No._____

IN THE
SUPREME COURT OF THE UNITED STATES

JASON LEON CRUSE,
Petitioner

v.

THE STATE OF OKLAHOMA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE OKLAHOMA COURT OF CRIMINAL APPEALS

APPENDIX

Marianne Mariano
Federal Public Defender
Martin J. Vogelbaum
Assistant Federal Public Defender
Counsel of Record
Federal Public Defender's Office
300 Pearl Street, Suite 200
Buffalo, New York 14202
Telephone: (716) 551-3341

Pet. App. A

Order Below

ORIGINAL

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

JASON LEON CRUSE,	)	
	)	
Petitioner,	)	
	)	
-vs-	)	**No. PC-2021-1074**
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner, pro se, appealed to this Court from an order of the District Court of Murray County in Case No. CF-2000-105 denying his request for post-conviction relief based upon issues addressed in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). In *State ex rel. Matloff v. Wallace*, 2021 OK CR 21, 497 P.3d 686, *cert. denied*, 595 U.S. __, No. 21-467 (Jan. 10, 2022), this Court determined that the United States Supreme Court decision in *McGirt*, because it is a new procedural rule, is not retroactive and does not void final state convictions. *See Matloff*, 2021 OK CR 21 at ¶¶ 27-28, 40, 497 P.3d at 691-92, 694.

The conviction in this matter was final before the July 9, 2020, decision in *McGirt*, and the United States Supreme Court's holding in *McGirt* does not apply. Therefore, the trial court's denial of post-

conviction relief is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2022), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 19th day of January, 2022.

SCOTT ROWLAND, Presiding Judge

ROBERT L. HUDSON, Vice Presiding Judge

GARY L. LUMPKIN, Judge

DAVID B. LEWIS, Judge

ATTEST:

Clerk

PA

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

Jason Leon Cruse,
Petitioner,
v.
STATE OF OKLAHOMA,
Respondent,

SERVICE COPY

105138108 2

Case Number: PC-2021-1074

TCC Number(s): CF-2000-105

MANDATE

To the Honorable Judge of the District Court in and for the County of MURRAY, State of Oklahoma, Greetings:

Whereas, the Court of Criminal Appeals of the State of Oklahoma has rendered its decision in the above styled and numbered case on the 19th day of January, 2022, resolving the appeal from the District Court in Case Number CF-2000-105.

AFFIRMED

Now, therefore, you are hereby commanded to cause such Decision to be filed and spread of record in your court and to issue such process (see 22 O.S. 2001, §§ 978 & 979, and 22 O.S. 2004 §980) and to take such other action as may be required by said Order (see 22 O.S. 2001 §§ 1066 and 1072). You shall then make due and prompt return to this court showing ultimate disposition of the above case.

Witness, the Honorable Scott Rowland, Presiding Judge of the Court of Criminal Appeals of the State of Oklahoma, State Capitol Building, Oklahoma City, this 19th day of January, 2022 .

JOHN D. HADDEN
Clerk

(seal)

By: Cynde Hannebaum
Deputy

Pet. App. B

Other Orders

IN THE DISTRICT COURT OF MURRAY COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
Plaintiff,)
)
vs.) Case No. CF-00-105
)
JASON LEON CRUSE,)
)
Defendant.)

01-1046

PRELIMINARY HEARING

Proceedings had and testimony given in the above entitled cause before the Honorable Timothy K. Colbert, Judge of the District Court, taken on September 25, 2000.

APPEARANCES

FOR THE STATE: MR. JOHNNY LOARD
Assistant District Attorney
Murray County Courthouse
Sulphur, Oklahoma 73086

FOR THE DEFENDANT: MR. DAVID J. PYLE
Attorney-at-Law
P.O. Box 2206
Ardmore, Oklahoma 73402

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PROCEEDINGS

THE COURT: This is State vs Jason Leon Cruse, CF-00-105. This matter is set for preliminary hearing today. The State appears by Johnny Loard. The Defendant appears with David Pyle. State ready to proceed?

MR. LOARD: Yes, Your Honor.

THE COURT: Defendant?

MR. PYLE: Yes, Judge. We'd invoke the rule at this time and waive reading of the information.

THE COURT: If you're a witness in this case, you'll be required to wait outside the courtroom, and you're not to discuss your testimony with any of the other witnesses.

MR. PYLE: Judge, I think that I filed a motion and objection to the jurisdiction of the Court, alleging that this property where this alleged crime occurred is a dependent Indian community. And I think Mr. Loard and I both are ready to address the Court on that issue prior to the preliminary hearing.

THE COURT: Go ahead.

MR. PYLE: Judge, the alleged crime occurred on land at the end of Seventeenth Street, which is known as the Chickasaw Nation low-income housing. I will tell the Court that that is -- it is not restricted Indian land, nor is it Chickasaw Nation tribal turst land. The land is titled to the Chickasaw Nation Housing Authority. We believe that the char-

acter of that land makes it a dependent Indian community under the federal statutes.

Judge, there's numerous cases that set out what an Indian community is, and in Sands vs. United States -- and that is a Tenth Circuit case found at 968 Fed2d, 1058 -- they have found that any Indian who commits an act against a person or property of another Indian or a person; namely, the following offenses, which is murder, manslaughter, and that's what -- it's -- committed shall be subject to law and penalties of other persons committing any of the above offenses within the exclusive jurisdiction of the United States. And it goes on, it said that -- this case says that three ways to get there. One is restricted Indian land. The other is Indian reservation or tribal trust land and a dependent Indian community.

Judge, particularly, the fact that one of the things that determines a dependent Indian community is the fact that these apartments are set apart primarily for the housing of members of the Chickasaw Nation. They are -- and the thing that goes primarily against this is the fact that the Chickasaw Housing Authority is set up pursuant to state law, but that does not -- that's one of the things that cuts against us, but this does not prevent this from being a dependent Indian community and the fact that this is held for not exclusively, but primarily for the use of the Chickasaw Nation is one of the

things that supports our contention that this is a dependent Indian community.

It's whether the United States has obtained the title or authority -- they haven't done that -- the nature of the area in question and its relationship to the inhabitants. It's -- it was held for the Indians where there's an element of cohesiveness, and that is the use by the Indians or by the Chickasaw Nation for their people, and the services that they provide and whether such lands have been set apart. Without a doubt, that's it. And, Judge, that's found in United States vs Adair. It's 111 Fed3rd, 770, and again, it's a Tenth Circuit Case.

Judge, more particularly, the Supreme Court of the State of Oklahoma has found that one house standing alone that is titled -- that was restricted Indian land that had the restrictions removed to be titled to the Seminole Nation Housing Authority was a dependent Indian Community. And that is Seminole Housing Authority of the Seminole Nation vs Harjoe, and that's at 790 P2d, 1098.

And, Judge, there's a case -- I don't have the cite on it -- it's Eaves vs State, and it's a case out of the Oklahoma Court of Criminal Appeals that basically says that the Supreme Court's all wet; that you have to look at this in context in a single dwelling standing alone is not good enough.

We don't have that here. We've got an apartment complex

that's owned and operated. And, further, Judge, the Eighth Circuit in United States vs South Dakota, at 655 Fed2nd, 837, has said that simply because it's not restricted entirely to Native Americans, that there are other people that live there and pay rent, does not remove that underlying concept that it is a dependent Indian community. And based on that, Judge, we would ask that -- we object to the jurisdiction of the Court. It doesn't mean that prosecution doesn't go forward. It just means that it doesn't go in this court.

THE COURT: Let me see that Supreme Court case, 790 P2d, 1098. Mr. Loard?

MR. LOARD: Yes, Your Honor. I have the same case that Mr. Pyle's referring to, Housing Authority Seminole Nation vs Josephine Harjoe, 790 P2d.

MR. PYLE: Judge, here's the federal cases, also.

MR. LOARD: Your Honor, this case sets out that there are several factors to determine whether this is dependent Indian community. I think that's the issue that we have to get to. This is certainly not a reservation, and it's not trust land. So the question is whether or not this is a dependent Indian community.

Mr. Pyle cited some of the factors which this case sets out, but he didn't cite all of those. Ask you to refer to those, Your Honor. If necessary, I have witnesses that will testify as to the nature of this property, as well, if that's

necessary for the Court, Your Honor.

THE COURT: Go ahead.

MR. LOARD: We'd call B.J. Taylor.

B. J. TAYLOR

having been duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOARD:

Q Sir, would you please state your name for the record?

A My name is B. J. Taylor. I'm the executive director of the Housing Authority of the Chickasaw Nation.

Q How long have you been so employed, sir?

A I'm sorry?

Q How long have you been employed in that capacity?

A I've been in this capacity about two or three months.

Q And what did you do prior to that?

A I was the deputy director of the Housing Authority at that time.

Q How long have you done that?

A About a year.

Q Sir, are you familiar with the address, 1705 Circle Drive, Apartment B, here in Sulphur?

Q Yes.

Q Could you describe where that is?

A Well, we have some -- we have two apartment complexes on Seventeenth Street and Eighteenth Street, and that's the area you're speaking of.

Q And they're owned by who? Who owns that?

A The Housing Authority owns those.

Q Sir, are you familiar with the term dependent Indian community?

A Yes, I am.

Q Sir, how are you aware of that? How do you know what that means?

A Well, just being affiliated with the tribe for quite a period of time and then with the housing. It's just something that you educate yourself on through what we do every day.

Q Sir, have you been asked whether you believe this is dependent Indian community at 1705 Circle Drive, Apartment B?

A Yes, I have.

Q What's your opinion about that?

MR. PYLE: Judge, I'll object. That's a decision we're asking the Court to make, and it does -- it's a legal conclusion that he's not qualified to make.

THE COURT: Sustain the objection.

Q (By Mr. Loard) Sir, to your knowledge, do you know whether the United States has retained title to this property?

A The United States government retained title to it?

Q Yes, sir.
A No.
Q Who has title to this property?
A The Housing Authority has title to this property. We're a state agency.
Q You're a state agency?
A Yes.
Q And what, if any, relationship does the United States Government have to this property?
A Absolutely none.
Q Do they in any way regulate the property?
A No.
Q Do they in any way provide protection to the property?
A No.
Q Sir, what is the relationship of the inhabitants of this property to the Indian tribe?
A Well, that's -- that's a mix. I mean as far as the makeup individually?
Q Yes.
A It's -- it's a melting pot of a variety of individuals. They could be Native American or non-native American.
Q The Native Americans, are they exclusively Chickasaws?
A We have a priority list that they go through in the process of housing individuals. The priority -- and I won't bore you with that -- but our tribal affiliation is certainly a

priority. Native Americans, as well, is a priority, and then non-native Americans.

Q Sir, are you aware if there's any cohesiveness as far as the economic pursuits or economic interest as far as this property is concerned? Do they pursue a common economic interest pursuit?

A With whom?

Q The inhabitants of the property.

THE COURT: Ask that question again.

Q (By Mr. Loard) Sir, do the inhabitants of this property in any way pursue common economic pursuits or common economic interests?

A That's a difficult question for me to answer. You're asking are they pursuing -- I wouldn't know how to answer that question.

Q Do they all work for the same employer in any way?

A As far as their individual employment's concerned, I wouldn't have that information, nor is that information that we based -- what we use as criteria for the housing. We use an income-based situation, but as far as the actual employer themselves, that's something that I wouldn't have information to share with you.

Q Sir, are you aware of any traditional Indian ceremonies performed at this property at this location?

A No, I'm not.

MR. LOARD: Your Honor, I wouldn't have any further questions of this witness.

CROSS-EXAMINATION

BY MR. PYLE

Q Sir, you have a priority system, do you not?

A Yes, sir, we do.

Q And a priority system is, first of all, people that are members of your tribe?

A That's correct.

Q And second, other Native Americans?

A That's corerct.

Q And lastly, you will rent to non-native Americans if you have positions available?

A That's correct.

Q And these apartments basically, sir, are for the benefit of your people, the Chickasaw Nation?

A That is correct.

Q And they're held for that? That's --

A They are held in priority for that, yes.

Q And that's part of your bylaws, is it not, sir?

A As far as bylaws, no. It's not a part of any bylaws. It's part -- it's not written in the bylaws. The priority list is up to how we would like to structure it. The bylaws do not address that structure.

Q And you are organized under state law?
A That's correct.
Q The cohesiveness that Mr. Loard asked you about, the benefit of this is the Chickasaw Nation, is it not?
A Absolutely.
Q And the monies that's derived from rent, whether it be from Native Americans or whether it be from non-native Americans, go to the benefit of the Chickasaw Nation?
A Well, specific areas within the Chickasaw Nation. It doesn't -- those monies are identified -- and I won't bore you with what NASDA means, but those monies are identified through programs that can be redistributed under criteria set by NASDA, which is the rules that we work under. HUD, for example.
Q Okay. And the benefit being, first of all, back to the members -- the enrolled members of the Chickasaw Nation?
A Not in what they receive compensation for. But as far as benefits are econerned, yes.
Q I'm not interested in compensation. It's benefits that the members of the Chickasaw Nation are eligible for?
A That's correct.
Q Is that fair?
A Indirectly, yes, that's correct.
Q And you rent to non-native American people?
A We do.
Q Do you have any idea what your population statistics out

there are right now?

A Well, I can tell you that the properties that we were talking about, sixty-three percent as of the last information that we have available to me, which was as of July of this year, sixty-three percent of the occupied units are made up of Native Americans. Not necessarily Chickasaws, but Native Americans.

Q Native American people. Do your figures -- can you break that down how many Chickasaws are in there?

A I wish I had that information. I'm sorry. I don't.

Q Who do you report to, sir?

A I report to a makeup of the Board of Commissioners of the Housing Authority.

Q Are they members of the Chickasaw tribe?

A They are.

MR. PYLE: Thank you. That's all I have, Judge.

THE COURT: Mr. Loard, anything further?

MR. LOARD: Your Honor, I don't believe -- the only thing I would add, Your Honor, is this case briefly says that general terms of questionning be answered is whether the land was validly set apart for the use of Indians, as such, under the superintendents of the government. The way he testified, Your Honor, it sounded like that the federal government does not -- not superintendents of this property, Your Honor, so I would argue that it's not a dependent Indian community. I

wouldn't have any more questions of this witness.

THE COURT: Thank you, Mr. Taylor. Step down. Do you have any other witnesses?

MR. LOARD: No, Your Honor.

THE COURT: Do you have anything further?

MR. PYLE: No, Judge.

THE COURT: Court does not find that these apartments are a dependent Indian community. We'll proceed with the preliminary hearing. Call your first witness.

MR. LOARD: Thank you, Your Honor. Our first witness will be Allen Jones. We'd ask for an exception to the rule as regards to Agent Allen. He's the case agent.

THE COURT: All right. Just for the record, your objection to the jurisdiction of the Court is overruled.

MR. PYLE: Thank you, Judge.

ALLEN JONES

having been duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOARD:

Q Sir, would you state your name for the record?

A My name's Allen Jones.

Q Sir, do you know a person by the name of Richard Jones?

FILED
MURRAY COUNTY OKLAHOMA
SEP 25 2000
JO FREEMAN, Court Clerk
Deputy

IN THE DISTRICT COURT OF MURRAY COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,

PLAINTIFF(S)

VS. CASE NO. CF 00-105

JASON LEON CRUSE,

DEFENDANT(S)

JUDGE Timothy K. Colbert
DATE September 25, 2000

COURT ORDER

This matter came on for preliminary hearing this date at 9:30 A.M. State appears by ADA Johnny Loard. Defendant appears with David Pyle. Defendant objects to jurisdiction. Court overrules. Sworn and testified: B.J. Taylor, Allen Jones, Antoine Colungo, Dr. John Tatom, and Tom Allen. Defendant demurs to evidence, Court overrules. Court binds defendant over for Formal Arraignment before Judge John Scaggs on October 6, 2000, at 9:00 A.M. Same bond.

Court clerk to give copy of order to all parties

JUDGE OF THE DISTRICT COURT

IN THE DISTRICT COURT OF THE 20TH JUDICIAL DISTRICT OF THE STATE OF OKLAHOMA SITTING IN AND FOR MURRAY COUNTY

THE STATE OF OKLAHOMA, Plaintiff,
-vs-
JASON LEON CRUSE, Defendant.

Case No: CF-2000-105

FILED
MURRAY COUNTY, OKLAHOMA
JUL 17 2001
JO FREEMAN, Court Clerk
Deputy

VERDICT

MURDER IN THE FIRST DEGREE

We, the jury, empanelled and sworn in the above-entitled cause, do, upon our oaths, find as follows:

Defendant is:

✓ Guilty of MURDER IN THE FIRST DEGREE and fix punishment at _____.

_____ Guilty of MANSLAUGHTER IN THE FIRST DEGREE and fix punishment at _____.

_____ Not Guilty.

Foreperson

CR 10-25

IN THE DISTRICT COURT OF MURRAY COUNTY, STATE OF OKLAHOMA

STATE OF OKLAHOMA — Plaintiff(s)

--vs--

JASON LEON CRUSE — Defendant(s)

JOHNNY LOARD — Attorney(s) for Plaintiff(s)

FILED
MURRAY COUNTY, OKLAHOMA
AUG 24 2001
JO FREEMAN, Court Clerk
Deputy

Case No. CF-00-00105

OSHER BACHRACH — Attorney(s) for Defendant(s)

SUMMARY ORDER

Date: 08-24-2001 Judge: JOHN SCAGGS

Court Reporter:

CO: COURT ORDER: THIS MATTER COMES ON FOR SENTENCING. PLAINTIFF PRESENT THROUGH ATTORNEYS JOHNNY LOARD AND CRAIG LADD. DEFENDANT IS PRESENT WITH ATTORNEY OSHER BACHRACH. PLAINTIFF EXHIBIT #S1 IS ADMITTED. PLAINTIFF CALLS SUMMER DECKER AND CRYSTAL TYSON, BOTH SWORN AND TESTIFIED. PARTIES REST. CLOSING STATEMENTS. DEFENDANT DOES NOT HAVE A STATEMENT TO THE COURT. THE COURT ORDERS LIFE WITHOUT THE POSSIBILITY OF PAROLE. THE COURT FURTHER SUSPENDS "WITHOUT PAROLE" AND ADVISES THE DEFENDANT OF RULES AND CONDITIONS OF PROBATION. COURT ALSO IMPOSES COURT COSTS OF $3165.00 AND VCA OF $6835.00 TOTAL OF $10,000.00. DEFENDANT IS ADVISED OF HIS RIGHT TO APPEAL AND FINDS THE DEFENDANT INDIGENT FOR PURPOSES OF THE APPEAL. DEFENDANT ASKS FOR THE 10 DAY WAITING TIME AND IS REMANDED TO THE CUSTODY OF THE MCSO WITHOUT BAIL.

JUDGE

IN THE DISTRICT COURT OF THE TWENTIETH JUDICIAL DISTRICT
MURRAY COUNTY, STATE OF OKLAHOMA

STATE OF OKLAHOMA)
Plaintiff,)
)
vs.) Case No. CF-2000-105
)
JASON LEON CRUSE,)
DOB: 02/08/80)
SSN: 447-96-8066)
Defendant.)

FILED
MURRAY COUNTY, OKLAHOMA
OCT 2 6 2001
JO FREEMAN, Court Clerk
Deputy

JUDGEMENT AND SENTENCE

Now on the 24th DAY OF AUGUST 2001, this matter comes on before the undersigned Judge for sentencing. The defendant, JASON LEON CRUSE, appears personally and with counsel, OSHER BACHRACH. The State of Oklahoma is present and represented by JOHNNY S. LOARD, Assistant District Attorney and CRAIG LADD, Assistant District Attorney. The defendant was tried by a jury and previously found guilty to the crime of Murder in the First Degree.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the defendant, JASON LEON CRUSE is convicted of Murder in the First Degree and is sentenced as follows:

CONFINEMENT

A term of confinement for a period of LIFE WITHOUT THE POSSIBILITY OF PAROLE in the custody of the Oklahoma Department of Corrections. The Court further suspends "WITHOUT PAROLE" and advises Defendant of the rules and conditions of probation to-wit:

1. I will report as directed by my probation officer each month. I will provide verification of any income received each month, with a general statement of my environment and progress.
2. I will not use or be in possession of intoxicants of any kind, nor use or be in possession of controlled drugs unless legally prescribed by a physician. I will not visit places where intoxicants or drugs are used or unlawfully sold. I understand I am not to go into or loiter around beer taverns, private clubs, or anyplace whose primary purpose is to sell liquor, beer, or wine.
3. I will immediately notify my officer of any change of address or employment. I will not leave the State of Oklahoma without prior approval of my officer.
4. I will have no association with any person identified by my probation officer as a detriment to my probation, including but not limited to any person having a criminal record.
5. I will truthfully answer inquiries directed to me by my probation officer, law enforcement officers, or any official of the government.
6. I will allow a representative of the Probation and Parole Division to visit me at my home, place of employment or elsewhere and will follow any instructions he or she may give me.
7. I understand I am to remain under supervision of the Probation and Parole Division until I serve my maximum term, or until supervision is terminated by the Court or Department of Corrections.
8. I understand it will be a violation of my probation to own or possess a firearm of any type.

