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**OPINION OF THE COURT OF CRIMINAL  
APPEALS, STATE OF OKLAHOMA  
(OCTOBER 7, 2021)**

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IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

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SHAYNNA LAUREN SIMS,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

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No. F-2017-635

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

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**OPINION**

**LUMPKIN, JUDGE:<sup>1</sup>**

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<sup>1</sup> As stated in my separate writing in *Roth v. State*, 2021 OK CR 27, \_\_\_ P.3d \_\_\_, (Lumpkin, J., concurring in result), I am bound by my oath and adherence to the Federal-State relationship under the U.S. Constitution to apply the edict of the majority opinion in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). However, I continue to share the position of Chief Justice Roberts' dissent in *McGirt*, that at the time of Oklahoma Statehood in 1907, all parties accepted the fact that Indian reservations in the state had been disestablished and no longer existed.

Appellant Shaynna Lauren Sims was tried by jury and convicted of Knowingly Concealing Stolen Property (21 O.S.2011, § 1713) (Count II); First Degree Burglary (21 O.S.2011, § 1431) (Count III); Unauthorized Dissection (21 O.S.2011, § 1155 (Count IV); Disturbing or Interrupting a Funeral (21 O.S.2011, § 1166 (Count V); and Unlawful Removal of Body Part from Deceased (21 O.S.2011, § 1161(B)) (Count VI) in the District Court of Tulsa County, Case No. CF-2015-2252.<sup>2</sup> In accordance with the jury's recommendation the Honorable Kelly Greenough, District Judge sentenced Appellant to two (2) years imprisonment and a \$500.00 fine in Count II, seven (7) years imprisonment in Count III, one year imprisonment and a \$500.00 fine in each of Counts IV and V and five (5) years imprisonment and a \$5,000.00 fine in Count VI. The sentences were ordered to run consecutively. Appellant appeals from these convictions and sentences.

In Proposition VII of her appellate brief, Appellant claims the District Court lacked jurisdiction to try her. Appellant argues that while she is not Indian, her victim, Tabatha Lynch, was a citizen of the Muscogee (Creek) Nation and the crimes occurred within the boundaries of the Creek Nation.

Pursuant to *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020) Appellant's claim raises two separate questions: (a) the Indian status of the victim, Tabatha Lynch, and (b) whether the crime occurred in Indian Country. These issues require fact-finding. We therefore remanded this case to the District Court of Tulsa County for an evidentiary hearing.

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<sup>2</sup> Count I, Larceny from a Person (21 O.S.2011, § 1704.2) was dismissed prior to trial.

Recognizing the historical and specialized nature of this remand for evidentiary hearing, we requested the Attorney General and District Attorney work in coordination to effect uniformity and completeness in the hearing process. Upon Appellant's presentation of *prima facie* evidence as to the victim's legal status as an Indian and as to the location of the crime as Indian Country, the burden shifts to the State to prove it has subject matter jurisdiction. The District Court was ordered to determine whether the victim had some Indian blood and was recognized as an Indian by a tribe or the federal government. The District Court was also directed to determine whether the crime occurred in Indian Country. The District Court was directed to follow the analysis set out in *McGirt* to determine: (1) whether Congress established a reservation for the Creek Nation; and (2) if so, whether Congress specifically erased those boundaries and disestablished the reservation. In so doing, the District Court was directed to consider any evidence the parties provided, including but not limited to treaties, statutes, maps, and/or testimony.

We also directed the District Court that in the event the parties agreed as to what the evidence would show with regard to the questions presented, the parties could enter into a written stipulation setting forth those facts upon which they agree and which answer the questions presented and provide the stipulation to the District Court. The District Court was also ordered to file written findings of fact and conclusions of law with this Court.

An order from Honorable Tracy L. Priddy, District Judge, entitled *Findings of Fact and Conclusions of Law* was timely filed with this Court. The order states

that the parties appeared for a status conference and based upon the parties' announcement that they had agreed and stipulated to facts supporting the issues to be decided, no evidentiary hearing was held. The order states that appearances were made by attorneys from the office of the Attorney General of Oklahoma, the Tulsa County District Attorney's Office, and defense counsel.

In its order, the District Court states that Appellant and the State of Oklahoma stipulated to the following: 1) Shaynna Lauren Sims is the named Defendant/Appellant in the matter; 2) the victim, Tabatha Nadine Lynch, had 1/64 Indian blood and was a member of the Muscogee (Creek) Nation Tribe at the time of the crime; 3) the Muscogee (Creek) Nation is a federally recognized tribe; and 4) verification of Ms. Lynch's tribal membership and blood quantum are attached to the stipulation as Exhibit A and the parties agree Exhibit A should be admitted into the record of the case. The District Court stated that it adopted the Agreed Stipulation and based upon the record before the court, found that the victim Tabatha Nadine Lynch was an Indian.

