573 P.2 d 1978 OK CR; SEE ALSO MUSTANG FUEL CORP V. HATCH, 890 F. SUPP 995 (W.D. OKLA. 1995) (DISTRICT COURT OPION IN THIS CASE)

"(a) ALL LANDS WITHIN THE LIMITS OF ANY INDIAN RESERVATION UNDER THE JURISDICTION OF THE UNITED STATES GOVERNMENT, NOT WITHSTANDING THE ISSUANCE OF ANY PATENT, AND, INCLUDING RIGHTS-OF-WAY RUNNING THROUGH THE RESERVATION, (b) ALL DEPENDENT INDIAN COMMUNITIES WITHIN THE BORDERS OF THE UNITED STATES WHETHER WITHIN THE ORIGINAL OR SUBSEQUENTLY ACQUIRED TERRITORY THEREOF, AND WHETHER WITHIN OR WITHOUT THE LIMITS OF A STATE, AND (c) ALL INDIAN ALLOTMENTS, THE INDIAN TITLES TO WHICH HAVE NOT BEEN EXTINGUISHED, INCLUDING RIGHTS-OF-WAY RUNNING THROUGH THE SAME. SEE 18 U.S.C. §1151: AND SEE *U.S. V. ARRIETA*, 436 F.3d 1246, 1248-49 (10<sup>TH</sup> CIR. 2006) SEE ALSO *MURPHY V. STATE*, 2005 OK CR 25, ¶8, 124 P.3D 1198, 1200-1201. THE UNITED STATES CONGRESS HAS NOT DISESTABLISHED THE CHEYENNE AND ARAPAHO RESERVATION, STATE OF OKLAHOMA, THE CHEYENNE AND ARAPAHO

*SIGNED THE FORT LARAMIE TREATY WITH THE UNITED STATES IN 1851. IT RECOGNIZED AND GUARANTEED THEIR RIGHTS TO TRADITIONAL LANDS IN PORTIONS OF COLORADO, KANSAS, NEBRASKA AND WYOMING. THE UNITED STATES COULD NOT ENFORCE THE TREATY, HOWEVER AND EUROPEAN AMERICAN TRESPASSERS OVERRAN INDIAN LANDS.*

*THE UNITED STATES GOVERNMENT BROUGHT THE TRIBES TO COUNCIL AGAIN IN 1867 TO ACHIEVE PEACE UNDER THE MEDICINE LODGE TREATY. IT PROMISED THE CHEYENNE AND ARAPAHO A RESERVATION IN KANSAS, BUT THEY DISLIKED THE LOCATION, THEY ACCEPTED A RESERVATION WITH THE CHEYENNE IN INDIAN TERRITORY, SO BOTH TRIBES WERE FORCED TO REMOVE SOUTH NEAR FORT RENO AT THE DARLINGTON AGENCY IN PRESENT DAY*

*OKLAHOMA [CITATION] IN 1870, THE AGENCY WAS LOCATED NEAR AN ADEQUATE TIMBER AND SPRING WATER SUPPLY ACROSS THE RIVER, NORTH AND EAST OF PRESENT DAY FORT RENO. SEE ALSO [HTTP://WWW.FORTRENO.ORG/HISTORY-2](http://www.fortreno.org/history-2) THE CHEYENNE AND ARAPAHO TRIBES NEVER RELINQUISHED ANY LAND IN INDIAN COUNTY IN 1867 OR 1870, SEE ALSO MUSTANG PRODUCTION CO. V. HARRISON, U.S.C.A., 10TH CIR AUGUST 23<sup>RD</sup>, 1996 94 F.3d 1382*