9. I understand I must support myself, and all my dependents without public assistance so long as I am physically able to do so. Failure to do my full duty to my dependents shall constitute grounds for revocation of my probation.
10. I will not violate any City, State, or Federal laws.
11. Probation fees to be assessed per state statute.
12. I will abide by the following special Rules and Conditions of Probation to wit:

Defendant is remanded to the Murray County Sheriff's Department for ten (10) days waiting time. Bail is denied on appeal.

FINE, COSTS, FEES

Defendant is ordered to pay court costs in the amount of $3,165.00 and $6,835.00 to the Victim's Compensation Assessment for a total of $10,000.00.

HEARING ON ABILITY TO PAY AFTER INCARCERATION

The defendant shall report to the Court within thirty (30) days of release from confinement to determine a schedule for the payment of costs and fees.

The Court further advised the defendant of the right and procedure to appeal to the Court of Criminal Appeals of the State of Oklahoma, and if unable to afford counsel or a transcript of the proceedings, the same would be furnished at public expense, subject to reimbursement according to law.

The Sheriff of MURRAY County, Oklahoma, is ordered to deliver the defendant to the Lexington Assessment and Reception Center at Lexington, Oklahoma, and leave therewith a copy of this Judgment and Sentence to serve as warrant and authority for the imprisonment of the defendant as provided herein. A second copy of this Judgment and Sentence to be warrant and authority of the Sheriff for the transportation and imprisonment of the Defendant as herein before provided. The Sheriff to make due return to the Clerk of this Court, with his proceedings endorsed thereon.

Witness my hand the day and year first above mentioned.

HONORABLE JOHN H. SCAGGS,
JUDGE OF THE DISTRICT COURT

Attest: JO FREEMAN, COURT CLERK
By: Deputy Court Clerk

DISTRICT COURT MURRAY COUNTY, OK.

67 P.3d 920
Court of Criminal Appeals of Oklahoma.

Jason Leon CRUSE, Appellant,
v.
STATE of Oklahoma, Appellee.

No. F-2001-1046.
|
April 9, 2003.

Synopsis

Defendant was convicted in a jury trial in the District Court, John H. Scaggs, J., of first-degree malice aforethought murder, for which he was sentenced to life imprisonment with suspended prohibition of parole. Defendant appealed. The Court of Criminal Appeals, Lile, V.P.J., held that: (1) trial court's failure to instruct jury, sua sponte, on second-degree murder was not plain error; (2) there existed no inference of discriminatory purpose in exclusion of Native American jurors; (3) trial court's acknowledgment of Native American jurors during voir dire was not error; (4) defendant failed to demonstrate ineffective assistance of counsel; (5) trial court had jurisdiction notwithstanding "dependent Indian community" in which murder occurred; and (6) trial court lacked authority to suspend prohibition of parole portion of defendant's life sentence.

Affirmed; sentence modified.

West Headnotes (11)

[1] **Criminal Law** ⇐ Evidence Justifying or Requiring Instructions

A lesser included instruction should be given only if there is evidence to support a conviction of the lesser charge.

[2] **Criminal Law** ⇐ Grade or Degree of Offense

Trial court's failure to instruct jury, sua sponte, on lesser offense of second-degree murder was not plain error; given the apparent deliberate manner in which defendant stabbed to death his girlfriend's former lover, there was no evidence to support an absence of intent to kill, and, if requested, the instruction would properly have been refused. 21 Okl.St.Ann. § 701.7.

1 Cases that cite this headnote

[3] **Criminal Law** ⇐ Competency of Jurors and Challenges

Batson claims are waived if not raised at trial.

[4] **Jury** ⇐ Peremptory Challenges

Totality of relevant facts surrounding alleged exclusion of Native Americans from jury in first-degree murder trial gave rise to no inference of discriminatory purpose on the part of State; Native American jurors remained on the jury, even though State did not exercise all of its peremptory challenges. 21 Okl.St.Ann. § 701.7.

[5] **Jury** ⇐ Examination of Juror

Trial court did not commit error by asking potential jurors in first-degree murder trial to identify themselves if they were, like defendant, Native American citizens; no citation to authority accompanied defendant's claim that trial judge improperly injected race into the trial, as no such authority existed. 21 Okl.St.Ann. § 701.7.

[6] **Criminal Law** ⇐ Statement of Evidence

Criminal Law ⇐ Appeals to Sympathy or Prejudice

Although sympathy for the victim or defendant is not a proper consideration

in a criminal trial, a mere recital of facts in evidence by prosecutor during closing argument is proper.

[7] **Criminal Law** ⇐ Jury Selection and Composition

Criminal Law ⇐ Lesser Included Offense Instructions

Trial counsel's failure to object to State's purported exclusion of Native American jurors, and to request second-degree murder instruction as lesser offense to charge of first-degree malice aforethought murder, did not constitute ineffective assistance of counsel; any such requests and objections would have been properly overruled by trial court. U.S.C.A. Const.Amend. 6; 21 Okl.St.Ann. § 701.7.

3 Cases that cite this headnote

[8] **Indians** ⇐ Jurisdiction and Power to Enforce Criminal Laws

Trial court had jurisdiction to preside over first-degree murder trial notwithstanding "dependent Indian community" in which murder occurred, where murder occurred on property that was owned by a state agency. 21 Okl.St.Ann. § 701.7.

[9] **Pardon and Parole** ⇐ Offenses, Punishments, and Persons Subject of Parole

Trial court lacked authority to suspend prohibition of parole portion of defendant's life sentence for first-degree malice aforethought murder conviction; judiciary lacked authority to grant parole in case of a sentence of death or life imprisonment without parole. Const. Art. 6, § 10; 21 Okl.St.Ann. § 701.7.

[10] **Pardon and Parole** ⇐ Offenses, Punishments, and Persons Subject of Parole

The power to grant parole in the case of a sentence of death or life imprisonment without parole, or to suspend a prohibition of parole, denied to the Executive Branch certainly does not lie with the Judiciary. Const. Art. 6, § 10.

[11] **Constitutional Law** ⇐ Nature and Scope in General

That which is prohibited by the Constitution cannot be granted by the Judiciary.

Attorneys and Law Firms

***922** An appeal from the District Court of Murray County; John H. Scaggs, District Judge.

Osher Bachrach, Norman, for Defendant at trial.

Johnny S. Loard, Assistant District Attorney, Sulphur, OK, Craig Ladd, Assistant District Attorney, Ardmore, OK, Attorneys for State at trial.

Thomas Purcell, Appellate Defense Counsel Indigent Defense System, Norman, for Appellant on appeal.

W.A. Drew Edmondson, Attorney General, Brant M. Elmore, Assistant Attorney General, Oklahoma City, OK, for Appellee on appeal.

OPINION

LILE, Vice Presiding Judge.

¶ 1 Appellant, Jason Leon Cruse, was convicted at jury trial of First Degree Malice Aforethought Murder (21 O.S.Supp.1998 § 701.7) in the District Court of Murray County, Case No. CF-2000-105. The jury was unable to recommend a sentence. The Honorable John H. Scaggs, District Judge, sentenced Appellant

to life imprisonment without the possibility of parole, suspending the "without the possibility of parole" portion of the sentence. Appellant has perfected his appeal to this Court.

¶ 2 Appellant, age 21, had just served as a pallbearer at his grandfather's funeral. He was upset and drinking. His girlfriend went to the apartment of a former lover, the victim. Cruse showed up, kicking the door and screaming. The victim opened the door and Cruse demanded to know where his girlfriend was. When informed that she was in the back of the apartment, Cruse stabbed the victim in the heart. Other occupants of the apartment disarmed Cruse who then ran away.

[1] [2] ¶ 3 Appellant contends that the trial court erred in failing to instruct the jury on Second Degree Murder even though not requested to do so at trial. We examine for plain error only. *Ashinsky v. State,* 1989 OK CR 59, 780 P.2d 201. The underlying premise of *Shrum v. State,* 1999 OK CR 41, 991 P.2d 1032, is that a lesser included instruction should be given only if there is evidence to support a conviction of the lesser charge.

¶ 4 This case is remarkably similar to *Williams v. State,* 2001 OK CR 9, 22 P.3d 702. In *Williams,* the defendant took a butcher knife from his home to the victim's home. Within a few minutes of his arrival, the knife was driven to the hilt into the victim's chest. This Court found no evidence to support a conclusion that the defendant acted without an intent to kill.

¶ 5 The facts in the case before us are more compelling for the same conclusion. Appellant took the knife and had it secreted as he asked for his girlfriend. When he confirmed where she was, he cursed the victim and drove the knife into the victim's chest. He wasn't satisfied with one fatal stab to the heart and continued trying to stab the victim until overpowered by others present.

¶ 6 There is no evidence to support an absence of intent to kill, and, if requested, the instruction would properly have been refused.

[3] [4] ¶ 7 Appellant complains, for the first time on appeal, that Native American jurors were excused on account of their race in violation of the rule in *Batson v. Kentucky,* 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). Appellant is also a Native American citizen. No objection was made at trial to the exercise of any peremptory challenges by the State. *Batson* claims are waived if not raised at trial. *Black v. State,* 1994 OK CR 4, 871 P.2d 35; *Ford v. Georgia,* 498 U.S. 411, 111 S.Ct. 850, 112 L.Ed.2d 935 (1991). An examination for plain error leads to the inescapable conclusion that none occurred here. The "totality of the relevant facts gives rise" to no "inference of discriminatory purpose" on the part of the prosecution. *See Batson,* supra. Native American jurors remained on the jury, even though the State did not exercise all of its peremptory challenges. In ***923** *Bland v. State,* 2000 OK CR 11, 4 P.3d 702, we said that the fact that a prosecutor left other persons of the same minority heritage on the jury weighed heavily against a showing of racial discrimination. There is no plain error here.

[5] ¶ 8 Next, Appellant claims that the trial judge improperly injected race into the trial. The defense counsel made the following comment during voir dire:

> "Mr. Cruse is a full-blood Native American citizen. Is there anyone on this panel who has a problem with that? Can you all agree that Native American citizens have the same rights as all the rest of us?"

¶ 9 The trial court asked the jurors to identify themselves if they were Native American citizens. It would be difficult to consider *Batson* issues unless this was determined. There was no objection to the Court's action at trial. On appeal, Appellant claims that the Court's action constituted error. No citation to authority accompanies the claim and, indeed, no authority exists. This proposition is denied.

[6] ¶ 10 Appellant complains for the first time on appeal that the prosecutor's closing argument was an appeal for sympathy for the victim. Sympathy for the

victim or defendant is not a proper consideration in a criminal trial. However, a mere recital of facts in evidence is proper. *Van White v. State,* 1999 OK CR 10, 990 P.2d 253. We find no plain error.

[7] ¶ 11 Appellant claims that his trial counsel provided inadequate representation under *Strickland v. Washington,* 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Counsel's failure to object to matters discussed above do not satisfy the requirements of *Strickland* because any such objections would have been properly overruled. *Frederick v. State,* 2001 OK CR 34, 37 P.3d 908.

¶ 12 Trial counsel's argument that the victim may have fallen on his own knife has some support in the record and was not improper. The victim did have a hunting knife laying out in the apartment. Trial counsel was not ineffective for making the argument.

¶ 13 Investigatory statements of two witnesses established that the victim had grabbed Appellant prior to the stabbing and that Appellant was under emotional stress on the night on the incident. These matters were established at trial and defense counsel cannot be said to be ineffective for avoiding cumulative or redundant witnesses. *Hammon v. State,* 2000 OK CR 7, 999 P.2d 1082. The claim of ineffective assistance of trial counsel is denied.

[8] ¶ 14 Appellant complains that the apartment complex where the crime occurred was a "dependent Indian community" and the State of Oklahoma had no jurisdiction. However, the property was owned by an agency of the State of Oklahoma, which fact is fatal to a claim that it was in Indian Country. *Eaves v. State,* 1990 OK CR 59, 800 P.2d 251. This proposition is denied.

[9] [10] [11] ¶ 15 However, we do find error in the sentence entered by the trial judge. Historically, under our Constitution, parole has been a matter exclusively reserved to the Pardon and Parole Board and to the Governor. In the case of a sentence of death or "life imprisonment without parole," the power to grant a parole has never existed. Oklahoma Constitution, Article VI, § 10. The power to grant parole, or to suspend a prohibition of parole, denied to the Executive Branch certainly does not lie with the Judiciary.[1] That which is prohibited by the Constitution cannot be granted by the Judiciary.[2]

¶ 16 The trial court's sentence in this case is not authorized by law. The trial court effectively sentenced Appellant to life imprisonment and the sentence is therefore modified to life imprisonment.

DECISION

¶ 17 Appellant, Jason Leon Cruse, was convicted at jury trial of First Degree Malice ***924** Aforethought Murder (21 O.S.Supp.1998, § 701.7) in the District Court of Murray County, Case No. CF-2000-105. The jury was unable to recommend a sentence. The Honorable John H. Scaggs, District Judge, sentenced Appellant to life imprisonment without the possibility of parole, suspending the "without the possibility of parole" portion of the sentence. The Judgment of the district court is **AFFIRMED.** The Sentence is not authorized by law and is **MODIFIED** to life imprisonment.

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

CHAPEL, J., concurs in results.

All Citations

67 P.3d 920, 2003 OK CR 8

Footnotes

1 This is not to say that the Governor is without the power to grant clemency or to commute such a sentence.

2 No statutory provision for suspension of sentence grants the court the right to suspend a prohibition of eligibility for parole. 22 O.S.2001, § 991(A).

IN THE DISTRICT COURT OF THE TWENTIETH JUDICIAL DISTRICT
MURRAY COUNTY, STATE OF OKLAHOMA

STATE OF OKLAHOMA,
Plaintiff,

vs.

JASON LEON CRUSE #413652,
Defendant.

Case No: CF-2000-105

FILED
MURRAY COUNTY, OKLAHOMA
MAY 24 2021
Jodi Jennings, Court Clerk
By _____ Deputy

ORDER SETTING EVIDENTIARY HEARING

This Court has before it the Defendant's Application for Post-Conviction Relief or Motion to Dismiss, requesting dismissal of the above case based on the holdings of *McGirt*[1] and/or *Bosse*[2].

This Court sets the matter for evidentiary hearing to determine:

1. Whether the Defendant or the alleged victim(s) have some degree of Indian blood;
2. Whether the Defendant or alleged victim(s) is/are a member of a federally recognized Indian Tribe;
3. Whether the crime(s) alleged or proven occurred within the territorial boundaries of the Chickasaw Nation; and
4. Whether the crimes(s) alleged or proven are or are not major crimes under the Major Crimes Act, 18 U.S.C. § 1153.

The evidentiary hearing is set for the 18th day of June, 2021, @ 9:00 a.m. This Court does not intend to issue writs to bring back the Defendant to this evidentiary hearing. If a Defendant is incarcerated, this Court will conduct the evidentiary hearing pursuant to Rule 34 of the Rules for the District Courts of Oklahoma. In all other cases, the Defendant and/or counsel shall appear for said evidentiary hearing.

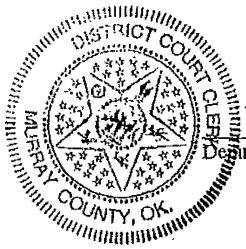
It is so ordered this 19th day of May, 2021.

WALLACE COPPEDGE
District Judge

[1] *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020)
[2] *Bosse v. State of Oklahoma*, 2021 OK CR 3

CERTIFICATE OF SERVICE

On May 24, 2021, I posted to the sorter box located in the Court Clerk's office of Murray County, and/or mailed, emailed, faxed or hand delivered, a true and correct copy of the foregoing Order to the following: Jessica Underwood, Assistant District Attorney for Murray County; Jason Leon Cruse #413652, 8607 SE Flower Mound Road, Lawton, OK 73501, pro-se deft.



Deana Ward
Deputy Court Clerk/Bailiff

NOTICE

This Court, as a courtesy, shall email a copy of the setting of this Evidentiary Hearing to: Debra Gee, General Counsel for the Chickasaw Nation, at:
Debra.Gee@chickasaw.net
chickasawprosecutor@chickasaw.net
5-19-21 (A)

IN THE DISTRICT COURT OF MURRAY COUNTY, STATE OF OKLAHOMA

FILED
MURRAY COUNTY, OKLAHOMA
JUN 18 2021
Jodi Jennings, Court Clerk
By 105 Deputy

STATE OF OKLAHOMA — Plaintiff(s) — JOHNNY LOARD — Attorney(s) for Plaintiff(s)

--vs--

Case No. CF-2000-00105

JASON LEON CRUSE — Defendant(s) — OSHER BACHRACH — Attorney(s) for Defendant(s)

SUMMARY ORDER

Date: 06-18-2021 Judge: WALLACE COPPEDGE

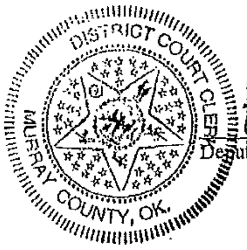
Court Reporter: Lori Faulkner

CO: COURT ORDER: THIS MATTER COMES ON FOR HEARING ON APPLICATION FOR POST CONVICTION RELIEF. STATE APPEARS BY ADA, JESSICA UNDERWOOD. DEFENDANT APPEARS VIA VIDEO. COURT FINDS THAT STAY REMAINS IN BOSSE BY THE US SUPREME COURT. THIS MATTER IS CONTINUED TO AUGUST 13, 2021 AT 11:00AM.

Wallace Coppedge
JUDGE

CERTIFICATE OF SERVICE

On May 24, 2021, I posted to the sorter box located in the Court Clerk's office of Murray County, and/or mailed, emailed, faxed or hand delivered, a true and correct copy of the foregoing Order to the following: Jessica Underwood, Assistant District Attorney for Murray County; Jason Leon Cruse #413652, 8607 SE Flower Mound Road, Lawton, OK 73501, pro-se deft.



Deputy Court Clerk/Bailiff

NOTICE

This Court, as a courtesy, shall email a copy of the setting of this Evidentiary Hearing to: Debra Gee, General Counsel for the Chickasaw Nation, at:
Debra.Gee@chickasaw.net
chickasawprosecutor@chickasaw.net
5-19-21 (d)

IN THE DISTRICT COURT IN AND FOR MURRAY COUNTY

STATE OF OKLAHOMA

THE STATE OF OKLAHOMA, Plaintiff,	)	
VS.	)	No. CF-2000-105
JASON LEON CRUSE, Defendant.	)	

TRANSCRIPT OF VIRTUAL MCGIRT HEARING

August 13, 2021

HEARD BEFORE THE HONORABLE WALLACE COPPEDGE

DISTRICT JUDGE

MURRAY COUNTY COURTHOUSE

SULPHUR, OKLAHOMA

A P P E A R A N C E S

FOR THE STATE: MS. JESSICA UNDERWOOD
Asst. District Attorney
Murray County Courthouse
1001 W. Wyandotte Avenue
Sulphur, OK 73086

FOR THE DEFENDANT: PRO SE
(Appearing Virtually)

PROCEEDINGS

August 13, 2021

THE COURT: Mr. Cruse, you filed what we commonly referred to as the "McGirt Motion", is that correct?

THE DEFENDANT: Yes.

THE COURT: I don't know if you're aware of it, but there was a case issued by the Court of Criminal Appeals yesterday styled Matloff vs. District Judge Wallace and she had granted a post-conviction relief and dismissed a State Court action. The Court of Criminal Appeals says that she should not have done that because if your case is already been pled and you've been found guilty of all those things then the Defendants are not entitled to raise any McGirt motions. Are you aware of that case?

THE DEFENDANT: Slightly, yeah.

THE COURT: I'm sure that case is spreading around the prison like wildfire, isn't it, that case?

THE DEFENDANT: Yes.

THE COURT: Based on that I'm going to deny the Post-Conviction Relief because under the law as it currently exists you're not entitled to raise that defense because all of your appeals were exhausted prior to July 9th of 2020.

So you can appeal that if you choose to. I'll send you a copy of the Order denying it and I will give you that cite

at least, so you'll have that to refer to.

THE DEFENDANT: Why was it being denied, though?

THE COURT: Because the Oklahoma Court of Criminal Appeals said yesterday in that Matloff decision that you're not entitled to raise that defense. They ruled it was a procedural remedy and that you can't raise it at this point. I don't know if it's a good decision or not, but it's the decision that's here and I've got to follow it. Okay?

THE DEFENDANT: All right.

THE COURT: I'll send you my decision in the mail.

THE DEFENDANT: Okay. So you'll send me the papers so I can appeal it right now?

THE COURT: You can appeal it, yes.

THE DEFENDANT: All right. Bye.

*****END OF PROCEEDINGS*****

CERTIFICATE

STATE OF OKLAHOMA)
) ss.
COUNTY OF MARSHALL)

I, Lori Faulkner, a Certified Shorthand Reporter within and for the State of Oklahoma do hereby certify that the foregoing 3 pages are a true and accurate transcription of the proceedings had on August 13, 2021.

Dated this 23rd day of August, 2021.

Lori Faulkner, CSR-RPR-CM
District Court Reporter
OK Certificate #907
TX Certificate #4253

IN THE DISTRICT COURT OF MURRAY COUNTY, STATE OF OKLAHOMA

STATE OF OKLAHOMA — Plaintiff(s)

JOHNNY LOARD — Attorney(s) for Plaintiff(s)

--vs--

Case No. CF-2000-00105

JASON LEON CRUSE — Defendant(s)

OSHER BACHRACH — Attorney(s) for Defendant(s)

FILED
MURRAY COUNTY, OKLAHOMA
AUG 13 2021
Jodi Jennings, Court Clerk
By: Deputy

SUMMARY ORDER

Date: 08-13-2021 Judge: WALLACE COPPEDGE

Court Reporter:

CO: COURT ORDER: THIS MATTER COMES ON FOR HEARING ON DEFENDANTS APPLICATION FOR POST CONVICTION RELIEF. STATE APPEARS BY ADA, JESSICA UNDERWOOD. DEFENDANT APPEARS VIA MICROSOFT TEAMS. COURT DENIES THE APPLICATION FOR POST CONVICTION RELIEF PURSUANT TO STATE VS WALLACE 2021 OKCR 221 (OCCA).

JUDGE

Pet. App. C

Constitutional and Statutory Provisions

United States Code Annotated
Constitution of the United States
Annotated
Article I. The Congress

U.S.C.A. Const. Art. I § 8, cl. 3

Section 8, Clause 3. Regulation of Commerce

Currentness

The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Notes of Decisions (4605)

U.S.C.A. Const. Art. I § 8, cl. 3, USCA CONST Art. I § 8, cl. 3
Current through P.L. 117-102. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Constitution of the United States
Annotated
Article VI. Debts Validated--Supreme Law of Land--Oath of Office

U.S.C.A. Const. Art. VI cl. 2

Clause 2. Supreme Law of Land

Currentness

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Notes of Decisions (2226)

U.S.C.A. Const. Art. VI cl. 2, USCA CONST Art. VI cl. 2
Current through P.L. 117-102. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Constitution of the United States
Annotated
Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV, § 1-Due Proc

Section 1. Due process of law [Notes of Decisions subdivisions I to XIII]

Currentness

<Notes of Decisions for Due Process are displayed in multiple documents.>

* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *

<For complete text of Amend. XIV, see USCA Const Amend. XIV-Full Text>

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Equal protection of the laws>

Notes of Decisions (5374)

U.S.C.A. Const. Amend. XIV, § 1-Due Proc, USCA CONST Amend. XIV, § 1-Due Proc
Current through P.L. 117-102. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 53. Indians (Refs & Annos)

18 U.S.C.A. § 1151

§ 1151. Indian country defined

Currentness

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) 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, (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.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 757; May 24, 1949, c. 139, § 25, 63 Stat. 94.)

Notes of Decisions (167)

18 U.S.C.A. § 1151, 18 USCA § 1151
Current through P.L. 117-102. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 53. Indians (Refs & Annos)

18 U.S.C.A. § 1153

§ 1153. Offenses committed within Indian country

Effective: March 7, 2013

Currentness

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, 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.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 758; May 24, 1949, c. 139, § 26, 63 Stat. 94; Pub.L. 89-707, § 1, Nov. 2, 1966, 80 Stat. 1100; Pub.L. 90-284, Title V, § 501, Apr. 11, 1968, 82 Stat. 80; Pub.L. 94-297, § 2, May 29, 1976, 90 Stat. 585; Pub.L. 98-473, Title II, § 1009, Oct. 12, 1984, 98 Stat. 2141; Pub.L. 99-303, May 15, 1986, 100 Stat. 438; Pub.L. 99-646, § 87(c)(5), Nov. 10, 1986, 100 Stat. 3623; Pub.L. 99-654, § 3(a)(5), Nov. 14, 1986, 100 Stat. 3663; Pub.L. 100-690, Title VII, § 7027, Nov. 18, 1988, 102 Stat. 4397; Pub.L. 103-322, Title XVII, § 170201(e), Title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 2043, 2150; Pub.L. 109-248, Title II, § 215, July 27, 2006, 120 Stat. 617; Pub.L. 113-4, Title IX, § 906(b), Mar. 7, 2013, 127 Stat. 125.)

Notes of Decisions (524)

18 U.S.C.A. § 1153, 18 USCA § 1153
Current through P.L. 117-102. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Oklahoma Statutes Annotated
Title 21. Crimes and Punishments
Part III. Crimes Against the Person
Chapter 24. Homicide
Murder

21 Okl.St.Ann. § 701.7

§ 701.7. Murder in the first degree

Currentness

A. A person commits murder in the first degree when that person unlawfully and with malice aforethought causes the death of another human being. Malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

B. A person also commits the crime of murder in the first degree, regardless of malice, when that person or any other person takes the life of a human being during, or if the death of a human being results from, the commission or attempted commission of murder of another person, shooting or discharge of a firearm or crossbow with intent to kill, intentional discharge of a firearm or other deadly weapon into any dwelling or building as provided in Section 1289.17A of this title, forcible rape, robbery with a dangerous weapon, kidnapping, escape from lawful custody, eluding an officer, first degree burglary, first degree arson, unlawful distributing or dispensing of controlled dangerous substances or synthetic controlled substances, trafficking in illegal drugs, or manufacturing or attempting to manufacture a controlled dangerous substance.

1. Except as provided in paragraph 3 of this subsection, the term "synthetic controlled substance" means a substance:

a. the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II,

b. which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II, or

c. with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

2. The designation of gamma butyrolactone does not preclude a finding pursuant to paragraph 1 of this subsection that the chemical is a synthetic controlled substance.

3. Such term does not include:

a. a controlled substance,

b. any substance for which there is an approved new drug application,

c. with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) to the extent conduct with respect to such substance is pursuant to such exemption, or

d. any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

C. A person commits murder in the first degree when the death of a child results from the willful or malicious injuring, torturing, maiming or using of unreasonable force by said person or who shall willfully cause, procure or permit any of said acts to be done upon the child pursuant to Section 843. 5 of this title. It is sufficient for the crime of murder in the first degree that the person either willfully tortured or used unreasonable force upon the child or maliciously injured or maimed the child.

D. A person commits murder in the first degree when that person unlawfully and with malice aforethought solicits another person or persons to cause the death of a human being in furtherance of unlawfully manufacturing, distributing or dispensing controlled dangerous substances, as defined in the Uniform Controlled Dangerous Substances Act,[1] unlawfully possessing with intent to distribute or dispense controlled dangerous substances, or trafficking in illegal drugs.

E. A person commits murder in the first degree when that person intentionally causes the death of a law enforcement officer, correctional officer, or corrections employee while the officer or employee is in the performance of official duties.

Credits

Laws 1976, 1st Ex.Sess., c. 1, § 1, eff. July 24, 1976; Laws 1982, c. 279, § 1, operative Oct. 1, 1982; ; Laws 1989, c. 259, § 1, emerg. eff. May 19, 1989; Laws 1996, c. 161, § 1, eff. Nov. 1, 1996; Laws 1997, c. 386, § 23, emerg. eff. June 10, 1997; Laws 1998, c. 5, § 11, emerg. eff. March 4, 1998; Laws 2004, c. 520, § 2, eff. Nov. 1, 2004; Laws 2006, c. 186, § 2, eff. July 1, 2006; Laws 2009, c. 234, § 120, emerg. eff. May 21, 2009; Laws 2012, c. 128, § 1, eff. Nov. 1, 2012; Laws 2012, c. 208, § 1, eff. Nov. 1, 2012.

Notes of Decisions (1389)

Footnotes

1

Title 63, § 2-101 et seq.

21 Okl. St. Ann. § 701.7, OK ST T. 21 § 701.7
Current with emergency effective legislation through Chapter 10 of the Second Regular Session of the 58th Legislature (2022). Some sections may be more current, see credits for details.

End of Document

Pet. App. D

Other Materials

IN THE DISTRICT COURT OF MURRAY COUNTY
STATE OF OKLAHOMA

STATE OF OKALHOMA,	)	
Plaintiff,	)	
	)	
Vs.	)	
	)	
JASON KRUSE,	)	
Defendant.	)	**CF-00-105**

FILED
MURRAY COUNTY, OKLAHOMA
SEP 2 5 2000
JO FREEMAN, Court Clerk
Deputy

OBJECTION TO JURISDICTION OF THE COURT

COMES NOW the Defendant, Jason Kruse, by and through his attorney of record, David Pyle and objects to the jurisdiction of this court as follows:

1. That Jason Kruse is an enrolled member of an Indian Tribe.

2. That the victim in this case is an enrolled member of an Indian Tribe.

3. That the incident where the alleged crime occurred is Indian Country within the meaning of the Federal Statute.

4. That the apartment complex where the alleged crime occurred is owned and operated by the Chickasaw Nation.

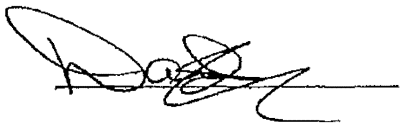
WHEREFORE PREMISES CONSIDERED the Defendant prays this court to grant his objection to the jurisdiction of the case and dismiss the case in the District Court of the State of Oklahoma.

David Pyle, OBA 14155
P.O. Box 2206
Ardmore, OK 73402
(580) 226-6120

CERTIFICATE OF MAILING

I certify that on the ___ day of September I mailed a true and correct copy of the above and foregoing document to the following:

Murray County District Attorney
Murray County Court House
Sulphur, OK. 73086



FILED
MURRAY COUNTY, OKLAHOMA
JAN - 5 2001
JO FREEMAN, Court Clerk
_____ Deputy

IN THE DISTRICT COURT OF MURRRAY COUNTY

STATE OF OKLAHOMA

THE STATE OF OKLAHOMA, Plaintiff,	)	
vs.	)	CF-2000-105
JASON CRUSE	)	
Defendant.	)	

STATE'S RESPONSE TO DEFENDATN'S OBJECTION TO JURISDICTION OF THE COURT

Comes Now, the State of Oklahoma by and through Johnny S. Loard, Assistant District Attorney and responds to the defendant's objection to Jurisdiction of this court as follows:

1. The State of Oklahoma would stipulate that the defendant, Jason Cruse, is an enrolled member of an Indian Tribe.
2. The State of Oklahoma would stipulate that the victim, Richard Jones, was an enrolled member of an Indian Tribe.
3. The State of Oklahoma would argue that the location where the alleged crime occurred is not Indian Country within the meaning of the Federal Statute as alleged by the Defendant. Authority – Eaves v. State 795 P.2d 1060 (Okl.Cr. 1990), Eaves v. State 800 P.2d 251 (Okl.Cr. 1990) and 63 O.S. 1981, § 1057.
4. The State of Oklahoma would stipulate that the apartment complex where the alleged crime occurred is owned by the Chickasaw Housing Authority and is operated and managed by the Chickasaw Nation Division of Housing.

Wherefore, the State of Oklahoma requests this Court overrule the Defendant, Jason Cruse's objection to the Jurisdiction of this court to hear the above captioned case.

Dated this __5th__ day of January 2001.

JOHNNY S. LOARD
ASSISTANT DISTRICT ATTORNEY

CERTIFICATE OF DELIVERY

I certify that on the 5th day of January, 01 I placed a true and correct copy of the above Response in the Sorter Box of David Pyle, Attorney for the Defendant, in the Office of the Court Clerk for Murray County and that I hand delivered to David Pyle a copy of the same.

Johnny S. Loard

IN THE DISTRICT COURT OF MURRAY COUNTY

STATE OF OKLAHOMA

IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
AUG 31 2001
JAMES W. PATTERSON
CLERK

THE STATE OF OKLAHOMA,

Plaintiff,

v.

JASON LEON CRUSE,

Defendant.

F -2001-1046

APPEAL CASE NO. _____

TYPE OF APPEAL: Direct Felony Appeal

DISTRICT COURT CASE NO. CF-2000-105

NOTICE OF INTENT TO APPEAL; ORDER DETERMINING INDIGENCY, APPELLATE COUNSEL, PREPARATION OF APPEAL RECORD, AND GRANTING TRIAL COUNSEL'S MOTION TO WITHDRAW; COURT REPORTER'S ACKNOWLEDGEMENT; AND NOTIFICATION OF APPROPRIATE APPELLATE COUNSEL, IF APPOINTED

I. NOTICE OF INTENT TO APPEAL

FILED
MURRAY COUNTY, OKLAHOMA
AUG 31 2001
JO FREEMAN, Court Clerk
_____ Deputy

The Defendant was sentenced on the 24th day of August, 2001, for:

Crime: Murder in the First Degree

Statute: 21 O.S. § 701.7(A)

Sentence: Life in prison without the possibility of parole plus ~~$10,000.00~~ $4,835.00 Victims Compensation Assessment ~~plus $4,000.00 restitution to the family of the deceased~~ of $5,145.00 plus court costs, with that portion of the sentence related to "without the possibility of parole" suspended upon condition of Defendant's law-abiding conduct both in and out of prison.

The Defendant intends to appeal the above conviction and sentence to the Oklahoma Court of Criminal Appeals pursuant to 22 O.S. § 1051. This Notice of Intent to Appeal and the Designation of Record, attached as Exhibit "A" pursuant to Rule 2.5(A) of the *Rules of the Court of Criminal Appeals*, Ch.18, App., of Title 22, was filed with the clerk of the trial court within ten (10) days of the date of the pronouncement of the Judgment and Sentence in this case and constitutes a valid initiation of a direct appeal in accordance with the Court of Criminal Appeals Rule 2.1(B). The Defendant further requests that the original record be prepared in accordance with the completed Designation of Record, attached as Exhibit "A". To assist in the expediting of the appeal, an advisory list of propositions of error deemed viable by trial counsel, signed by trial counsel is attached as Exhibit "B".

RECEIVED
SEP 04 2001
FROM: COURT OF CRIMINAL APPEALS

Osher Bachrach

Osher Bachrach, OBA No. 13010
Trial Counsel (Retained)

FILE COPY

No. F-2001-1046

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

JASON LEON CRUSE,	)	
	)	
Appellant,	)	
	)	
v.	)	Appeal from the District
	)	Court of Murray County
	)	Case No. CF-2000-105
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

BRIEF OF APPELLANT

Thomas Purcell
Deputy Appellate Defense Counsel
Oklahoma Bar No. 10115

1623 Cross Center Drive
Norman, OK 73019
(405) 325-3128

ATTORNEY FOR APPELLANT

OSR/413652

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	)	
Appellant,	)	
	)	
v.	)	Case No. F-2001-1046
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

BRIEF OF APPELLANT

Jason Leon Cruse was the defendant in the District Court, and will be referred to by name or as the Appellant. The Appellee will be referred to as the State or the prosecution. Numbers in parenthesis refer to page citations in the original record (O.R.), and transcripts of the hearing at which Mr. Cruse pled guilty (P.Tr.), the hearing at which Mr. Cruse was sentenced after his plea (S.P.Tr.), the hearing at which Mr. Cruse was allowed to withdraw his plea (W.Tr.), the Preliminary Hearing (P.H.Tr.), the Jury Trial (J.Tr.), and the Sentencing Hearing. (S.Tr.)

STATEMENT OF THE CASE

On June 19, 2000, Mr. Cruse was charged with Murder in the First Degree in Murray County Case No. CF-00-105. (O.R.1) Mr. Cruse entered a blind plea of guilty on February 12, 2001, before the Honorable John H. Scaggs, District

Judge. (P.Tr.2-17) Mr. Cruse was represented by Mr. David J. Pyle, Attorney at Law. The State was represented by Mr. Mitchell D. Sperry, District Attorney.

On March 30, 2001, the trial court found Mr. Cruse guilty of Manslaughter and imposed a sentence of life imprisonment. (S.P Tr. 17) Mr. Cruse filed a Motion to Withdraw Guilty Plea on April 9, 2001. (O.R.120) A hearing was held on the motion on May 5, 2001, before the Honorable John H. Scaggs, District Judge. Mr. Cruse was represented by Mr. Osher Bachrach, Attorney at Law. The State was represented by Mr. Johnny Loard, Assistant District Attorney. The trial court allowed Mr. Cruse to withdraw his guilty plea. (O.R.135)

A jury trial was held on July 16-17, 2001, before the Honorable John H. Scaggs. Mr. Cruse was again represented by Mr. Osher Bachrach, Attorney at Law. The State was represented by Mr. Johnny Loard and Mr. Craig Ladd, Assistant District Attorneys. The jury returned a verdict of guilty of Murder in the First Degree, but could not agree on a sentence. (Tr. 389) On August 24, 2001, the trial court imposed a sentence of life without parole, but suspended the "without parole" provision of the sentence. (S.Tr.17)

STATEMENT OF FACTS

On June 17, 2001, Mr. Cruse was twenty-one years old. He was very close to his grandfather, who had recently passed away. Mr. Cruse was one of the pall-bearers, and was very upset by the experience. (Tr.324, O.R.10) He had asked Sheila Amos, his girlfriend of three years, to attend the funeral with him, but she

refused. This further upset him. (Tr.179, 324) He began to drink, eventually finishing a fifth of Jack Daniels whiskey. (Tr.325)

Amos worked until 8:00 p.m. that evening. Mr. Cruse went to visit her at 10:00 p.m., and stayed until 10:30 p.m. Then he left, but said he would be back soon. (Tr.181-182) When Mr. Cruse returned, he saw his girlfriend drive off with her former lover, Richard Jones, and Richard's brother Allen. (Tr.333)

Mr. Cruse went home. (Tr.334) At approximately 1:00 a.m., Mr. Cruse went to the house of Everett Berryhill, who is Mr. Cruse's older brother. Mr. Cruse asked Everett to ride around with him, because Mr. Cruse could not handle having been a pall bearer at his grandfather's funeral. Mr. Cruse was crying, and said he wanted his girlfriend, Shelia Amos, to be with him. Mr. Cruse then drove to the apartment where Richard Jones lived. (O.R.8)

Mr. Cruse went to Richard's apartment and kicked the door. When Richard opened the door, Mr. Cruse asked him where his girlfriend was. Richard told him that she was in the back of the apartment. (Tr.206-208) According to Allen Jones' statement to police, Mr. Cruse then started to walk into the apartment. Richard reached out to stop Mr. Cruse, at which time Mr. Cruse stabbed Richard. (O.R. 197) Richard died of a stab wound to the heart. (Tr.221) Mr. Cruse ran from the scene, but was later arrested. One of the arresting officers was related to Mr. Cruse, and expressed his surprise to Mr. Cruse about his involvement in the

incident. Mr. Cruse responded by saying that "I didn't want to do it, I didn't mean to, I was mad." (Tr.249)

PROPOSITION I

MR. CRUSE WAS DENIED A FAIR TRIAL BY THE COURT'S FAILURE TO INSTRUCT ON THE LESSER INCLUDED OFFENSE OF FIRST DEGREE MURDER.

The evidence in this case supported an instruction on Second Degree Murder. Although Mr. Cruse's trial counsel did not request such an instruction, the jury sent a message to the trial court which asked if they could consider Second Degree Murder. (Tr.383) However, the trial court failed to instruct the jury on this offense. (Tr.383) The trial court's failure to properly instruct the jury was error which requires reversal.

Mr. Cruse was under extreme emotional pressure at the time of the offense. His grandfather had been buried that day. He was very close to his grandfather, and the death had affected him greatly. (Tr.324) He had hoped his girlfriend of three years would have accompanied him to the funeral, but she refused. (Tr.179, 324) Upset about his grandfather's death, he started drinking heavily. (Tr.325)

He went to visit his girlfriend that evening. He left for a few minutes, telling her he would soon return. However, when he returned, he saw her driving off with Richard Jones, her former lover. (Tr.181–182, 333) He eventually went to Jones' apartment, and asked where his girlfriend was. Jones said she was in the back of the apartment. When Mr. Cruse started to enter the apartment, Jones grabbed him. It was then when Mr. Cruse stabbed Jones. (Tr.206-208, 221, O.R.8,197)

> Oklahoma law defines depraved-mind murder as a homicide: perpetrated by an act imminently dangerous to another person and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual. . . .