*UNDER THE ACT OF AUGUST 15, 1953, PUBLIC LAW NO. 83-280, 67*

*STAT. 588 (1953) (HEREIN AFTER PUBLIC LAW 83-280), THE CONGRESS GAVE THE STATES PERMISSION TO ASSUME CRIMINAL AND CIVIL JURISDICTION OVER ANY "INDIAN COUNTRY" WITHIN THEIR BORDERS WITHOUT THE CONSENT OF THE TRIBES AFFECTED, TITLE IV OF THE CIVIL RIGHTS ACT OF 1968, 25 U.S.C. § 1321-1326 (HEREINAFTER TITLE IV) CHANGED THE PROCEDURE SET OUT IN PUBLIC LAW 83-280 AND REQUIRED THE CONSENT OF THE INDIANS INVOLVED BEFORE A STATE WAS PERMITTED TO ASSUME CRIMINAL AND CIVIL JURISDICTION OVER "INDIAN COUNTRY" SEE 25 U.S.C. § 1321(a) AND 1322(a) LIKE SECTION 6, PUBLIC LAW 83-280, 25 U.S.C. § 1324 GAVE STATES WITH LEGAL IMPEDIMENTS TO THE ASSUMPTION OF JURISDICTION UNDER TITLE IV PERMISSION TO AMEND THEIR CONSTITUTIONS AND STATUTES TO REMOVE ANY SUCH IMPEDIMENTS AND PROVIDED THAT THE ASSUMPTION OF JURISDICTION BY SUCH A STATE SHOULD NOT BE EFFECTIVE UNTIL THE REQUIRED AMENDMENTS HAD BEEN MADE. ARTICLE I, SECTION 3 OF THE OKLAHOMA CONSTITUTION CONSTITUTES A LEGAL IMPEDIMENT. SEE H.R. REP. NO. 848, 83d CONG., 1<sup>ST</sup> SESS., REPRINTED IN (1951) U.S. CODE CONG. & ADMIN. NEWS p. 2409. UNDER THE PROVISIONS OF PUBLIC LAW 83-280 IT APPEARS THEREFORE THAT THE STATE OF OKLAHOMA COULD HAVE UNILATERALLY ASSUMED JURISDICTION OVER ANY "INDIAN COUNTRY" WITHIN ITS BORDERS AT ANY TIME BETWEEN 1953 AND 1968 HAD THE OKLAHOMA CONSTITUTION BEEN AMENDED AS REQUIRED. AFTER THE ENACTMENT OF TITLE IV IN 1968 OKLAHOMA HAD TO AMEND ITS CONSTITUTION AND THE AFFECTED TRIBES HAD TO CONSENT TO THE STATE'S ASSUMPTION OF JURISDICTION OVER THEM BEFORE THE STATE COULD ACQUIRE JURISDICTION OVER "INDIAN COUNTRY". SEE MCCLANAHAN V. ARIZONA STATE TAX COMMISSION, 411 U.S. 164, 93 S. CT. 1257-36 L. Ed 2d 129 (1971). HOWEVER, THE STATE OF OKLAHOMA APPARENTLY HAS NEVER ACTED PURSUANT TO PUBLIC LAW 83-280 OR TITLE IV AND ASSUMED JURISDICTION OVER THE "INDIAN COUNTRY"*

## REASONS FOR GRANTING THE PETITION

1. PETITIONER, AN ENROLLED MEMBER OF THE CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA WAS CONVICTED OF FIRST DEGREE MURDER IN THE DISTRICT COURT OF CANADIAN COUNTY, AND WAS SENTENCED TO LIFE WITHOUT PAROLE, CASE NO. CF-2010

THE AREA WHERE THE MURDER TOOK PLACE IS INDIAN COUNTRY AS THAT TERM DEFINED BY FEDERAL LAW. AS SUCH, THE STATE OF OKLAHOMA LACKED JURISDICTION TO PROSECUTE PETITIONER, AN "INDIAN," WHOSE CRIME WAS COMMITTED ON "INDIAN COUNTRY." FURTHERMORE, THE "CLEAR AND CONVINCING" ACTS OF THE UNITED STATES CONGRESS ABOVE ENVISIONING A CONSTITUTIONAL FOR THE CHEYENNE AND ARAPAHO TRIBES ADOPTED ON THE 18<sup>TH</sup> SEPTEMBER 1937 LIBRARY OF CONGRESS MAY 17<sup>TH</sup>, 1938 DIVISION OF DOCUMENTS [CITATION] CANNOT SUPPORT THAT CONGRESS SOUGHT TO DISESTABLISH THAT "INDIAN COUNTRY". THESE MATERIAL FACTS SUBMITTED AS TO THE EXISTENCE OF THE CHEYENNE AND ARAPAHO IN PRESENT DAY OKLAHOMA.