21 O.S. 1981, § 701.8(1)

These facts present a classic case of Second Degree Depraved-Mind Murder. Stabbing a person is an imminently dangerous act, and shows a depraved mind. However, it is unlikely that Mr. Cruse had a premeditated design to stab the victim. The stabbing seems to be the result of a spur of the moment decision made by a deeply troubled young man. A similar case occurred in **Dorsey v. State**, 739 P.2d 528 (Okl.Cr.1987). In that case, the defendant armed himself with a knife, entered a store and started a fight with the deceased. The deceased had been having an affair with the defendant's wife. The defendant intentionally stabbed the deceased. This Court found that these facts supported a conviction for Second Degree Murder. Also see **Strong v. State**, 547 P.2d 383 (Okl.Cr.1976), **Deason v. State**, 576 P.2d 778 (Okl.Cr.1978)

Because the evidence supported the giving of an instruction on Second Degree Murder, the trial court erred when it failed to so instruct. This Court has adopted the rule that, "[i]n a prosecution for murder, the court should instruct the jury on the law of **each degree of homicide which the evidence tends to prove**" even where, as in the present case, the defendant did not request the instruction.

Dawson v. State, 647 P.2d 447, 448-449 (Okl.Cr. 1982). Also see **Walton v. State**, 744 P.2d 977 (Okl.Cr.1987).

Although Mr. Cruse's trial attorney did not ask for the instruction, the jury did ask if they could consider this lesser offense. The trial court was presented with the issue of whether to give the instruction, and mistakenly decided not to. (Tr.383-384) Therefore this Court should not find a waiver in this case. The issue was presented to, and decided by, the trial court. Therefore there is no reason to apply the waiver rule. Also, the trial court had a duty to give the requested instruction even without a request.

The error in this case was not harmless. The only other lesser included offense instructed on was First Degree Manslaughter. (O.R.21-22) However, this offense can only be found if the deceased engaged in "improper conduct" towards the defendant which caused the defendant's heat of passion. (O.R.22) As the prosecutor pointed out:

> "I'm going to start off by explaining to you why this man's not charged with Manslaughter, why Manslaughter is not the right charge for this man to be convicted of, not the right crime. If I read your instructions, and bear with me here, I won't dwell too much on the instructions, but this is a very important instruction. I'd ask you to flip to Instruction No. 12, I think it's the third one. I think it was 3 of 12, I believe it's the third one. It's entitled - I think the first two words on the page are "adequate provocation" in bold print. In order for him to be guilty of Manslaughter we have to have adequate provocation, and I would submit to you there is no adequate provocation in this case. The first, "Any improper conduct of the deceased toward the Defendant". The deceased would, of course, be Richard Jones, toward the Defendant, Jason Cruse. "Which naturally or reasonably would have the effect of arousing a sudden

heat of passion within a reasonable person in the position of the Defendant". Generally, actions which are calculated, are calculated. That's implicit that the deceased, Richard Jones, is aware of the Defendant's presence, is aware that the Defendant is going to be provoked or aroused by his behavior. There's been no evidence in this case to establish that Richard Jones ever knew anything about the Defendant being around or being onto the fact that she was going to be over at their apartment. "Calculated to provoke an emotional response and ordinarily cause serious violence are recognized as adequate provocation. In determining whether this deceased's" - - again, Richard Jones - "conduct was adequate provocation, conduct is just as a person of reasonable intelligence and disposition would respond to it. Mere words alone or threats, menaces or gestures alone, however offensive or insulting, do not constitute adequate provocation". I want you to pay particular attention to that last sentence I've read to you. It's the next to the last sentence in that paragraph. Mere words alone, threats, menaces, gestures alone, however offensive or insulting, do not constitute adequate provocation. You might be asking yourselves, well, why do you point that out? I mean, there's been absolutely on evidence that Richard Jones ever did anything or ever made any menacing gestures or offensive words or anything like that, which is my point. I mean, if Richard Jones saw Jason Cruse whenever he picked up Sheila Amos he could have said, hey, buddy, I'm taking your girlfriend and called him the worst names in the book, and said, that's right, I'm taking your girlfriend with me right now and we're going back to my place and we're going to have a good time. He could have done it. And this instruction says still that that's not - that's not enough for adequate provocation because that's not enough to kill somebody over. And I would submit to you Richard Jones did nothing at all in regards to the Defendant; therefore, there's no adequate provocation; therefore, it was no manslaughter. The evidence does not support a conviction for Manslaughter in the First Degree.

(Tr. 359-360)

The prosecutor was correct in stating that the offense of First Degree Manslaughter was not raised by the facts of this case. Therefore the failure to give an instruction on Second Degree Murder, which was the lesser included offense

raised by the evidence, was prejudicial error which requires that the conviction in the present case be reversed.

The failure of the trial court to instruct on the lesser included offense of Second Degree Murder not only violated Oklahoma law but was also a violation of the United States Constitution's sixth, eighth, and fourteenth amendments. **Keeble v. United States**, 412 U.S. 205, 208, 93 S.Ct. 1993, 1995, 36 L.Ed.2d 844 (1973). Therefore, Mr. Cruse's conviction should be reversed.

PROPOSITION II

BECAUSE THE STATE EXERCISED PEREMPTORY CHALLENGES AGAINST MINORITY JURORS WITHOUT DEMONSTRATING NEUTRAL REASONS FOR THE CHALLENGES, MR. CRUSE WAS DENIED AN IMPARTIAL JURY COMPOSED OF A FAIR CROSS SECTION OF THE COMMUNITY IN VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE II, §§ 7 AND 20 OF THE OKLAHOMA CONSTITUTION.

During voir dire, the trial court asked the jurors to raise their hands if they or a family member had a certificate of degree of Indian blood, or CDIB, card. A number of venire men raised their hands, and the prosecutor struck three of them. The prosecutor never provided a race-neutral reason for his strikes. Therefore Mr. Cruse was deprived of a fair trial, and his conviction should be reversed.

The exercise of peremptory challenges in a manner that excludes individuals from jury service on account of their race is a violation of the Equal Protection Clause of the Fourteenth Amendment. **Batson v. Kentucky**, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). In **Powers v. Ohio**, 499 U.S. 400, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991), the Supreme Court held that a discriminatory peremptory challenge was impermissible because it condoned a violation of the Constitution, cast doubt upon the judicial system, and allowed the rights of excluded jurors to remain unvindicated. 499 U.S. at 413, 111 S.Ct. at 1372.

In Mr. Cruse's case, the following happened during voir dire:

THE COURT: Thank you. Ladies and gentlemen, if you'd raise your hands, please, any of you who hold a CDIB card, your certificate of degree of Indian Blood? Just you, Mr. Davis? Anyone else that holds one or has a family member who holds one? All right. Mr. Arms, you and - okay. Thank you very much.

JUROR DAY: I have a niece that does.

THE COURT: A niece, all right. Thank you very much. All right. State, your first peremptory challenge.

MR. LOARD: May we approach, Your Honor?

THE COURT: Yes.

(The following proceedings were had at the bench outside the hearing of the jury.)

MR. LOARD: Your Honor, based upon your questions about CDIB card, I understand we probably need to make a record as far as anybody that has a card, is that correct?

THE COURT: Yes.

MR. LOARD: Our first strike was going to be Ms. Day and I think she raised her hand and I think she has it.

THE COURT: She has a niece that has it. Your first strike is Ms. Day?

MR. LOARD: Yes, Your Honor.

(The respective parties returned to their places and the following proceedings were had within the hearing of the jury.)

THE COURT: Ms. Day, you're excused. Thank you for being here, ma'am. We don't usually do this at the bench.

(Tr. 39-40)

The Supreme Court in **Batson** set forth a three-part analysis for evaluating an equal protection challenge to a prosecutor's use of peremptory challenges. First, the opponent of the peremptory challenge must make a prima facie showing of discrimination in the exercise of the peremptory challenge. Second, the proponent of the challenge must articulate a race-neutral explanation for the strike which is clear, reasonably specific and constitutes a legitimate reason for challenging the juror. Finally, if the proponent of the challenge offers a race-neutral explanation for the strike, the judge must decide whether the opponent of the strike has carried the burden of proving that the strike constituted purposeful racial discrimination. 476 U.S. at 96-98; **Neill v. State**, 896 P.2d 537, 546 (Okl.Cr. 1994).

In **Green v. State**, 862 P.2d 1271, 1272 (Okl.Cr. 1993), this Court held that the failure of the trial court to require the State to provide a race-neutral explanation for the exercise of a peremptory challenge of a minority juror violates the principles of **Powell**. In **Green**, the Appellant argued that three of the State's peremptory strikes were racially motivated. **Id.**, at 1272. This Court found reversible error in the trial court's failure to require the State to provide a race-neutral explanation for the exercise of <u>one</u> of the peremptory challenges. **Id.** (emphasis added)

In the present case, it was the prosecutor himself who brought up the need to make a record on these strikes. However, when given a chance to make a

record, he failed to give any race-neutral reason for striking the holders of CDIB cards. (Tr.40) No record at all was made as to the prosecutor's strike of two other holders of CDIB cards. (Tr.95-105, 107, 116-119) Although Mr. Cruse's trial counsel should have raised the issue, the issue was raised in this case by the prosecutor. Therefore the prosecutor's failure to make a record of a race-neutral reason for striking these jurors is error which requires reversal.

PROPOSITION III

THE PROSECUTOR'S APPEAL TO THE JURY'S SYMPATHY FOR THE DECEASED AND HIS FAMILY DEPRIVED MR. CRUSE OF A FAIR TRIAL.

During closing argument, the prosecutor appealed to the jury's sympathy for the deceased and his family. The prosecutor told the jury:

> One of your instructions says don't let sympathy enter into your deliberations. Because of his age - - I know that Mr. Loard covered this in voir dire, he was really concerned about it, I was concerned about it. He's a young man. But will you feel too sorry for him to look at the evidence? Let me remind you of something, Richard Jones was 24-years old. Richard Jones was a young man, too. And Richard Jones was minding his own business on June the 18th. He wasn't trying to hurt anybody. I mean, he's got a lot to look forward to. He was excited about his move. He was going to move up to Noble, going to try to get a job in Norman, and he's having, I guess, basically a going-away party there in his apartment. You know, and I think he probably felt safe in his own home. I know I do in mine. We have that right. We should be able to feel safe in our own home. And Richard's there minding his own business, having some beer with his brother and his friends and his cousin and Sheila, and here comes the Defendant kicking in the door and in an instant the Defendant decided to take his life away. The Defendant robbed him of the opportunity to live a complete and full life.
>
> Ladies and gentlemen, remember what Allen Jones told you. And Allen Jones, I mean, he's lost his younger brother. Mr. and Mrs. Jones, they've lost their youngest son. That's a permanent loss, folks, that's for forever. You can't take it back. It's done.
>
> Allen Jones' last memories of his brother will be driving his brother to the hospital. I'll never forget the way he described it whenever he described it on the stand. He said, I heard bubbles. That's a bit of a strange way to describe it, but I think it's pretty effective. That's one of the his last memories of his brother, struggling for his last few breaths of air. He walks him into the ER and he sees his brother and he says that he lost it, I think is what he said. He said that his eyes rolled back into his head, his knees

> buckled and he hit the floor, and he died right there in front of Allen. That's what Allen Jones has got to live with. That's what he's going to remember.
>
> Ladies and gentlemen, if you do the crime you've got to do the time, and that's what this Defendant has done. It's time to punish him. If you're tempted to feel sorry for him, remember the Jones' family.

(Tr. 366-367)

This Court has prohibited invoking the image of the victim in appealing to the passion and prejudices of the jury. In **Sier v. State**, 517 P.2d 803 (Okl.Cr. 1973), this Court condemned a prosecutor's statement that the jury should feel sympathy for the victims of a crime. This Court modified the defendant's sentence for sodomy after former conviction of a felony from 35 years to 20 years. And in **Dupree v. State**, 514 P.2d 425 (Okl.Cr. 1973), similar comments led to the reversal of the defendant's conviction. Although the comments in the present case were not objected to, this Court has held that prosecutorial misconduct may require reversal despite the lack of objection at trial. **Williams v. State**, 658 P.2d 499 (Okl.Cr.1983)

Even after being exposed to these improper comments, the jury was reluctant to return a verdict of First Degree Murder. (Tr. 383) Had these improper comments not been made, the jury may well have refused to convict Mr. Cruse. Therefore the conviction in this case should be reversed.

PROPOSITION IV

THE TRIAL COURT INTRODUCED THE ISSUE OF RACE INTO THE JURY SELECTION PROCESS BY INQUIRING INTO WHICH JURORS HAD BEEN ISSUED "CERTIFICATES OF DEGREE OF INDIAN BLOOD."

As discussed in Proposition II above, the trial court during voir dire asked the prospective jurors if they had certificates of degree of Indian blood, or "CDIB cards." (Tr.390) The only purpose for asking this question was to raise the issue of race during voir dire. Because Mr. Cruse is an Indian, the trial court's questions deprived Mr. Cruse of Due Process and a fair trial. Therefore, his conviction must be reversed.

By intentionally seeking out information about the racial background of the venire men, the trial court made race an issue in the selection of the jury. The United States Supreme Court, in **Batson v. Kentucky**, 476 U.S. 79, 89, 106 S.Ct. 1712, 1719, 90 L.Ed.2d 69 (1986), dealt with this issue from the standpoint of a prosecutor's use of race in determining who to remove from a jury. The Court announced:

> [a]lthough a prosecutor ordinarily is entitled to exercise permitted peremptory challenges "for any reason at all, as long as that reason is related to his view concerning the outcome" of the case to be tried ... the Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors as a group will be unable impartially to consider the State's case against a black defendant.

This rule prohibiting dismissal of jurors based on race protects not only the rights of the individual defendant, but also safeguards the right and obligation of

the excluded juror to participate in jury service. 476 U.S. at 87-89, 106 S.Ct. at 1717-18. Equally important is that discrimination within the judicial system is "most pernicious" and the **Batson** mandate assures the public of a system of justice which will be free of racial prejudice. 476 U.S. at 87-88, 106 S.Ct at 1718. **See Powers v. Ohio**, 499 U.S. 400, 111 S.Ct. 1364 113 L.Ed.2d 411 (1991).

Appellant would contend that it is more prejudicial for a judge to inject race into a judicial proceeding than for a prosecutor to do so. A judge is a representative of the judicial system itself. A prosecutor is recognized to be, at least in part, an advocate representing one side in a dispute before that court. Therefore the potential for harm to the reputation of the judicial system is even greater in the present case than that addressed in **Batson**. For this reason, Mr. Cruse's conviction should be reversed.

PROPOSITION V

MR. CRUSE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL

Mr. Cruse did not receive effective assistance of counsel. The failure of trial counsel to object to improper and prejudicial matters, to request the proper lesser included offense instructions, to introduce important evidence, or to present a credible defense left the jury with no alternative but to convict Mr. Cruse of the greater offense of First Degree Murder. Trial counsel's performance constituted a denial of Due Process, and requires that the resulting conviction be reversed.

"It is well established that an accused has a fundamental right to the reasonably effective assistance of counsel." **Williamson v. State**, 812 P.2d 384, 410-11 (Okl.Cr. 1991). "The Sixth Amendment demands that defense counsel exercise the skill, judgment and diligence of a reasonably competent defense attorney." **United States v. Glick**, 710 F.2d 639, 644 (10th Cir. 1983).

Mr. Cruse was severely prejudiced by trial counsel's inexplicable failure to object to numerous prejudicial actions which occurred at trial. Mr. Cruse's trial counsel failed to object to the court's questioning of jurors about their racial background. (See Proposition IV) When the prosecutor moved to exclude minority members with peremptory challenges, trial counsel did not object. Even when the prosecutor himself raised this issue, trial counsel still did not require the prosecutor to justify his removal of minority venire men. (See Proposition II) Trial

counsel also failed to object when the prosecutor made prejudicial comments during closing arguments. (See Proposition III)

Failure to object may rise to the level of ineffective assistance of counsel. **Shepard v. State**, 756 P.2d 597, 601 (Okl.Cr. 1988); **Aycox v. State**, 702 P.2d 1057, 1058 (Okl.Cr. 1985). Under similar circumstances, this Court has found the failure to object does not fall within the wide range of "reasonable professional assistance" and could not be considered "sound trial strategy." **See Williamson v. State**, 812 P.2d 384, 411 (Okl.Cr. 1991). Such a failure was even deemed "inexcusable" in **McCalip v. State**, 778 P.2d 488, 490 (Okl.Cr. 1989).

Trial counsel also failed to request an instruction on Second Degree Murder. Even when the jury raised the issue of second degree murder, trial counsel failed to unambiguously request the instruction. (See Proposition I) Trial counsel's failure meant that Mr. Cruse's jury was not allowed to find him guilty of the lesser included offense which seemed to most closely fit the facts of this case. This also denied Appellant due process of law and requires reversal. U.S. Const. amends. V, XIV; Okla.Const., art. II, § 7; **United States ex rel. Means v. Solem**, 646 F.2d 322, 332 (8th Cir. 1980); **Scott v. State**, 808 P.2d 73, 77 (Okl.Cr. 1991); **Tully v. State**, 730 P.2d 1206, 1210-1211 (Okl.Cr. 1986).

Trial counsel's most striking deficiency was his failure to act even when prompted to by the prosecutor or jury. As the court noted in **Voyle v. Watkins**,

489 F.Supp. 901, 912 (N.D. Miss. 1980), counsel's standing still and doing nothing might be the best evidence of incompetency.

Trial counsel's theory of the defense, that the deceased stabbed himself, also constituted ineffective assistance of counsel. The witnesses to the stabbing all claimed that the deceased did not have a knife when he opened the door, and that Mr. Cruse stabbed the deceased. (Tr.162-165, 208-209) Mr. Cruse claimed he did not remember what happened. (Tr.326) Given these facts, trial counsel's argument that the deceased stabbed himself was not a reasonable one. (Tr.147-148) While this Court will generally not second-guess sound trial strategy, the strategy adopted in this case could not be considered "sound" trial strategy. **See Williamson v. State**, 812 P.2d at 411 .

Trial counsel also failed to present important information to the jury. The deceased's own brother told police that the deceased had grabbed Mr. Cruse, at which time Mr. Cruse stabbed the deceased. (O.R.197) While this evidence does not excuse Mr. Cruse's actions, it does show that Mr. Cruse was reacting to an unexpected event. This evidence strongly supports a finding that Mr. Cruse was guilty of a lessor degree of homicide. However, trial counsel never presented this evidence to the jury.

Mr. Cruse's brother also gave a statement to police. In the statement he explained the great emotional stress his brother was under on the night of the incident. Trial counsel also failed to present much of this evidence. (O.R. 8) This

Court has found that failure to present available and relevant evidence can constitute ineffective assistance of counsel. **Wilhoit v. State**, 816 P.2d 545 (Okl.Cr.1991).

This Court has consistently employed the two-prong test for ineffective assistance of counsel set forth by the United States Supreme Court in **Strickland. See Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984); **Williamson**, 812 P.2d at 410-11. The first prong of the **Strickland** test requires the defendant to show that counsel's performance was deficient, and the second prong requires a showing of prejudice. **Strickland**, 466 U.S. at 687, 104 S.Ct. at 2064. The prejudice prong is satisfied by a showing that the defendant was deprived of "a trial whose result [was] reliable." **Horton v. Zant**, 941 F.2d 1449, 1463 (11th Cir. 1991); **see also Strickland**, 466 U.S. at 694, 104 S.Ct. at 2068; **Williamson**, 812 P.2d at 411.

Trial counsel's actions in this case constituted deficient performance. Because of this deficient performance, the jury never passed upon the central issue of this case-the degree of murder Mr. Cruse was guilty of. Mr. Cruse was deprived of a trial which was fair and reliable. **See Lockhart v. Fretwell**, 506 U.S. 364, 369, 113 S.Ct. 838, 842, 122 L.Ed.2d 180 (1993). Therefore his conviction should be reversed.

PROPOSITION VI:

THE APARTMENT HOUSE WHERE THIS OFFENSE OCCURRED WAS A "DEPENDENT INDIAN COMMUNITY," AND THEREFORE THE COURT HAD NO JURISDICTION TO TRY MR. CRUSE.

Mr. Cruse moved to dismiss the charges against him on the grounds that the offense occurred on a "dependent Indian community," and therefore only the United States Government had jurisdiction to try the case. (O.R.41) After hearing evidence on the motion, the court ruled that the apartment where the offense occurred was not a dependent Indian community. (P.H.Tr.14) Appellant would contend that the trial court's ruling was in error, and that Mr. Cruse's conviction should be vacated.

Mr. B.J. Taylor, Executive Director of the Housing Authority of the Chickasaw Nation, testified at the hearing on the Motion to Dismiss. He stated that the apartment in question was part of two apartment complexes owned and operated by the Housing Authority of the Chickasaw Nation. Indians are given priority in renting the apartments, and 63% of the residents of the apartment complexes are Indians. Monies collected as rent go to the Chickasaw nation. (P.H.Tr. 7-13) Taylor stated that the United States Government did not own or control the land, and that he was not aware of any Indian ceremonies being held on the property or common economic activity among the residents. Taylor stated that he reported to the Board of Commissioners of the Chickasaw Housing Authority, who were all members of the Chickasaw tribe. (P.H.Tr.10-13)

The test for a dependant Indian community is quite factually dependent and no one factor is determinative. **Housing Authority of the Seminole Nation v. Harjo**, 790 P.2d 1098, 1101 (Okl.1990). An apartment complex can be a dependant Indian community. In **United States v. State of South Dakota**, 665 F. 2d 837 (8th. Cir. 1981), a housing project was found to be a dependant Indian community. The project did accept non-Indians, and the State had asserted jurisdiction over the project. Nevertheless, the court found that, given the totality of the circumstances, the project constituted a dependant Indian community.

Appellant would contend that Taylor's testimony established that the apartment was a dependant Indian community. Therefore, the trial court did not have jurisdiction over the offense, and the proceedings were void Ab initio. **C.M.G. v. State**, 594 P.2d 798 (Okl.Cr.1979). For this reason, Mr. Cruse's conviction should be vacated.

CONCLUSION

For the reasons and authorities cited herein, Appellant respectfully requests that the Judgment and Sentence of the District Court be reversed and the case remanded for a new trial. In the alternative, Appellant asks that the sentence be modified.

Respectfully submitted,

JASON LEON CRUSE

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CERTIFICATE OF SERVICE

This is to certify that on April 24th, 2002, a true and correct copy of the foregoing Brief of Appellant was mailed, via United States Postal Service, postage pre-paid, to Appellant at the address set out below, and a copy was served upon the Attorney General this date by leaving a copy with the Clerk of the Court of Criminal Appeals for submission to the Attorney General.

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THOMAS PURCELL

FILE COPY

CASE NO. F-2001-1046

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

JASON LEON CRUSE,

Appellant,

-vs-

THE STATE OF OKLAHOMA,

Appellee.

BRIEF OF APPELLEE

On Appeal from the Murray County District Court
Case No. CF-2000-105
The Honorable John H. Scaggs, District Judge

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July 24, 2002

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	)	
Appellant,	)	
	)	
v.	)	Case No. F-2001-1046
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

BRIEF OF APPELLEE

STATEMENT OF THE CASE

Jason Leon Cruse, hereinafter the defendant, was charged by Information, in the District Court of Murray County, Case Number CF-2000-105, with Murder in the First Degree, in violation of 21 O.S. Supp. 1998, § 701.7. (O.R. 1). On February 12, 2001, the defendant entered a blind plea of guilty. (Plea Tr. 2-17). The court found the defendant guilty of manslaughter in the first degree and sentenced him to imprisonment for life. (3-30-01 Sent. Tr. 17). On May 5, 2001, the trial court allowed the defendant to withdraw his plea and set the matter for trial. (5-5-01 Tr. 3-16).

The Honorable John H. Scaggs, District Judge, presided over the defendant's jury trial July 16-17, 2001. The jury found the defendant guilty of Murder in the First Degree. (O.R. File # 2 at 26). The jury could not agree on a sentence. (Tr. II, 389). On August 24, 2001, the trial court sentenced the defendant to imprisonment for life without the possibility of parole and suspended the "without parole" portion of the sentence. (8-24-01

Sent Tr. 17). From this Judgment and Sentence the defendant has perfected his appeal to this Court.

STATEMENT OF FACTS

On June 17, 2002, on or around 10:00 p.m., the defendant visited the home of Sheila Amos, his girlfriend of three years. (Tr. I, 179 & 182). The defendant was upset by his grandfather's funeral and had been drinking. (Tr. I, 182). Around 10:30 p.m., the defendant left to run an errand but stated that he would return. (Tr. I, 182). At 12:30 a.m., Ms. Amos left to visit Sondra Willmond and the victim, Richard Allen. (Tr. I, 183-84). The victim and his brother, Allen Jones, picked up Ms. Amos in front of her home. (Tr. I, 156-57).

The defendant arrived at Ms. Amos home and recognized Allen Jones' truck leaving. (Tr. II, 333-34). The defendant concluded that Ms. Amos had left in the truck with the Joneses. (Tr. II, 334). This made the defendant mad. (Tr. II, 334). The defendant was the jealous type and Ms. Amos had dated the victim several years prior to her relationship with the defendant. (Tr. I, 180-81). The defendant returned home and became [sic] madder and madder. (Tr. II, 334). The defendant went to the home of his older brother, Everett Berryhill, and they went to the victim's apartment in Mr. Berryhill's truck looking for Ms. Amos. (Tr. II, 325 & 334-35).

The victim, his brother, Antoine Colungo, Sheila Amos, and Sondra Willmond were relaxing, drinking beer, and listening to music at the victim's apartment. The individuals were celebrating the victim's pending move to Noble, Oklahoma. (Tr.149-58). Ms. Amos and the victim were not romantically involved that evening. (Tr. I, 159). The victim had a common law spouse. (Tr. I, 150). The celebration was disturbed by the defendant kicking and screaming at the door. (Tr. I, 160 & 207). Ms. Amos recognized the defendant's voice, realized that he was angry, and ran into the backroom. (Tr. I, 188). The victim answered the door. (Tr. I, 190). Everyone present testified that the victim's hands were empty when he answered the door. (Tr. I, 161-64, 190, 208, 214, & 283-84). The defendant cursed and asked where his girlfriend was? (Tr. I, 164). The victim informed Amos that she was in the back room. (Tr. I, 209). The defendant cursed "God dam," and stabbed the victim. (Tr. I, 209). The defendant had kept the knife hidden at his side until this point in time. (Tr. I, 208-09).

Antoine Colungo observed the knife in the defendant's hand and yelled that he had a knife. (Tr. I, 208-09 & 164). The defendant held a black "ginsu" knife. (Tr. I, 165). Allen Jones turned and observed the defendant attempting to stab the victim. (Tr. I, 165). The victim had his arms up blocking the defendant's repeated attempts to stab him. The defendant continued to attempt to stab the victim over his extended arms. (Tr. I, 165 & 217-18). The men ran to aid the victim. (Tr. I, 165-66). Allen Jones grabbed the

defendant's wrists and the combined weight forced the defendant to the ground. (Tr. I, 166). The defendant would not let loose of the knife and Allen Jones forced it into a crack in the nearby window sill. (Tr. I, 166-67). The defendant's brother seized the knife and announced: "I've got the knife, he is not going to stab nobody else...," and he tossed the knife off the breeze way. (Tr. II, 286). The defendant got up and ran away. (Tr. II, 338).

The victim's brother rushed him to the emergency room. The victim collapsed in the emergency room. (Tr. I, 169-71). The victim had been stabbed through his lung and heart. (Tr. I, 221-225 & 230). The victim was pronounced dead thirty-seven minutes after arriving at the hospital. (Tr. I, 222).

The defendant was arrested. (Tr. I, 239). The defendant was not intoxicated, did not stumble or smell of alcohol. (Tr. I, 257-58, 266 & Tr. II, 345). One of the arresting officers was related to the defendant and expressed his sincere surprise in the defendant's involvement. The defendant stated: "I didn't want to do it, I didn't mean to do it, I was mad." (Tr. I, 248). The Sheriff's office conducted a formal interview. The defendant informed that he became mad an Sheila Amos when she was not home. (Tr. I, 256-59). Blood was discovered on the defendant's person. (Tr. I, 260). The defendant attempted to scrape the blood off after it was pointed out to him. (Tr. I, 261). The defendant asked if the victim had died. (Tr. I, 260).

At trial, the defendant testified on his own behalf. The defendant admitted the great weight of the testimony against him. (Tr. II, 322-43). The defendant asserted that he could not remember what happened because "It just happened real quick. (Tr. II, 327). The defendant remembered asking for Ms. Amos and the victim being present. (Tr. II, 336-37). The defendant remembered being upset with Ms. Amos and going to the victim's apartment. (Tr. II, 339). The defendant remembered a struggle. (Tr. II, 338). The defendant remembered being scared afterwards and running away. (Tr. II, 339 & 342). The defendant testified that: "Well it just happened like that. I mean, it was just kind of like a rush, so it was - - I mean, all of the adrenaline and everything... ." (Tr. II, 342). Additional facts will be presented as they become pertinent to the State's argument.

PROPOSITION I

THE DEFENDANT'S CONVICTION SHOULD BE AFFIRMED BECAUSE THE COURT PROPERLY INSTRUCTED THE JURY.

In his first proposition of error, the defendant asserts that the trial court erred by failing to instruct the jury upon Second Degree Murder. This argument is without merit because the evidence did not support such an instruction.

As properly noted by the defendant, the defendant failed to request an instruction regarding Second Degree Murder and did not object to the instructions on the basis that they did not contain such an instruction. (Tr. II, 384). All but plain error is waived where

the defendant fails to object to instructions given and does not submit a requested instruction. Ashinsky v. State, 1989 OK CR 59, ¶ 17, 780 P.2d 201, 206.

Moreover, the determination of which instructions shall be given to the jury is left to the sound discretion of the trial court. Williams v. State, 2001 OK CR 9, ¶ 22, 22 P.3d 702, 711. This Court will not interfere with the trial court's judgment absent an abuse of that discretion. Id. In the case at bar, the trial court found that "the evidence doesn't support Murder II." (Tr. II, 384). The trial court instructed upon the lesser included offense of First Degree Manslaughter and voluntary intoxication. (O.R. 17-18 & 21-23). The jury was properly instructed and the trial court did not abuse its discretion.

In the instant case, the evidence did not support the giving of a lesser included offense instruction on second degree depraved-mind murder. In Shrum v. State, 1999 OK CR 41, ¶ 12, 991 P.2d 1032, 1036-1037, this Court held that a lesser included instruction is only given when warranted by the evidence. To determine whether the evidence is sufficient to support a lesser included offense instruction, this Court looks at "whether the evidence might allow a jury to acquit the defendant of the greater offense and convict him of the lesser." Williams, at ¶ 22, 22 P.3d at 711.

The defendant cites Dorsey v. State, 1987 OK CR 133, ¶ 4-6, 739 P.2d 528, 529. However, Dorsey is distinguishable from the instant cause. First, the issue in Dorsey was not what the proper degree of murder was, instead, the issue was whether sufficient

evidence supported the defendant's conviction. Id. Second, the evidence in the instant case foreclosed the jury's acquittal of the greater offense. See Willingham v. State, 1997 OK CR 62, ¶ 23-23, 947 P.2d 1074, 1081 *overruled on other grounds by* Shrum v. State, 1999 OK CR 41, 991 P.2d 1032, ("[T]he existence of an intent to harm a particular individual" does not preclude a conviction for second degree murder, however, the intention of taking the life of a particular individual does.).

This Court recognizes that the trial court need not instruct on lesser included offenses which would require the jury to ignore the great weight of the evidence. Pickens v. State, 2001 OK CR 3, ¶ 36, 19 P.3d 866, 879. In the instant case, the jury would have had to have ignored the great weight of the evidence which showed that the defendant intended to cause the death of Richard Jones. The evidence at trial established that the defendant had a premeditated design to effect the death of the victim. The defendant became mad, obtained a ride from his older brother, and went to the victim's apartment armed with a knife. (Tr. I, 208, Tr. II, 325-26, & 334-35). The defendant verified that his girlfriend was present, exclaimed "God Dam," and stabbed the victim without any warning. (Tr. I, 164-65 & 208-10).

The defendant's choice of weapon helps establish his premeditated design to take the life of the victim. The knife the defendant brought with him was a large "Ginsu" butcher's knife. (Tr. I, 165, 167, 263 & State's Ex. # 11). The blade was approximately

six inches long. (Tr. I, 173). It is reasonable to infer from the defendant's choice of weapons that he intended to take the life of the victim. See Williams v. State, 2001 OK CR 9, ¶ 25, 22 P.3d 702, 712 (The intent to take the life of another "may be inferred from the fact of the killing, unless circumstances raise a reasonable doubt whether such design existed."). (Citation omitted).

Further, the defendant actions evinced his intention to end the victim's life. First, the defendant stabbed the victim in the upper-left chest area. (Tr. I, 208-210). This area is most commonly associated with the human heart. It is reasonable to infer that a knife blow to this area is intended to cause the death of the recipient. See Frederick v. State, 2001 OK CR 34, ¶ 137 n. 11, 37 P.3d 908, 943-44. Second, the defendant stabbed the victim in the chest with such force that it sounded like a punch being thrown. (Tr. I, 164-65). The stabbing pierced all the way through the victim's left lung and entered his heart. (Tr. I, 230). Third, the defendant continued to attempt to stab the victim after the first blow. (Tr. I, 165, 210, & 217-18). Fourth, the defendant's intention to use the knife upon the victim was so strong that he would not let go of the knife and was fought to the ground by Allen Jones and Antoine Colungo. (Tr. I, 165-69 & 210). The defendant only released the knife when his older brother took control of the situation. (Tr. I, 166-69 & Tr. II, 286). Fifth, the defendant damned the victim by cursing "God Dam" as he struck the

defendant with the knife. (Tr. I, 208). Sixth, the defendant kept the knife hidden from view up until the moment he stabbed the victim through the heart. (Tr. I, 208-09).

In the same manner, the evidence was such that it would not allow conviction of the offense of second degree murder. Because the defendant acted with the intent to take the life of the victim, the fifth element of second degree murder could not be proven. OUJI-CR-2D 4-91; Willingham ¶ 23-23, 947 P.2d at 1081.

Moreover, the instant case is most similar to Williams v. State, 2001 OK CR 9, ¶ 24, 22 P.3d 702, 712. The facts in Williams were that the defendant went to the victim's home with a butcher knife. Id. The defendant stabbed the victim through her left lung and heart. Id., at ¶ 4. The defendant drove the knife into the victim to the hilt of the blade. Id., at ¶ 24. This Court in Williams held that second degree murder instructions were not warranted under such circumstances. Id., at ¶ 25. The facts in Williams identically match the instant case except the defendant was unable to drive the knife completely into the victim.[1] Based upon this Court's decision in Williams, the trial court did not abuse its discretion. The evidence clearly established that the defendant acted with a premeditated design to take the life of the victim. For all of the above stated reasons, the defendant's conviction should be affirmed.

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[1] Presumably, the defendant failed to drive the blade completely into Richard Jones' chest because the victim partially blocked the blow with his arm. (Tr. I, 165, 210 & 217-18).

PROPOSITION II

THE DEFENDANT'S CONVICTION SHOULD BE AFFIRMED BECAUSE THERE WAS NOT A VIOLATION OF BATSON V. KENTUCKY, AND THE DEFENDANT RECEIVED A FAIR TRIAL.

In his second proposition of error, the defendant asserts that the prosecution violated Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), by exercising peremptory challenges to exclude Native-American jurors. The State contends that the defendant has waived review of the instant claim by failing to raise such a challenge at trial.

This Court in Black v. State, 1994 OK CR 4, ¶ 18-23, 871 P.2d 35, 41-42, held that a Batson claim is waived if no objection is raised at trial. In the instant case, the defendant did not make a Batson challenge at trial. (Tr. I, 26-137).

In any event, the State contends that the defendant has failed to establish a Batson violation because he cannot show that the prosecutor's challenges were racially motivated. This Court has consistently held that the applicable analysis for claims under Batson v. Kentucky, supra, is a three part test, to wit:

> "1) the defendant must make a prima facie showing that the prosecutor has exercised peremptory challenges on the basis of race; 2) after the requisite showing has been made, the burden shifts to the prosecutor to articulate a race neutral explanation related to the case for striking the juror in question; and 3) the trial court must determine whether the defendant has carried his burden of proving purposeful discrimination."

Black v. State, 2001 OK CR 5, ¶ 31, 21 P.3d 1047, 1061. The court examines the "totality of the relevant facts" to determine if they give "rise to an inference of discriminatory purpose." Batson, 476 U.S. at 93-94.

The relevant facts are as follows: The defendant first raised the issue of race when he questioned the jury panel:

> "Mr. Cruse is a full-blood Native American citizen. Is there anyone on this panel who has a problem with that? Can you all agree that Native American citizens have the same rights as all the rest of us?"

(Tr. I, 38). In response, the trial court had the respective jurors indicate if any of them held a Certificates of Degree of Indian Blood card (CDIB card). (Tr. I, 39). Jurors Davis and Arms indicated that they held CDIB cards and Juror Day indicated that her niece held such a card. (Tr. I, 39). The court requested the prosecution's first challenge. (Tr. I, 39). The prosecution asked the court if a record should be made of its challenges to CDIB cardholders and the trial court replied, yes. (Tr. 40). The prosecution indicated that it was excusing Juror Day. (Tr. I, 40). The jury selection process continued and, as jurors were excused, six additional jurors were called who personally held, or were closely related to someone who held, a CDIB card. (Tr. I, 43, 66, 77, 83, 95, & 116). The defendant excused two jurors who had relatives that possessed CDIB cards. (Tr. I, 66 & 77). Out of its eight challenges, the State excused three jurors who held cards. (Tr. I, 50, 95 & 119). The State's challenges were made with its second, seventh and eighth

peremptory challenges. (Tr. I, 39, 50, 107, & 119). Three jurors indicating Native American heritage or a close relative thereof were left on the jury. (Tr. I, 39, 66 & 83). The prosecutor waived his ninth and final peremptory challenge. (Tr. I, 128-29).

The defendant contends that the prosecutor must have given a race neutral explanation for his challenges because the court replied, yes, when the prosecutor asked if he needed to make a record of his challenges to CDIB cardholders. However, "[t]he ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike." Brown v. State, 1998 OK CR 77, ¶ 29, 989 P.2d 913, 924. (additional quotation and citation omitted). The prosecution need not make a record of the reason for its challenge unless the defendant establishes a prima facie showing of purposeful racial discrimination. Powell v. State, 2000 OK CR 5, ¶ 46, 995 P.2d 510, 523.

In the instant case, the prosecutor never needed to give an explanation for his challenges because the defendant failed to establish a prima facie showing that the prosecutor exercised peremptory challenges on the basis of race. In order to make out a prima facie case of purposeful discrimination the defendant must show "that the totality of the relevant facts gives rise to an inference of discriminatory purpose." Batson, 476 U.S. at 93-94. The defendant must show facts and other relevant circumstances that "raise an inference that the prosecutor used that practice to exclude the veniremen from the petit

jury on account of their race." Id., 476 U.S. at 96. An example of facts or circumstances that would give rise to the necessary inference would be a "'pattern' of strikes against black jurors" or prosecutor's statements or questions indicating purposeful discrimination. Id., 476 U.S. at 97.

The defendant challenges the prosecution's challenge to Juror Day. However, Juror Day did not indicate she was Native-American. Instead, Juror Day indicated that her niece held a CDIB card. (Tr. I, 39). The record is devoid facts sufficient to establish that Juror Day was a member of racial minority. Therefore, Juror Day's excusal does not create a prima facie showing of purposeful racial discrimination.

Likewise, the prosecution's challenge to three Native-Americans out of eight peremptory challenges does not create a prima facie showing of purposeful discrimination. This fact is more significant when viewed in the light that two CDIB card holders and one relative of a card holder remained on the jury. The State did not use its last challenge. (Tr. I, 128). The Native-Americans were challenged with the State's second, seventh and eighth challenges. (Tr. I, 50, 107, 119). It is reasonable to infer that if the State's challenges were used for the purpose of removing Native-Americans it would have challenged the other three, as well. Furthermore, in Bland v. State, 2000 OK CR 11, ¶ 15, 4 P.3d 702, 711, this Court recognized that the fact that a prosecutor left other persons of the same minority heritage on the jury would weigh heavily against a finding of

purposeful discrimination. In this manner, the defendant cannot show a "pattern of strikes" or questions and statements that indicated purposeful discrimination. This Court, in Short v. State, 1999 OK CR 15, ¶ 17, 980 P.2d 1081, 1092, under somewhat similar circumstances, held that a Batson violation had not occurred. This Court, in Short, found it compelling that the defendant did not establish "a history of the prosecutor seeking to purposefully discriminate against jurors on the basis of race," failed to establish that the prosecution of the case was in any way racially motivated, or that race was an issue in the trial proceedings. Id. In the instant case, as in Short, the defendant failed to establish a history of the prosecutor excusing minority members. Likewise, the evidence failed to show that the prosecution or any aspect of the trial was racially motivated or involved a racial issue.