THE SUBJECT MATTER OF THIS DISPUTE AS TO 'JURISDICTION' OF THE STATE OF OKLAHOMA AND THE DISTRICT COURT OF CANADIAN COUNTY TO INSTITUTE CRIMINAL PROCEEDINGS AGAINST THIS "INDIAN" PERSON, IN VIEW OF THE "CLEAR AND EXPLICIT MANDATORY LANGUAGE" OF TITLE 18 U.S.C. §1151 ET SEQ. HAS NOT BEEN THE STATES RESPONSE.

BECAUSE THE STATE DID NOT ALLEGE ANY "SPECIFIC" FACTS PROVING THAT THE CHEYENNE AND ARAPAHO TRIBES LOCATED IN EL RENO, CANADIAN COUNTY, STATE OF OKLAHOMA HAS BEEN "DISESTABLISHED," THE HISTORICAL RECORDS OF THE CHEYENNE AND ARAPAHO TRIBES CONCLUDE OTHERWISE.

SEE MONTGOMERY V. LOUISIANA 136 S. CT 718 THIS COURT HAS SAID IT WAS FORBIDDEN TO USE FEDERAL HABEAS WRIT "AS A MERE WRIT OF ERROR" 100 U.S., 375. "THE ONLY GROUND ON WHICH THIS COURT, OR ANY COURT, WITHOUT SOME SPECIAL STATUTE AUTHORIZING IT [COULD] GIVE RELIEF ON HABEAS CORPUS TO A PRISONER UNDER CONVICTION AND SENTENCE OF ANOTHER COURT IS THE WANT OF JURISDICTION IN SUCH COURT OVER THE PERSON OR THE CAUSE, OR SOME OTHER MATTER RENDERING ITS PROCEEDINGS VOID.

2. THE OKLAHOMA COURT OF CRIMINAL APPEALS DECISION CLASSIFYING THE MCGIRT V. OKLAHOMA AS PROCEDURAL RATHER THAN SUBSTANTIVE IS IN CONFLICT WITH THIS COURTS DECISION IN SCHIRO V. SUMMERLIN, 542 U.S. 348

IN SCHIRO V. SUMMERLIN, SUPRA, THIS COURT HELD THAT SUBSTANTIVE RULES INCLUDE DECISIONS THAT "NARROW THE SCOPE OF A CRIMINAL STATUTE BY INTERPRETING ITS TERMS... AS WELL AS CONSTITUTIONAL DETERMINATIONS THAT TOOK PLACE PARTICULAR CONDUCT OR PERSONS COVERED BY THE STATUTE BEYOND THE STATES POWER TO PUNISH." ID (CITATIONS OMITTED); SEE ALSO PENRY V. LYNAUGH, 492 U.S. 302, 330 (1989), ABROGATED ON OTHER GROUNDS BY ATKINS V. VA., 536 U.S.

WITHIN ITS BORDERS. SEE CONFEDERATED BANDS AND TRIBES OF THE YAKIMA INDIAN NATION V. WASHINGTON, 550 F.2d 443 (CA9 1977) AT NOTE 3.

WE FIND THAT THE ISSUE SOUGHT TO BE RAISED HAS BEEN DETERMINED BY THE HONORABLE FRED DAUGHERTY, AND THAT SAID DETERMINATION IS BINDING ON THE STATE OF OKLAHOMA SINCE IT INVOLVES THE CONSTRUCTION AND APPLICATION OF FEDERAL STATUTES, TO WIT: ACT OF AUGUST 15, 1953; PUBLIC LAW NO. 83-280, 67 STAT. 588; AND TITLE IV OF THE CIVIL RIGHTS ACT OF 1968, 25 U.S.C. §1321 THROUGH 1326. SAID DETERMINATION IS BINDING ON THE STATE OF OKLAHOMA UNLESS AND UNTIL IT IS OVERTURNED BY THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT OR THE SUPREME COURT OF THE UNITED STATES, SEE STATE V. LITTLECHIEF, 573 P.2d 263 1978 OK CR. SEE ALSO MUSTANG FUEL CORP. V. HATCH, 890 F.SUPP 995 (W.D. OKLA. 1995) (DISTRICT COURT OPINION IN THIS CASE)