In the alternative that this Court finds that the defendant did make a prima facie showing of purposeful discrimination, race neutral reasons for the prosecutor's challenges may be found in his questioning of the respective jurors. The prosecutor focused on specific details that concerned him when he questioned the prospective jurors. Juror Day had a relative that had been accused of a serious felony, was an employee of the Department of Human Service providing care, and her sister lived at the same apartments where the offense occurred. (Tr. I, 18, 22, 29). Jurors Arms indicated that he was forced to rebuild the fence around the apartments where the victim resided because the tenant's

tore up the fence. (Tr. I, 29). Juror Arms indicated strong feelings against the people that he knew resided at the apartments. (Tr. I, 29-30). Juror Capehart had extensive ties to most of the witnesses in the case. (Tr. I, 93-95 & 98-99). The defendant's current girlfriend, Sheila Amos, was listed as a witness on his behalf. (Tr. I, 179 & 181). Ms. Amos was Juror Capehart's niece and only days before the trial he had gone to the park and had a picnic with her. (Tr. I, 99). Juror Rawls' father had been convicted of assault upon a police officer and his cousin had the same charges pending at the time of trial. (Tr. I, 114-15 & 117-18). From the prosecutor's specific questioning and the juror's respective responses to the questions propounded during voir dire, the prosecutor's reason for striking the individual jurors may be reasonably ascertained. The defendant has failed to establish that the prosecutor's challenges were purposeful racial discrimination.

Alternatively, the defendant is not entitled to the relief which he requests. The defendant's requested relief is that this Court reverse his conviction. The State notes that precedent establishes that when this Court finds that a defendant made a prima facie case of purposeful discrimination, this Court does not reverse, instead, it remands the matter to the trial court to allow the prosecutor to state the reason for his challenge to the minority jurors. Van White v. State, 1999 OK CR 10, ¶ 25-26 990 P.2d 253, 263-264. For the above stated reasons, the defendant's conviction should be affirmed.

PROPOSITION III

THE DEFENDANT'S CONVICTION SHOULD BE AFFIRMED BECAUSE HE RECEIVED A FAIR TRIAL.

In his third proposition of error, the defendant asserts that he was denied a fair trial because of the prosecutors improper comments that occurred in closing argument. The State contends that the defendant received a fundamentally fair trial.

The defendant admits that he failed to object to the alleged improprieties at trial. (Appellant's Brief, at page 15). In Langdell v. State, 1982 OK CR 205, ¶ 6 , 657 P.2d 162, 163, this Court stated:

> "It is well settled that an objection must be interposed at trial in order to preserve the alleged error for review by this Court. If not, the errors are deemed waived."

The defendant cites to Williams v. State, 1983 OK CR 16, ¶ 9, 658 P.2d 499, 500, for the proposition that the failure to make a contemporaneous objection is not controlling upon the situation. However, said circumstances have been limited to when this Court finds that the cumulative effect of flagrant prosecutorial misconduct denied a defendant a fair trial. Langdell, at ¶ 7, 657 P.2d at 164. This Court's decision in Williams was based upon the fact that the "combined effect [of the several instances of prosecutorial impropriety] deprived Williams of his fundamental right to a fair and impartial trial." Williams, at ¶ 9, 658 P.2d at 501. In the instant case, the defendant only complains of one instance of

alleged misconduct. Further, the defendant does not complain that the alleged instance was flagrant. Therefore, Williams is not applicable to the instant case.

Likewise, the greatest part of the prosecutor's argument was proper. First, comments on the evidence do not constitute prosecutorial misconduct. Van White v. State, 1999 OK CR 10, ¶ 71, 990 P.2d 253, 272. Second, the prosecutor has wide latitude to discuss the evidence and reasonable inferences therefrom in closing argument. Hooks v. State, 2001 OK CR 1, ¶ 40, 19 P.3d 294, 314. In the instant case, the prosecutor quoted the jury instruction that the jury should not let sympathy enter into their deliberations. (Tr. II, 366). The prosecutor argued against the jury deciding the case based upon sympathy. The prosecutor commented on the evidence and argued that the facts of the case did not warrant feeling sorry for the defendant. (Tr. II, 366-67). The prosecutor touched on the fact that sympathy existed for both the defendant, he was a man of tender years, and the victim and his family, the victim's life was ended and his family had to deal with this tragedy. (Tr. II, 366). The prosecutor went on to argue that the jury should not feel sorry for the defendant because he had failed to show any remorse for his actions during his testimony. (Tr. II, 367). The prosecutor closed by referencing that the jurors had taken an oath to render a verdict based upon the evidence. (Tr. II, 367). Therefore, the majority of the prosecutor's argument was proper argument of the evidence.

Moreover, the State asserts that the defendant's conviction should be affirmed because the comments did not cause the trial to be fundamentally unfair or affect the outcome of the trial. This Court examines the trial as a whole to determine if alleged instances of misconduct warrant relief. Le v. State, 1997 OK CR 55, ¶ 60, 947 P.2d 535, 556. "[A] criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone." Powell, ¶ 152, 995 P.2d at 539. (Internal quotation omitted). An improper appeal for sympathy for the victims does not require reversal unless the comments were so prejudicial as to have affected the jury's verdict. Shelton v. State, 1990 OK CR 34, ¶ 15, 793 P.2d 866, 872. Relief should not be granted unless the alleged inappropriate comments deprived a defendant of a fair trial or affected the jury's finding of guilt or innocence. Wackerly v. State, 2000 OK CR 15, ¶ 30, 12 P.3d 1, 12.

In the instant case, as more fully discussed in Proposition One, above, the evidence of the defendant's guilt of the offense of first degree murder was overwhelming. The defendant admitted to his cousin's husband, Officer Lafountain, that he did it because he was mad. (Tr. I, 248). Antoine Colungo observed the defendant stab the victim in the heart. (Tr. I, 208-10). The defendant continued to attempt to stab at the victim until his brother wrestled the knife away. (Tr. I, 166-69 & Tr. II, 286). The majority of the alleged improper comments were proper. The defendant complains of only one incident. As shown above, the comments were not flagrant. Any impropriety in the prosecutor's

comments was not outcome determinative because of the great weight of the evidence against the defendant. For all of the above stated reasons, the defendant's conviction should be affirmed.

PROPOSITION IV

THE DEFENDANT'S CONVICTION SHOULD BE AFFIRMED BECAUSE HE HAS FAILED TO ESTABLISH THAT THE TRIAL COURT PURPOSEFULLY DISCRIMINATED AGAINST NATIVE-AMERICANS IN THE SELECTION OF THE JURY.

In his fourth proposition of error, the defendant asserts that the trial judge deprived him of Due Process by raising the issue of race during voir dire. The State contends that the defendant's argument lacks merit from both a factual and legal standpoint.

First, the defendant failed to raise a timely objection synonymous to the instant claim. To properly preserve any error for appellate review the defendant must object at trial. Romano v. State, 1995 OK CR 74, ¶ 61, 909 P.2d 192, 116. Therefore, the defendant has waived review of the instant claim.

Second, the defendant's contention is factually inaccurate. The trial court did not inject the issue of race into the defendant's trial. Instead, the defendant first raised the issue of race when he questioned the jury during voir dire:

> "Mr. Cruse is a full-blood Native American citizen. Is there anyone on this panel who has a problem with that? Can you all agree that Native American citizens have the same rights as all the rest of us?"

(Tr. I, 38). In response, the trial court had the respective jurors indicate if they held a Certificate of Degree of Indian Blood card (CDIB card). (Tr. I, 39). Presumably, the trial court's action was to make a record regarding the racial make-up of the jury based upon the defendant's suggestion that some citizens might not grant the defendant the same rights as a Caucasian defendant.

Third, the defendant has not established purposeful racial discrimination on the part of the trial judge. The defendant alleges that the trial court's actions violated Batson v. Kentucky. As discussed in Proposition Two, above, the United States Supreme Court in Batson, held that "[p]urposeful racial discrimination in selection of the venire violates a defendant's right to equal protection because it denies him the protection that a trial by jury is intended to secure." Batson, 476 U.S. at 86. However, the defendant does not allege purposeful discrimination in his brief, instead, he argues that "the trial court made race an issue in the selection of the jury" or that the judge injected race into the judicial proceeding. (Appellant's Brief at 16-17).

Likewise, the trial court's actions were race neutral. The trial court did not utilize the fact that certain members of the jury were Native-American or related to Native-Americans to purposefully discriminate against Native-Americans. Instead, the trial court

used said information to ensure the defendant's rights. The information was reasonably relevant based upon the defendant's voir dire questions. The information assisted the trial court in ensuring that the jury was drawn from a fair cross section of the community and a proper determination under Batson.[2] From a practical standpoint, a prospective juror's race is not readily ascertainable from the record unless a record is made regarding that point. In the instant case, the trial court was placed on notice during voir dire that the defendant had reservations regarding his ability to receive a fair trial based upon his race. The trial court simply made a record of the racial composition of the jury. The trial court did not make any negative statements towards Native-Americans jurors or indicate any racial preference in any manner. Race was not an issue in this trial. The defendant, the victim and his brother were all Native-Americans. (State's Exhibit 12 & 13 & P.H. Tr. 4). The defendant raised the issue of race and the trial court made a record so that an appellate court could appropriately review any racial discrimination or jury cross section claims. As discussed above, a race neutral reason defeats a claim of purposeful discrimination. Black, ¶ 31, 21 P.3d at 1061. The trial court did not purposefully discriminate against Native-American jurors.

Fourth, the defendant's rights under the Equal Protection Clause and/or his right to a jury from a fair cross section of the community were not violated. The defendant has

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[2] State ex rel. Macy v. Bragg, 2000 OK CR 21, ¶ 8, 13 P.3d 503, 506 (the defendant has a right to a jury drawn from a fair cross section of the community.)

failed to allege or prove that Native-Americans were underrepresented in the jury venire. United States v. Contreras, 108 F.3d 1255, 1268-69 (10th Cir. 1997). It is also important to note that the defendant has neither alleged nor proven systemic exclusion of Native-Americans in the jury selection process. Turrentine v. State, 1998 OK CR 33, ¶ 18, 965 P.2d 955, 966-67.

Fifth, as discussed in Proposition Two, above, the defendant has failed to show that any juror was excused on the basis of race. Reasonable race neutral reasons exist in the record which support the prosecutor's challenge to each and every juror that held, or was related to someone who held, a CDIB card. Black, ¶ 31, 21 P.3d at 1061. For all of the above discussed reasons, the defendant's conviction should be affirmed.

PROPOSITION V

THE DEFENDANT'S CONVICTIONS SHOULD BE AFFIRMED BECAUSE HE RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL.

In his fifth proposition of error, the defendant asserts that his trial counsel was ineffective because he failed to make objections to improper and prejudicial matters, failed to request the proper lesser included offense instructions, failed to introduce important evidence, and failed to present a credible defense.[3] The State contends that defense

[3] The defendant further alleges that his trial counsel was ineffective because he failed to act even when prompted to by the prosecutor or jury. (Appellant's Brief, 19). However, the defendant's fails to cite to any specific occurrence or act. The defendant's entire argument is the one bare assertion. The State has fully addressed each of the defendant's claims. The State

counsel provided effective assistance because his performance was reasonably competent and the defendant cannot show that he was prejudiced by any act or omission of counsel.

In order to establish that his trial counsel was ineffective the defendant must show that his counsel's performance was deficient and that but for any unprofessional errors by counsel, there is a reasonable probability that the result of the proceeding would have been different. Williams, 2001 OK CR 9, ¶ 111, 22 P.3d 702, 728. "Unless the defendant makes both showings, 'it cannot be said that the conviction ... resulted from a breakdown in the adversary process that renders the result unreliable.'" Id. (citing Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984)). The defendant has failed to establish that his trial counsel provided ineffective assistance.

A. Defense counsel did not fail to provide reasonably competent representation when he did not object or raise a Batson challenge.

The defendant claims that his counsel was ineffective because he failed to object to the trial court's questioning the jurors regarding CDIB cards and failed to object to the prosecutor's peremptory challenges to minority prospective jurors. However, as discussed in Propositions Two and Four, above, neither of these objections held merit. Neither the trial court nor the prosecutor committed purposeful discrimination against Native-

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disputes that defense counsel ever stood still and did nothing. If this claim sets forth a claim not addressed by the State, then the State asserts that the defendant has waived this claim Rule 3.5(A)(5), Rules of the Court of Criminal Appeals, 22 O.S.2000, ch. 18, App.; Mayes v. State, 1994 OK CR 44, ¶ 161, 887 P.2d 1288, 1321-1322; Armstrong v. State, 1991 OK CR 34, ¶ 24, 811 P.2d 593, 599.

Americans. Black, ¶ 31, 21 P.3d at 1061. "It is well established that where there is no error, one cannot predicate a claim of ineffective assistance of counsel upon counsel's failure to object." Frederick, ¶ 189, 37 P.3d at 955 (citing Harris v. State, 1989 OK CR 15, ¶ 7, 773 P.2d 1273, 1274-75; Woods v. State, 1988 OK CR 222, ¶ 14, 762 P.2d 987, 990.). Therefore, defense counsel's performance, in the instant case, was not deficient.

In any event, the defendant cannot show prejudice from his trial counsel's failure to object because there is not a reasonable probability that the outcome of the proceedings would have been different if defense counsel made the objections. In Davidson v. Gengler, 852 F.Supp. 782, 786-88 (W.D. Wis. 1994), the court analyzed the application of the Strickland v. Washington prejudice prong in relation to the defense counsel's failure to make a Batson challenge. In Davidson, the court held that the proper prejudice inquiry was not whether the outcome of the trial would have reasonably been different, but instead, whether such an objection would have been sustained. Id. In the instant case, if defense counsel had made a Batson objection, it would not have been sustained. Valid race neutral reasons for the actions taken defeat a claim of purposeful discrimination. Black, ¶ 31, 21 P.3d at 1061. Race neutral reasons supporting the actions of the trial court and the prosecutor are readily verifiable in the record. As discussed in Proposition Two, above, each juror the prosecutor excused possessed specific details which would have made him undesirable to the prosecution. The excused jurors had potential life experiences that may

have caused them to be biased against law enforcement officers or the victim. (Tr. I, 18, 22, 29-30, 93-95, 98-99, 179, 181, 114-15, 117-18). As more fully discussed in Proposition Four, above, the trial court's question regarding the CDIB cards was in response to the defendant's implication that the jury might hold his status as a Native-American against him. Presumably, the trial court's question was intended to ensure a record available for this Court to evaluate any claim of racial discrimination, fair cross section, or Equal Protection violation. Therefore, the defendant cannot establish a reasonable probability that the outcome of the proceedings would have been different. The defendant is unable to show either deficient performance or prejudice from the alleged failure of his trial counsel to raise the two Batson objections. The defendant received effective assistance of counsel.

B. Defense counsel did not fail to provide reasonably competent representation when he did not request an instruction on second degree murder.

The defendant alleges that his trial counsel's performance was deficient because he "failed to unambiguously request" an instruction on second degree murder. (Appellant's Brief, 19). However, defense counsel's performance was reasonable because there was not an error, in that, the evidence did not support the giving of such an instruction. Counsel does not provide ineffective assistance when he or she does not request a lesser included offense instruction not supported by the evidence. Spears v. State, 1995 OK CR 36, ¶ 68, 900 P.2d 431, 446-47. As more fully discussed in Proposition One, above, the

evidence did not support an instruction on second degree murder. The evidence was not such that would have allowed the jury to acquit the defendant of the offense of first degree murder because of the great weight of the evidence which indicated the defendant's premeditated design to take the life of the victim, Richard Jones. Williams, ¶ 22, 22 P.3d at 711. As argued above, the defendant came to the victim's home armed with a butcher's knife. Without previous altercation, insult or injury, the defendant stabbed the victim in the heart. The defendant continued to stab at the victim until he was forced to the ground by the victim's brother. Furthermore, defense counsel requested that the trial court instruct upon the lesser included offense of second degree manslaughter, self defense, and voluntary intoxication. (O.R. File # 3, 1-2 & Tr. II, 357). The trial court gave a first degree heat of passion manslaughter instruction. (O.R. File #3, 21). Defense counsel's performance was not deficient when he decided to not request the court to instruct upon second degree murder. Likewise, this Court has held that a trial counsel's failure to request a lesser included offense instruction is not prejudicial in the terms of ineffective assistance if the instruction would not have been given even if counsel requested them. Bland, ¶113, 4 P.3d 702, 731. In the instant case, the trial court informed defense counsel that he would not have given a second degree murder instruction even if defense counsel had requested such an instruction because it was not supported by the evidence. (Tr. II, 383-84). Again, as more fully set out in Proposition One, above, the defendant was not

entitled to a second degree murder instruction because it was not supported by the evidence. The defendant is unable to establish either deficient performance or prejudice regarding defense counsel's decision to not request second degree murder instructions. The defendant received effective assistance of counsel.

C. Defense counsel provided effective assistance when he presented the theory that the victim fell on the knife.

The defendant alleges that his trial counsel adopted unsound trial strategy when he argued in opening argument that the victim had fallen on is own knife during the scuffle. (Tr. I, 147-48). However, the State asserts that defense counsel's argument was sound strategy based upon the defendant's testimony, the defendant's possession of a knife, and the details concerning the defendant's wound.

This Court presumes that trial counsel's conduct falls within the wide latitude of reasonable professional representation. Frederick, ¶ 189, 37 P.3d at 955. "Reasonable assistance does not mean that counsel's performance must be flawless." Robinson v. State, 1997 OK CR 24, ¶ 21, 937 P.2d 101, 109. Moreover, "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." Cargle v. State, 1995 OK CR 77, ¶ 99, 909 P.2d 806, 832. In the instant case, the defendant has not overcome the presumption that trial counsel's argument was sound strategy because there was evidence in the record upon which counsel could legitimately make the alleged incompetent argument. The defendant testified that he did

not possess a knife when he came to the victim's door. (Tr. II, 326). The investigating officers discovered the victim's hunting knife laying out in the apartment and seized the knife. (Tr. I, 254). The victim's wound was not as long as the blade described by the victim's brother. (Tr. I, 173 & 229). The victim did not have any defensive wounds. (Tr. I, 233). The victim's brother did not seen the defendant stab the victim. (Tr. I, 173). The victim's brother admitted that he caused both himself, the victim, and the defendant to fall to the ground by jumping into the defendant and the victim. (Tr. I, 176). The defendant alleged that he had no recollection of the events that transpired during the time period in which the victim was mortally wounded. (Tr. I, 326-28). Most importantly, the defendant thought that the victim had brought his own knife and fallen on it. (Tr. II, 341). Based upon these facts, specifically the defendant's assertion, trial counsel's performance was not deficient.

Furthermore, the defendant is unable to demonstrate prejudice from his trial counsel's actions. In addition to the alleged unsound theory, defense counsel presented evidence and argued the defense of voluntary intoxication and heat of passion manslaughter. (Tr. II, 322-326 & 367-75). Therefore, the alleged unsound defense was not the defendant's only defense but one of several alternatives. The defendant was not prejudiced by his counsel's argument because the great weight of the evidence indicated the defendant's guilt of first degree murder. Based upon the evidence at trial, there is not

a reasonable probability that the outcome of the trial would have been different if trial counsel had not made the alleged incompetent argument. Williams, ¶ 111, 22 P.3d at 728. The defendant received effective assistance of counsel at trial.

D. Defense counsel was not ineffective for not utilizing available evidence.

The defendant alleges that his trial counsel provided a deficient performance when he failed to introduce the specific statements of Allen Jones and Everett Berryhill into evidence. The defendant argues that his counsel should have introduced Allen Jones' statement that the victim put his hand on the defendant at the doorway and introduced Everett Berryhill's statement that the defendant was emotional and upset on the night of the murder. The State contends that similar evidence was introduced at trial and that any additional evidence would not have had a reasonable probability of causing a different outcome.

Defense counsel did not err. At trial, Allen Jones testified that, when he was not looking, the defendant stabbed the victim and that he first saw the knife when the victim put his arm onto the defendant. (Tr. I, 164-65). This testimony matched the statement that the defendant complains that his trial counsel failed to introduce. (O.R. File # 2, 197). Likewise, similar testimony to Everett Berryhill's was introduced through Sheila Amos. Sheila Amos testified that the defendant was "really drunk," that he was upset at having attended his grandfather's funeral, and that he had been crying. (Tr. II, 315-17 &

320-21). It is reasonable to infer that calling Sheila Amos as a witness was safer because she had already testified and had not placed the defendant with the murder weapon. This is because Everett Berryhill was present during the murder and according to the State's witnesses was able to place the defendant with the murder weapon. (Tr. I, 168-69 & Tr. II, 286). "As a sound trial strategy the trial attorney may wish to avoid cumulative and redundant witnesses." Hammon v. State, 2000 OK CR 7, ¶ 71, 999 P.2d 1082, 1098. Counsel is not ineffective when he chooses to not call a favorable witness on the grounds that the witness may also hold unfavorable testimony, as well. Delozier v. State, 1998 OK CR 76, ¶ 58-68, 991 P.2d 22, 33-34. Defense counsel's performance was not deficient in the instant case.

Likewise, the defendant cannot show any prejudice from his trial counsel's conduct. In light of the great weight of evidence indicating that the defendant took the life of Richard Jones with a premeditated design, the defendant is unable to establish a reasonable probability that the outcome of the trial would have been different if defense counsel had presented the additional evidence. The fact that the victim may have placed his arm on the defendant at the time of the attack is unavailing because the defendant had already stabbed him at that point. This fact is even less availing in light of the fact that the defendant came the victim's apartment door armed with a six-inch long butcher knife. Likewise, the introduction of Everett Berryhill's statement would not have justified the taking of the

victim's life. It is reasonable to infer that the death of one's grandparent does not justify getting a butcher's knife and stabbing your girlfriend's ex-boyfriend in the heart. Furthermore, the statements would not have motivated the jury because, as discussed above, the jury heard this evidence. The jury heard nearly identical testimony from Sheila Amos and Allen Jones. Defense counsel was reasonably competent and the defendant was not prejudiced by any act or omission of counsel.

The defendant has failed to establish deficient performance and/or prejudice in relation to each of the above alleged failures of his trial counsel. "Failure to prove either of the required elements is fatal to an appellant's entire claim." Black, ¶ 65, 21 P.3d at 1070. Therefore, the defendant received effective assistance of counsel at trial and, for all of the above discussed reasons, the defendant's conviction should be affirmed.

PROPOSITION VI

THE STATE OF OKLAHOMA HAD JURISDICTION TO CRIMINALLY PROSECUTE THE DEFENDANT BECAUSE THE VICTIM'S APARTMENT COMPLEX WAS NOT "WITHIN THE INDIAN COUNTRY."

In his Sixth proposition of error, the defendant asserts that the trial court did not have jurisdiction to put the defendant to trial because the site of the offense was a "dependent Indian community." The State contends that it had jurisdiction to prosecute the defendant for murder because the victim's apartment complex is not located "within the Indian country" under 18 U.S.C.A. § 1153 (2000).

The Federal government retains exclusive jurisdiction to criminally prosecute "any Indian who commits an offense against the person or property of another Indian or other person" "within the Indian country." 18 U.S.C.A. § 1153 (2000). "Indian country" is defined by 18 U.S.C.A. § 1151 (2000), as:

> (a) 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, (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.

In the court below, the defendant conceded that the site of the offense was neither within the limits of an Indian reservation nor tribal trust land. (P.H. Tr. 4). The defendant contends that the apartment complex where he stabbed the victim was a "dependent Indian community" because it was owned by the "Housing authority of the Chickasaw Nation." (P.H. Tr. 7-8). However, the apartment complex fails to meet the necessary requirements to qualify as a "dependent Indian community."

In United States v. Adair, 111 F.3d 770 (10th Cir. 1997), the Tenth Circuit set forth the test for determining an assertion of "dependent Indian community" status. The court outlined a two part test, wherein, first, the court analyzed whether the referenced area was

an "appropriate community of reference" and, second, the court analyzed four factors to determine if, indeed, the area was a "dependent Indian community." Id., at 773-74.

In the instant case, the apartment complex is not an "appropriate community of reference." An "appropriate community of reference" must be an actual community or "mini-society" in that it possesses "formal or distinct boundary lines" and has the "quality and quantity of activity and institutions which create infrastructure." Id., at 774-75. The evidence showed that the apartment complex possessed formal and distinct boundary lines in that the area consisted of two apartment complexes located on Seventeenth and Eighteenth Streets in Sulphur, Oklahoma. (P.H. Tr. 7-8). Thus, the apartment complex has the distinct and formal boundary of an actual community.

However, the area is not an "appropriate community of reference" because the residents of the apartments were not engaged in activities or had any institutions which created a community infrastructure. In Adair, the Tenth Circuit held that an "appropriate community of reference" would have its own institutions such as a hospital, doctor, bank, restaurant, grocery store, or public utility office and would not be dependent upon nearby county, state, or municipal government infrastructure for its essential services. Id. The testimony showed a lack of common activities among the residents. (P.H. Tr. 10). The record is wholly devoid of any institutions being present, other than the apartment's themselves. Moreover, the apartment complex's inhabitants rely upon the infrastructure

of the nearby town of Sulphur and Murray county. As detailed by the facts of this case, the area depends upon the Sulphur Police Department and/or the Murray County District Attorney's office for law enforcement purposes. (Tr. I, 251 & P.H. Tr. 9).

The defendant correctly recites that sixty-three percent of the apartment residents are Native-American. (P.H. Tr. 13). However, a common Native-American heritage "is not a substitute for and does not overcome the absence of infrastructure and essential services generated from within." Id. The apartment complex is not a "mini-society." Instead, it is merely housing. The apartment complex cannot be a "dependent Indian community" because it is not an "appropriate community of reference." Therefore, the apartment complex is not "within the Indian country" and the State of Oklahoma had jurisdiction to put the defendant to trial.

Assuming for the sake of argument that the apartment complex is an "appropriate community of reference," the apartment complex fails to qualify as a "dependent Indian community." The Tenth Circuit listed four factors to make such a determination in Adair, to wit:

> (1) whether the United States has retained "title to the lands which it permits the Indians to occupy" and "authority to enact regulations and protective laws respecting this territory"; (2) "the nature of the area in question, the relationship of the inhabitants in the area to Indian tribes and to the federal government, and the established practice of government agencies toward the area"; (3) whether there is "an element of cohesiveness ... manifested either by economic pursuits in the

> area, common interests, or needs of the inhabitants as supplied by that locality"; and (4) "whether such lands have been set apart for the use, occupancy and protection of dependent Indian peoples.

Consideration of these factors in light of the evidence in the instant case establishes that the apartment complex fails to qualify as a "dependent Indian community."

In the instant case, analysis of the first factor weighs against a determination that the apartment complex was a "dependent Indian community." The evidence established that the United States has not retained title to the property. (P.H. Tr. 8-9). Instead, title was held by an Oklahoma state agency, namely the "Housing authority of the Chickasaw Nation." (P.H. Tr. 9 & 12). The "Housing authority of the Chickasaw Nation" is an agency of the State of Oklahoma formed under 63 O.S. 1991, § 1057. Likewise, the United States has absolutely no connection with the property, does not regulate the property, and does not provide protection to the property. (P.H. Tr. 9). In Alaska v. Native Village of Venetie Tribal Gov't, 522 U.S. 520, 527, 118 S.Ct. 948, 140 L.Ed.2d 30 (1998) the United States Supreme Court held that:

> "the term "dependent Indian community." [ ] "refers to a limited category of Indian lands that are neither reservations nor allotments, and that satisfy two requirements--first, they must have been set aside by the Federal Government for the use of the Indians as Indian land; second, they must be under federal superintendence."

In the instant case, the evidence fails to establish either of these two requirements. The apartment complex where the murder occurred is not a "dependent Indian community" and this courts of the State of Oklahoma have jurisdiction to prosecute the defendant.

Analysis of the second factor, likewise, weighs against a determination that the apartment complex was a "dependent Indian community." There is not a strong relationship between the inhabitants in the apartment complex to Indian tribes or to the federal government, and the established practice of government agencies toward the area illustrates that the area is not a "dependent Indian community." Again, the area is not connected to the federal government. (P.H. Tr. 9). The area depends on the nearby town, county and state government for its essential services. (Tr. I, 251 & P.H. Tr. 9). The population of the apartment complex is a melting pot of Native-Americans and non-Native-Americans. (P.H. Tr. 9). The Native-American population is not homogenous, in that, it consists of different tribes. (P.H. Tr. 13). The only relationship the apartment inhabitants have with an Indian tribe is that they are Native-American and that they lease an apartment from the Chickasaw Nation Housing authority. (P.H. Tr. 7-13).

Analysis of the evidence establishes that the apartment complex does not favorably weigh in on the third factor. The third factor analysis of the community cohesiveness interrelates with the aspects surrounding whether the area is an "appropriate community of reference." Adair, 111 F.3d at 777. The evidence in the instant case establishes that

there is a want of cohesiveness in the community. The record does not reflect any shared economic or institutional activity. (P.H. Tr. 7-13). The Native-Americans inhabiting the apartment complex do not engage in traditional Indian ceremonies. (P.H. Tr. 10). Again, the apartments are a "melting pot" of ethnicity. (P.H. Tr. 9). All of these facts weigh against a determination that the apartments are a "dependent Indian community." Id.

The fourth factor weighs slightly in favor of a determination that the apartments are a "dependent Indian community." The testimony below established that the apartments are predominately set aside for the use and benefit of Native-Americans. (P.H. 11-13). However, the Native-Americans only receive priority in leasing the apartments and non-Native-Americans are allowed to lease and occupy the apartments. (P.H. Tr. 9-11). Sixty-three percent of the inhabitants are Native-American. (P.H. Tr. 13). Thus, the Fourth Factor is favorable to a determination that the apartment is a "dependent Indian community."

A review of the entire analysis establishes that the apartment complex is not a community under the definition of Adair. Further, three of the four factors espoused in Adair indicate that the apartment complex is not a "dependent Indian community." Great importance must be placed upon the fact that the apartment complex fails to meet the standard set forth by the United States Supreme Court in Venetie because the apartments

were neither set aside by, nor under the superintendence of, the federal government. Venetie, 522 U.S. at 527.

Moreover, this Court in Eaves v. State, 1990 OK CR 59, ¶ 5, 800 P.2d 251, 252, synonymous with the holding in Venetie, held that "the fact that title to the land is in a state agency should be fatal to any holding that the land in question is Indian Country."[4] Again, the title to the land in the instant case is held by the "Housing authority of the Chickasaw Nation." (P.H. Tr. 9). The "Housing authority" is an agency organized under the laws of the State of Oklahoma. (P.H. Tr. 9 & 12). The State asserts that this Court's decision in Eaves is directly on point. The apartment complex lacks the qualities to constitute "within the Indian country" and the State of Oklahoma had jurisdiction over the defendant. For all of the above discussed reasons, the defendant's conviction should be affirmed.

CONCLUSION

The defendant's contentions have been answered by both argument and citations to authority. The State contends that no error occurred which would require reversal or modification and, therefore, respectfully requests that the judgment and sentence of the district court be affirmed in all respects.

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[4] The decision cited is this Court's decision on rehearing. The original decision was rendered in Eaves v. State, 1990 OK CR 42, 795 P.2d 1060.

RESPECTFULLY SUBMITTED,

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Brief Of Appellee was mailed this 24th day of July 2002, by depositing it in the U.S. Mails, postage prepaid to Counsel for Appellant:

Mr. Thomas Purcell
Deputy Appellate Defense Counsel
1623 Cross Center Drive
Norman, Oklahoma 73019

_____
BRANT M. ELMORE

FILE COPY

No. F-2001-1046

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

JASON LEON CRUSE, Appellant, v. THE STATE OF OKLAHOMA, Appellee.	)	Appeal from the District Court of Murray County Case No. CF-2000-105

REPLY BRIEF OF APPELLANT

Comes now Appellant, and replies to the Brief of Appellee as follows:

REPLY TO STATE'S PROPOSITION I
MR. CRUSE WAS DENIED A FAIR TRIAL BY THE COURT'S FAILURE TO INSTRUCT ON THE LESSER INCLUDED OFFENSE OF SECOND DEGREE MURDER.

Mr. Cruse went to Jones' apartment and asked where his girlfriend was. Jones said she was in the back of the apartment. When Mr. Cruse started to enter the apartment, Jones grabbed him. It was then that Mr. Cruse stabbed Jones. (Tr.206-208, 221, O.R.8,197) These facts indicate that Mr. Cruse acted without pre-meditation. Therefore second degree depraved- mind murder was the appropriate charge in this case.

The State claims that this Court's decision in **Williams v. State**, 2001 OK CR 9, Section 24, 22 P.3d 702, 712, is relevant to the present case. However, in that case the defendant put a knife, gloves and duct tapes in a box before leaving for the victim's house.

These facts made it clear that the defendant in **Williams** carefully planned his killing of the victim. In contrast, Mr. Cruse showed no intent to attack Jones until Jones attempted to stop him from entering the house. Therefore **Williams** is distinguishable from the present case, and the conviction should be reversed.

Respectfully submitted,

JASON LEON CRUSE

By: Thomas Purcell

THOMAS PURCELL
Deputy Appellate Defense Counsel
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1623 Cross Center Drive
Norman, Oklahoma 73019
(405) 325-3128

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

This is to certify that on July 29, 2002, a true and correct copy of the foregoing Reply Brief of Appellant was mailed, via United States Postal Service, postage pre-paid, to Appellant at the address set out below, and a copy was served upon the Attorney General this date by leaving a copy with the Clerk of the Court of Criminal Appeals for submission to the Attorney General.

JASON LEON CRUSE #413652
OKLAHOMA STATE REFORMATORY
PO BOX 514
GRANITE OK 73547

Thomas Purcell
THOMAS PURCELL

IN THE DISTRICT COURT OF Murray COUNTY
STATE OF OKLAHOMA

FILED
MURRAY COUNTY, OKLAHOMA

MAY 19 2021

Jodi Jennings, Court Clerk
By _____ Deputy

Jason Leon Cruse
Petitioner,

vs.

THE STATE OF OKLAHOMA,
Respondents.

Case No. CF-2000-105

APPLICATION FOR POST-CONVICTION RELIEF AND REQUEST TO VACATE AND SET ASIDE THE JUDGEMENT AND SENTENCE BECAUSE THE COURT LACKED SUBJECT MATTER JURISDICTION

I, Jason Leon Cruse, DOC # 413652, whose present address is Lawton Correctional Facility, 8607 SE Flower Mound Road, Lawton, Oklahoma 73501, hereby apply for relief under the Post-Conviction Procedure Act, Section 1080 et seq. of Title 22.

The sentence from which I seek relief is as follows:

1. (a) Court in which sentence was rendered: Murray County

   (b) Case Number: CF-2000-105

2. Date of sentence: 3-30-2001

3. Terms of sentence: life with the possibility of parole

4. Name of Presiding Judge: John Scaggs

5. Are you now in custody serving this sentence? Yes (x) No ( )
   Where? Geo, Lawton, Okla

6. For what crime or crimes were you convicted? 1st degree murder

7. Check whether the finding of guilty was made:

   After plea of guilty ( ) After plea of not guilty (X)

8. If found guilty after plea of not guilty, check whether the finding was made by:

   A jury (X) A judge without a jury ( )

9. Name of lawyer who represented you in trial court: Osher, Bachrack

10. Was your lawyer hired by you or your family? Yes (X) No ( )

    Appointed by the court? Yes ( ) No (X)

11. Did you appeal the conviction? Yes (X) No ( )

    To what court or courts? Courts of criminal of appeals

12. Did a lawyer represent you for the appeal? Yes (X) No ( )

    Was it the same lawyer as in No. 9 above? Yes ( ) No (X)

    If "no," what was this lawyer's name? David Purcell

    Address? Norman Oklahoma Indigent Defense

13. Was an opinion written by the appellate court? Yes (X) No ( )

    If "yes", give citations if published: Cruse vs State

    If not published, give appellate case no.: F-2001-1046

14. Did you seek any further review of or relief from your conviction at any other time in any court? Yes ( ) No (X)

    If "Yes", state when you did so, the nature of your claim and the result (include citations to any reported opinions.)

JURISDICTION

The District Court reacquires jurisdiction of a case through post-conviction proceedings. "Excluding a timely appeal, the Uniformed Post-Conviction Procedure Act (22 O.S. §1080 et seq.) encompasses and replaces all common law and statutory methods of challenging a conviction or sentence." See *Jones v State,* 1985 OK CR 99, 704 P.2d 1138, 1140; *Webb v State,* 1983 OK CR 40, 661 P.2d 904, 905. "Post-Conviction review provides petitioner with a very limited grounds upon which to base a collateral attack on their judgments." *Logan v. State,* 2013 Ok CR 2, 293 P.3d 969, 973, citing 22 O.S. 2001, §1086. An exception to this rule exists where a Court finds sufficient reason for not asserting or inadequately presenting an issue in prior proceedings or when an "intervening change in constitutional law impacts the judgment and sentence" *Bryson v. State,* 1995 OK CR 57, 903 P.2d 333, 334; *Stevens v. State,* 2018 OK CR 11, 422 P.3d 741. Petitioner is unlawfully restrained of his liberty and his sentence must be vacated because this Court did not have Jurisdiction and under 22 O.S. §1080 (b) provides an enumerated provision "that the Court was without jurisdiction to impose sentence."

BRIEF IN SUPPORT

STATEMENT OF FACTS

The Petitioner, and/or one or more of his victims are a member of the Choctaw Nation. This offense occurred in Sulphur, Okla, Oklahoma, within "Indian Country" This land is considered Indian Country belonging to the Chickasaw Nation, according to the United States Supreme Court as discussed below.

PROPOSITION ONE

THIS COURT LACKED SUBJECT MATTER JURISDICTION BECAUSE THE OFFENSE OCCURRED IN INDIAN COUNTRY AND 18 U.S.C. §1153 PROVIDES FOR EXCLUSIVE FEDERAL JURISDICTION. *MCGIRT V. OKLAHOMA, 591 U.S.___(2020)(DECIDED JULY 9, 2020)*

STANDARD OF REVIEW

The correct standard of review is set forth in *McGirt v. Oklahoma,* 591 U.S.____(2020); *Murphy v. Royal,* 875 F.3d 896, 907-909, 966(2017), cert. granted 589 I.S.__(2019); see *Sharp v. Murphy,* 591 U.S.___(2020)(Per Curiam)(affirming the tenth circuit); See also *Cox v. State,* 2006 OK CR 51, 152.P.3d 244,247 "a lack of subject matter jurisdiction upon the trial Court cannot be waived" *Wallace v. State*, 1997 OK CR 18, 935 P.2d 366, 372; *Triplet v Franklin*, 365 Fed. Appx. 86, 95 (10th Cir. 2010); *Wackerly v. State,* 2010 OK CR 16, 237 P.3d 795, 797.

ARGUMENT AND AUTHORITY

The District Court lacked subject matter jurisdiction because 18 U.S.C. §1153, the Major Crimes Act ("MCA") gives the federal government exclusive jurisdiction to prosecute major crimes committed by or against Indians in Indian country. *McGirt v. Oklahoma* 591 U.S.__(2020), *Sharp v. Murphy,* 591 U.S.__(2020)[1] (Per Curiam)(The judgment of the United States Court of Appeals for the tenth Circuit is affirmed for the reasons stated in *McGirt v. Oklahoma,* ante, p.)

18 U.S.C. §1153 grants jurisdiction to Federal courts, exclusive of the states, over Indians who commit any of the listed offenses, whether or not the victim is an Indian or non-Indian if the offense is committed by an Indian. *United states v. John,* 437 U.S. 634, 98 S.Ct. 2541, 57 L.Ed.2d 489 (1978). *McGirt* was clear regarding the scope of their dispute and that nothing today could unsettle Oklahoma's authority to try non-Indians for crimes against non-Indians on these lands. See *United States v. McBratney,* 104 U.S. 621, 624, 21 S.Ct. 924, 26 L.Ed. 869 (1882).

Subject matter jurisdiction is never waived and can therefore be raised on a collateral appeal. *Wallace v. State,* 1997 OK CR 18, 935 P.2d 366, 372; *Wackerly v. State,* 2010 OK CR 16, 237 P.3d 795, 797 (considering jurisdictional claim that crime occurred on federal land raised in prisoner's second application for post-conviction relief); *Magnan v. State,* 2009 OK CR 16, 207 P.3d 397, 402 (Indian Country jurisdictional challenge; explaining subject matter jurisdiction may be challenged at any time). See also *Cox v State,* 2006 OK CR 51, 152 P.3d 244, 247.