AS SUCH, THE STATE OF OKLAHOMA LACKED JURISDICTION TO PROSECUTE PETITIONER, AN "INDIAN" WHOSE CRIME WAS COMMITTED ON "INDIAN COUNTRY." FURTHERMORE, THE "CLEAR AND CONVINCING" ACTS OF THE UNITED STATES CONGRESS ABOVE ENVISIONING A CONSTITUTION FOR THE CHEYENNE AND ARAPAHO TRIBES ADOPTED ON THE 18<sup>TH</sup> SEPTEMBER 1937 LIBRARY OF CONGRESS MAY 17, 1938 DIVISION OF DOCUMENTS {CITATION} CANNOT SUPPORT THAT CONGRESS SOUGHT TO DISESTABLISH THAT "INDIAN COUNTRY", THESE MATERIAL FACTS SUBMITTED AS TO THE EXISTENCE OF THE CHEYENNE AND ARAPAHO TRIBES IN PRESENT DAY OKLAHOMA.

THE SUBJECT MATTER OF THIS DISPUTE AS TO 'JURISDICTION' OF THE STATE OF OKLAHOMA AND THE DISTRICT COURT OF CANADIAN COUNTY TO INSTITUTE CRIMINAL PROCEEDINGS AGAINST THIS "INDIAN" PERSON, IN VIEW OF THE "CLEAR AND EXPLICIT MANDATORY LANGUAGE" OF TITLE 18 U.S.C. §1151 ET SEQ HAS NOT BEEN THE STATES RESPONSE. IN LIGHT OF THE MCGIRT DECISION, THE ANALYSIS OF TRIBAL JURISDICTION FITS THE DESCRIPTION OF THE CHEYENNE AND ARAPAHO TRIBES.


THE SUBSTANTIATED RULING IN PENRY V. LYNAUGH, 492 U.S. 302, 330 (1989) CLEARLY ESTABLISHES THE LAW THAT WHICH THE TREATY FOREVER HOLDS TRUE IS NEVER CONVEYED.

304(2002)(FIRST TEAGUE EXCEPTION ALSO COVERS RULES "PROHIBITING A CERTAIN CATEGORY OF PUNISHMENT FOR A CLASS OF DEFENDANTS BECAUSE OF THEIR STATUS OR OFFENSE;" IF COURT WERE TO HOLD THAT 8<sup>TH</sup> AMENDMENT PROHIBITS EXECUTING MENTALLY RETARDED DEFENDANTS, IT WOULD CONSTITUTE" RULE THAT WOULD APPLY RETROACTIVELY BECAUSE IT WOULD PROHIBIT CERTAIN CATEGORY OF PUNISHMENT DUE TO STATUS).  
THUS, THE OKLAHOMA COURT OF CRIMINAL APPEALS CLASSIFICATION OF THIS COURT'S DECISION IN MCGIRT AS A PROCEDURAL LAW IS IN CONFLICT WITH THIS COURT'S DECISION IN SCHIRO V. SUMMERLIN, SUPRA. THE RULE ANNOUNCED IN MCGIRT IS SUBSTANTIVE. ID.  
WHEN A STATE COURT OF LAST RESORT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT, COMPELLING REASONS EXISTS FOR GRANTING A PETITION FOR A WRIT OF CERTIORARI. SUPREME COURT RULE 10(C)  
ACCORDINGLY, THE RULE ANNOUNCED BY MCGIRT APPLIES RETROACTIVELY TO PETITIONER'S CONVICTION, EVEN THO HIS CONVICTION BECAME FINAL BEFORE THE RULE WAS ANNOUNCED, BECAUSE THE RULE SUBSTANTIVE SCHIRO V. SUMMERLIN, SUPRA

#### CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED

RESPECTFULLY SUBMITTED,

Thomas Twoobies 

DATE: Feb 15, 2022

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

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

Thomas Allen Twobabies — PETITIONER  
(Your Name)

VS.

The State of Oklahoma — RESPONDENT(S)

**PROOF OF SERVICE**

I, Thomas Allen Twobabies, do swear or declare that on this date, \_\_\_\_\_, 20\_\_\_\_, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

John O'Conner, Attorney General of Oklahoma  
313 N.E. 21<sup>st</sup> Street  
Oklahoma City, OK 73105

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Feb 15<sup>th</sup>, 2022

  
(Signature)