The MCA[2] 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 an of [those] offenses, within the exclusive jurisdiction of the United States." 18

[1] *Murphy v Royal,* 875 F.3d 896, 907-909, 966 (2017). SCOTUS certiorari to settle the question. 589 U.S.__(2019)
[2] The Major Crimes Act was passed in reaction to the holding of *Ex parte Crow Dog,* 109 U.S. 556, 3 S.Ct 396, 27 L.Ed. 1030 (1883);*Keeble v. United States,* 412 U.s. 205, 209-12, (1973) 93 S.Ct. 1993, 36 L.Ed.2d 844, and *United States v. Kagama,* 118 U.S. 375, 383, 6 S.Ct. 1109, 30 L.d. 228(1886)

U.S.C. 1153(a). "Indian Country" includes "all land within the limits of any Indian reservation under the jurisdiction of the Unites States Government." §1151. *McGirt v. Oklahoma,* 591 U.S.__(2020)

What lands are considered Indian Country are clearly defined by SCOTUS, "Reservation[s]" and "Indian allotments, the Indian titles to which have not been extinguished," qualify as Indian Country under the subsections (a) and (c) of §1151. But "dependent Indian communities" also qualify as Indian Country under subsection 9b0. So, Oklahoma lacks jurisdiction to prosecute Mr. McGirt whether the Creek lands happen to fall under one category or another."

This also reigns true with other tribes and not limited to the Creek Nation. "the policy of leaving Indians free from State jurisdiction and control is deeply rooted in this Nation's history." *McGirt v. Oklahoma* 591 U.S.___(2020)(citing *Rice v. Olson,* 324 U.S 786, 789, 65 S.Ct. 989, 89 L.Ed. 1397 (1945)).

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 9 defining "Indian Country" even more broadly). The Supreme Court also addressed jurisdictional concerns with interpretation of the statutory provision of MCA. "States are otherwise free to apply their criminal laws in cases of non-Indian victims and defendants, including within Indian Country. *McGirt v. Oklahoma,* 591 U.S.p 38 (2020); *Sharp v. Murphy,* 591 U.S. ___(2020)(Per Curiam) (The judgment of the United States Court of Appeals for the Tenth Circuit is affirmed for the reasons states in *McGirt v. Oklahoma,* ante, p,)

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 conflict 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.

For years, States have sought to suggest that allotments automatically ended reservations, and for years courts have rejected the argument. The Supreme Court stated that 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). 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 passes hands to non-Indians. But 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 v. Arnett*, 412 U.S. 481, 497, 93 S.Ct. 2245, 37 L.Ed.2d 92 (1973), ([A]llotment under the...Act is completely consistent with continued reservation status"); *Seymour v. Superintendent of Wash. State Penitentiary,* 368 U.S. 351, 56-358, 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 reservation"); *McGirt v. Oklahoma,* ante, p.10. (2020). The federal government, acting as guardian and trustee for the Indians, regarded as beneficial to the development of its wards" See *United States v. Celestine*, 215 U.S. 278, 30 S.Ct. 93, 54 L.Ed. 195 (1909); *United States v. Nice*, 241 U.S. 591, 36 S.Ct. 696, 60 L.Ed (1916).

See Also *Wilbur v. United States ex rel. Kadrie,* 281 U.S. 206, 50 S.Ct. 320, 74 L.Ed. 809 (1930); *Donnelly v. United States,* 228 U.S. 243, 33 S.Ct. 449, 57 L.Ed. 820(1913)

The trial Court erred in not *sua sponte* dismissing the case for lack of jurisdiction. It should have used the same existing Supreme Court precedent, being *Solem v. Bartlett,* 465 U.S. 463, 470-472 (1984) and its "analytical structure for distinguishing those surplus land acts that diminished reservations from those acts that simply offered non-Indians the opportunity to purchase land within established reservation boundaries.". This would have been consistent with this Court's ruling in *Murphy* that concluded congress had not disestablished the 1866 boundaries of the Creek reservation. *See Murphy,* 875 F.3d at 904, 909, 921-22, 950. Ergo, as was the case in *McGirt, supra,* Petitioner's conviction must be reversed with instructions to dismiss.

Petitioner challenges his convictions and on the assertion that the state court that tried him was without jurisdiction to do so. In fact, *every* state court lacked jurisdiction to try Petitioner. Under the MCA and numerous cases from this Court as well as the United States Supreme Court all mandate all mandate that certain crimes committed by or against an Indian in Indian Country must be tried, if at all, in Federal court. As this Court has stated, "the State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country." *Cravatt v. State*, 1992 OK CR 6 ¶ 15, 825 P.2d 277, 279 (citing *State v. Klindt,* 1989 OK CR 75, 782 P.2d 401, 403). Thus, the State lacked authority to try the Petitioner in this case because the site of the crime was in Indian Country, within territorial boundaries, and Petitioner is of Indian Blood.

CONCLUSION

WHEREFORE, premises considered, the Court must VACATE AND SET ASIDE the Judgment and Sentence in the interest of justice as the Petitioner's conviction is void for a lack of subject matter jurisdiction.

IT IS SO PRAYED.

Respectfully submitted,

Josue Cruz

Pro-Se

DOC # 413652

8607 SE Flower Mound Road

Lawton, Oklahoma 73501

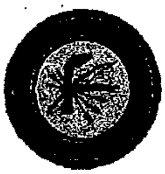
VERIFICATION

I, K. Tremaine state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct. Title 12 O.S. .Supp. 2004, § 426. Executed by the Petitioner at the Lawton Correctional Facility, 8607 S.E. Flower Mound Road, Lawton, Oklahoma, 73501, on the 6 day of May, 2021.

NOTARY PUBLIC State of OK
K. TREMAINE
Comm. # 19004319
Expires 04-25-2023

K. Tremaine
Signature

KT
5/6/2021
Date



Choctaw Nation of Oklahoma
CDIB/Tribal Membership

PO Box 1210
Durant, Oklahoma 74702-1210
580-924-8280, Ext. 4030
1-800-522-6170

April 27, 2021

To Whom It May Concern:

This letter is to certify that Jason Leon Cruse, born 02/08/1980, social security number XXX-XX-8066, has a Certificate of Degree of Indian Blood (CDIB). Jason Leon Cruse is a Tribal Member of the Choctaw Nation of Oklahoma (Membership #CN110430).

If you have any questions please, contact this office at the number listed above.

Sincerely,

Terry Stephens

Terry Stephens
Director, CDIB/Membership
Choctaw Nation of Oklahoma

choctawnation\acanada 04/27/2021 9:00:19 AM

FILED
MURRAY COUNTY, OKLAHOMA

AUG 23 2021

Jodi Jennings, Court Clerk
By _____ Deputy

IN THE DISTRICT COURT OF MURRAY COUNTY
STATE OF OKLAHOMA

JASON LEON CRUSE	)	
Petitioner	)	
	)	
vs.	)	**Case No.** CF-2000-105
	)	
THE STATE OF OKLAHOMA,	)	
Respondents	)	

NOTICE OF POST-CONVICTION APPEAL

Being *pro se*, Defendant ask that this court view his Notice of Post-Conviction Appeal with respect to ***Haines v. Kerner,*** 405 U.S. 948, 92 S. Ct. 963, 30 L. Ed. 2D 819 (1972) and ***Hall v. Bellmon,*** 935 F.2d 1106, 1110 (10th Cir. 1991).(Holding that *pro se* petitions be held to a less stringent standard than attorneys.)

Petitioner was DENIED Post-Conviction Relief by the District Court of Murray County on August the 13th, 2021. (See **Attachment A**) and files this Notice of Post-Conviction Appeal in good faith, in accordance with Oklahoma Court of Criminal Appeals Rule 5.2(c).

Petitioner asserts that this Notice of Post-Conviction Appeal is timely submitted in accordance with Oklahoma Court of Criminal Appeals Rule 5.2 (c)

The Defendant further request that the original record and transcripts be prepared in accordance with Oklahoma Court of Criminal Appeals.

Jason Leon Cruse

Jason Leon Cruse #413652
Lawton Correctional Facility (3-D-103)
8607 South East Flower Mound Rd.
Lawton, Oklahoma 73501

IN THE COURT OF CRIMINAL APPEALS

STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT 12 2021

JOHN D. HADDEN
CLERK

JASON LEON CRUSE
Petitioner

vs.

THE STATE OF OKLAHOMA,
Respondents

Case No. _____

PC 2021 1074

PETITION IN ERROR

WITH

BRIEF IN SUPPORT OF POST-CONVICTION APPEAL

COMES NOW, Jason Leon Cruse, Petitioner *Pro Se*, with his Petition in Error and Brief in Support of Post-Conviction Appeal. Being *pro se*, Petitioner asks that this court view this Petition-in-Error with Brief-in-Support with respect to ***Haines v. Kerner,*** 405 U.S. 948, 92 S. Ct. 963, 30 L. Ed. 2D 819 (1972) and ***Hall v. Bellmon,*** 935 F.2d 1106, 1110 (10th Cir. 1991) (Holding that *pro se* petitions be held to a less stringent standard than attorneys.)

Petitioner was DENIED Post-Conviction Relief by the District Court of Murray County on August the 13th, 2021 (See **Attachment A**). Petitioner has timely filed his Notice of Intent to Appeal in the District Court of Murray County on August 23rd 2021, in accordance with Oklahoma Court of Criminal Appeals Rule 5.2(c).

JURISDICTION

Jurisdiction is invoked under 22 O.S. §1087 of the *Oklahoma Uniform Post-Conviction Procedures Act* and Rule 5.2 of the *Rules of the Oklahoma Court of Criminal Appeals* (Oklahoma Statute Title 22 O.S. Chapter 18 Appendix)

STATEMENT OF THE CASE

On June 19th of 2000, an arrest warrant was issued for Petitioner, Petitioner was charged by information with the following felony in Murray County Case No. CF-2000-105: *Murder in the First Degree.* On September 25th of 2000 prior to any proceedings Petitioner challenged the Jurisdiction of the Court, to which the State responded on January 5th, 2001. The District Court of Murray County (pre-McGirt) erroneously determined that Jurisdiction was satisfied and moved forward with proceedings by setting dates for preliminary hearings and trial.

Petitioner, represented by counsel, was found Guilty and Sentenced to LIFE on August 24th, 2001. A timely appeal was filed in the Oklahoma Court of Criminal Appeals **(F-2001-1046)**, the Conviction was Affirmed.

Following the Supreme Court Ruling in *McGirt v. Oklahoma* **140 S. Ct. 2452** Petitioner filed an Application for Post-Conviction Relief in the District Court of Murray County on May 13th, 2021. Petitioner raised a single proposition in his Post-Conviction Relief; that the District Court of Murray County Lacked Subject Matter Jurisdiction. An evidentiary hearing was ordered on May 24th, 2021. The District Court DENIED Petitioner's Application for Post-Conviction Relief on August 13th, 2021 pursuant to *Wallace v. State.*

It is from this Denial of Post-Conviction Relief that Petitioner Appeals.

BRIEF IN SUPPORT

The District Court of Murray County committed error in the decision denying Petitioner's Application for Post-Conviction Relief when the Court failed to provide Findings of Facts and Conclusions of Law (as required by Oklahoma Post-Conviction Statute Title 22 §1084). The District Court of Murray County further erred when the Court based their denial on ***State v. Wallace*** **2021 OK CR 21** which is in direct conflict and contrary to Supreme Court Rulings.

Proposition #1:

The District Court of Murray County Erred when the Court Denied Petitioner's Post-Conviction Relief Without Providing a "Findings of Facts and Conclusion of Law" as Required by Oklahoma Statute Title 22 §1084.

The District Court of Murray County issued an Order Denying Petitioner's Application for Post-Conviction Relief on August 13th, 2021. The Order that the District Court issued was only a single page that contained a lone paragraph which stated:

> "CO: Court Order: This matter comes on for hearing on Defendant's Application for Post-Conviction Relief. State appears by ADA, Jessica Underwood. Defendant appears via Microsoft teams. Court Denies the Application for Post-Conviction Relief pursuant to State v. Wallace 2021 OK CR 221 (OCCA)."
>
> **(See Attachment A)**

Oklahoma Post-Conviction Statutes set out a clearly defined procedure for Post-Conviction Relief, including who may apply, the grounds for which they may seek relief, the commencement of the proceedings, as well as responses by the state, evidentiary hearings, and findings of facts and conclusion of law (Oklahoma Statutes Title 22 §§1080-1089).

Petitioner asserts that the District Court Order violates Oklahoma Statute 22 §1084, because the District Court's Order failed to acknowledge an examination of the merits in order to summarily dispose of his post-conviction application. See ***Logan v. State,* 293 P.3d 969, 2013 OK CR 2** (Holding that Appellate court could not determine whether the district court actually made necessary findings and conclusions under Okla. R. Ct. Crim. App. 5.2(C)(6)(b), 5.4(A), Okla. Stat. tit. 22, ch. 18, app. (2012) regarding petitioner's claim, in order to summarily dispose of his post-conviction application under Okla. Stat. tit. 22, 1083(c) (2011), because the district court's order failed to acknowledge an examination of the merits).

The District Court relies on and cites ***State v. Wallace 2021 OK CR 21,*** a ruling from the Oklahoma Court of Criminal Appeals. In State v. Wallace, it was held that Jurisdictional claims were not to be applied "retro-actively" to convictions that were final at the time that the Supreme Court Decision was made in McGirt v. Oklahoma, and that were not brought up on Direct Appeal.

Petitioner asserts that *Wallace* is *dicta* and should not be applied when Petitioner did in fact raise a jurisdictional claim both prior to trial and on Direct Appeal **(See Attachment B)**[1]**.** Petitioner further asserts that this error is a direct result of the failure to complete the evidentiary hearing, and a failure to provide findings of facts and conclusions of law. Had the District Court of Murray County followed Oklahoma Statute, then Petitioner would not have been denied Post-Conviction Relief pursuant to ***State v. Wallace*** because the standard set in that case would not apply as a bar to Petitioner.

[1] F-2001-1046, Opinion of the Court, Paragraph 14

Proposition #2:

The District Court of Murray County Erred when the Court Denied Petitioner's Post-Conviction Relief Pursuant *State v. Wallace*, in Direct Conflict with Supreme Court Ruling in McGirt v. Oklahoma.

A state-court decision is "contrary to" Supreme Court precedent if: (1) the state court's conclusion is **"opposite to that reached by [the Supreme Court] on a question of law"** or (2) the "state court confronts facts that are materially indistinguishable from a relevant Supreme Court precedent" and arrives at an opposite result *Williams v. Taylor*, 529 U.S. 362, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000). A state court unreasonably applies Supreme Court precedent if: (1) it unreasonably applies the correct legal rule to the facts of a particular case; or (2) it **"unreasonably extends a legal principle from [Supreme Court] precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply."** *Id.* at 1495.

Petitioner Asserts that the District Court Order denying Post-Conviction Relief is based on a Ruling that is contrary to Supreme Court precedent. ***State v. Wallace 2021 OK CR 21*** specifically stated:

> "**We cannot and will not ignore the disruptive and costly consequences that retroactive application of McGirt would now have**: the shattered expectations of so many crime victims that the ordeal of prosecution would assure punishment of the offender; the trauma, expense, and uncertainty awaiting victims and witnesses in federal re-trials; the outright release of many major crime offenders due to the impracticability of new prosecutions; and the incalculable loss to agencies and officers who have reasonably labored for decades to apprehend, prosecute, defend, and punish those convicted of major crimes; all owing to a long standing and widespread, but ultimately mistaken, understanding of law." (emphasis added)
>
> ***State v. Wallace 2021 OK CR 21*** **(Page 22, Paragraph 38)**

This sentiment is the basis for the Courts decision in State v. Wallace, and in the very next paragraph of the opinion of the court, the author of the Opinion states:

> "By comparison, Mr. Parish's legitimate interest in post-conviction relief for this error are minimal or non-existent. McGirt raises no serious questions about the truth-finding function of the state that tried Mr. Parish and so many others in latent contravention of the Major Crimes Act." (emphasis added)
>
> ***State v. Wallace 2021 OK CR 21*** **(Page 22, Paragraph 39)**

In contrast, the author of the Supreme Court Opinion, stated the ***exact opposite*** sentiments.

> "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." (emphasis added)
>
> *Mcgirt v. Oklahoma*, 140 S. Ct. 2452 at 2481

> "**In reaching our conclusion about what the law demands of us today,** we do not pretend to foretell the future and **we proceed well aware of the potential for cost** and conflict around jurisdictional boundaries, especially ones that have gone unappreciated for so long." (emphasis added)
>
> *Mcgirt v. Oklahoma*, 140 S. Ct. 2452 at 2481

So on one hand, the decision in Wallace states quite clearly that they will not ignore the cost, while the Supreme Court states just as clearly that cost are not a license to disregard the law, and that the McGirt decision was reached while well aware of the potential cost.

The District Court of Murray County has based their decision to deny Petitioner's Post-Conviction on a ruling that is contrary to Supreme Court precedent, and is therefore contrary to Supreme Court precedent itself.

Also, the Court stated "Mr. Parish's legitimate interest in post-conviction relief for this error are **minimal or non-existent.**" And that "McGirt raises no serious questions about the truth-finding function of the state that tried Mr. Parish."

Petitioner asserts that this is also contrary to Supreme Court precedent, as well as the United States Constitution and Oklahoma Constitution. It cannot be fairly said that Due Process and Constitutional violations are a "minimal" or "non-existent" interest. It is well established that Due process is a Constitutional guarantee ***Oklahoma Constitution Article II §7*** and this court has held, as recently as 2021 that ". . . Any violation of the U.S. Constitution and the Oklahoma Constitution, is not "harmless error." ***Hudson v. State (In re K.H.)*** 2021 OK 33

Even though the District court denied Petitioner pursuant to State v. Wallace, it is implied that the District Court holds the same regard for Petitioner's interest that the Court of Criminal Appeals holds for Mr. Parish, in that the District Court believes Petitioner's interest are minimal. The Constitutional right to not be deprived of life or liberty without due process cannot be construed as minimal or non-existent by any court.

The fact that McGirt raises no serious questions about the truth-finding function of the state that tried Mr. Parish (and by extension, Petitioner) is proper, since the truth finding process is irrelevant. For it is not possible to conduct the truth-finding process without the proper authority and jurisdiction to begin with. The truth finding process is moot. An individual, who commits a crime in one county (or state), will not be tried in another county (or state), even if the truth-finding process is fair, because where there is no jurisdiction, there is no process.

The sole function of determining jurisdiction and venue is to determine who shall conduct the process. Without the adherence to law and statute, chaos rules the day. In this imagined world, Tulsa County could prosecute crimes that occurred in Oklahoma County as long as they did so fairly.

This concept, and the ruling from which it derives, is contrary to the Oklahoma Constitution, the United States Constitution, and Supreme Court precedent.

CONCLUSION

Petitioner has demonstrated that the District Court of Murray County committed error in their decision denying Petitioner's Application for Post-Conviction Relief when the Court failed to provide Findings of Facts and Conclusions of Law (as required by Oklahoma Post-Conviction Statute Title 22 §1084). The District Court of Murray County further erred when the Court based their denial on ***State v. Wallace*** **2021 OK CR 21** which is in direct conflict and contrary to Supreme Court Rulings.

Wherefore, Petitioner requests relief in the following manner: That this Court reverse the conviction with a mandate that the case be dismissed for lack of Jurisdiction or in the alternative, remanded back to the District Court for a findings of facts and conclusions of law as required by Oklahoma Statute Title 22 § 1084.

Respectfully Submitted,

Jason Cruse

Jason Leon Cruse #413652
Lawton Correctional Facility (3-D-103)
8607 South East Flower Mound Rd.
Lawton, Oklahoma 73501

VERIFICATION

I, Jason Leon Cruse , hereby verify state and declare under penalty of perjury under the laws of Oklahoma, that I have read the foregoing and attached Post-Conviction Appeal, and it is true and correct to my best belief and knowledge. Title 12 O.S. § 426, Title 18 U.S.C. § 1621, Title 28 U.S.C. § 1746 . *See also,* Rule 1.13, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22. Ch. 18, App. (2005).

Executed by the Petitioner at the Lawton Correctional Facility, 8607 SE Flower Mound Road, Lawton, Oklahoma, 73501, on the 7th day of October, 2021

Jason Leon Cruse #413652
Lawton Correctional Facility (3-D-103)
8607 South East Flower Mound Rd.
Lawton, Oklahoma 73501

AFFIDAVIT IN FORMA PAUPERIS

I, JASON LEON CRUSE #413652, state that I am a poor person without
(Print Name & DOC #)
funds or property or relatives willing to assist me in paying for filing the within instrument. I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

Signed this 8TH day of OCTOBER, 2021, at Lawton Correctional Facility, Comanche County, Lawton, Oklahoma.

(Signature of Affiant)

JASON LEON CRUSE.
(Print Name)

RECEIVED
OCT 12 2021
CLERK'S OFFICE

Form 13.2 Affidavit in Forma Pauperis