Regarding whether the crime occurred in Indian Country, the order states that the parties stipulated "that the crimes occurred at 1908 South Memorial Dr. East, Tulsa, Ok 74112 and 4946 S. Mingo Road, Apt. 245G Tulsa, Ok 74146, which lie within the Muskogee (Creek) Reservation boundaries." The court stated that it adopted the stipulation and found the crime occurred within the boundaries of the Creek Reservation. The District Court concluded its order by finding that based upon *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), "the crimes occurred on the Creek Reservation which is Indian Country."

Both Appellant and the State were given the opportunity to file response briefs addressing issues from the evidentiary hearing. Appellant did not file a response brief. The State filed a response brief acknowledging the District Court's acceptance of the stipulations regarding the victim's status as an Indian and the location of the crime as occurring within the Muscogee (Creek) Reservation. The State does not contest the factual findings that the victim was an Indian but also does not concede the legal conclusion that she was a victim. The State agrees the crimes occurred in Indian Country but argues the State properly exercised jurisdiction for two reasons: 1) the State has exclusive jurisdiction over victimless crimes committed by non-Indian defendants; and 2) assuming any of Appellant's crimes were not victimless, the State has concurrent jurisdiction. The State also argues that should this Court find Appellant is entitled to relief, this Court should stay any order reversing the conviction for thirty (30) days to allow the United States Attorney's Office for the Eastern District of Oklahoma to secure custody of Appellant. *cf.* 22 O.S. 2011, § 846.

To support its first claim, the State relies on *United States v. Langford*, 641 F.3d 1195, 1197 (10th Cir. 2011). There the Tenth Circuit Court of Appeals said that “[t]he states possess exclusive criminal jurisdiction over crimes occurring in Indian country if there is neither an Indian victim, nor an Indian perpetrator”, relying in part on *Solem v. Bartlett*, 465 U.S. 463, 465 n. 2, (1984) (“[w]ithin Indian country, State jurisdiction is limited to crimes by non-Indians against non-Indians, and victimless crimes by non-Indians”) and *United States v. McBratney*, 104 U.S. 621, 622 (1881) (federal jurisdiction over crimes in Indian country is contingent

upon the existence of either an Indian victim or perpetrator). The State then argues that the crimes in this case were victimless crimes as they were committed upon the person or property of a deceased person.

The evidence in this case shows that Appellant entered the Moore Eastlawn Funeral Home and proceeded to the viewing room where the body of Tabatha Lynch was displayed so her family and friends could pay their last respects prior to her cremation. Appellant cut the decedent's forehead from her hairline to the top of her nose, cut her hair, smeared the decedent's make-up, and cut off a toe and both breasts. Appellant then took photographs of the body, including the actual cutting off of the toe. She then removed the decedent's pants and took photographs of the decedent's vagina. Appellant took the shoes from the decedent's feet.

After leaving the funeral home, Appellant went to the decedent's apartment. She introduced herself to the decedent's son who answered the door as working for the funeral home and needing a photograph of the decedent. The son left Appellant outside the apartment as he searched for a photograph. The decedent's boyfriend soon arrived and let Appellant into the apartment. He then received a phone call from the decedent's brother informing him that the decedent's body had been disturbed and Appellant was suspected of committing the acts. Family and friends kept Appellant at the apartment until police arrived. For these acts, Appellant was charged, tried by jury, and convicted of the crimes of Knowingly Concealing Stolen Property, First Degree Burglary, Unauthorized Dissection, Disturbing or Interrupting a Funeral, and Unlawful Removal of Body Part from Deceased.

A “victimless crime” has been defined as “a crime which generally involves only the criminal, and which has no direct victim.” Black’s Law Dictionary 1567-68 (6th ed.1990). The State has cited no controlling authority establishing that the crimes in this case fall under that definition or have been considered by a court as victimless crimes. We find the State’s arguments on the issue unpersuasive and not sufficient to show the State has jurisdiction to prosecute Appellant.

Turning to the second portion of the State’s argument, we have addressed and rejected a similar argument on the concurrent jurisdiction of the federal and state governments in *Roth*, 2021 OK CR 27, ¶ 12, \_\_\_ P.3d at \_\_\_. The State of Oklahoma does not have concurrent jurisdiction to prosecute Appellant.

After thorough consideration of the arguments and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we find that under the law and the evidence relief is warranted. Under the record before us, we find the District Court did not abuse its discretion and its findings are supported by the evidence presented at the evidentiary hearing. *See State v. Delso*, 2013 OK CR 5, ¶ 5, 298 P.3d 1192, 1194. We find Appellant has met her burden of establishing that her victim, Tabatha Lynch was an Indian, having 1/64 degree Indian blood of the Muscogee (Creek) Nation Tribe and is an enrolled member of the Muscogee Creek Nation of Oklahoma on the dates of the charged offense and that the charged crime occurred within the Muscogee (Creek) Reservation.

Based upon the evidence in this case, we find that pursuant to *McGirt*, the State of Oklahoma did not



have jurisdiction to prosecute Appellant in this matter.<sup>3</sup> The Judgments and Sentences in this case are hereby reversed and the case remanded to the District Court of McIntosh County with instructions to dismiss the case.<sup>4</sup>

## DECISION

The **JUDGMENTS and SENTENCES are REVERSED AND REMANDED with instructions to Dismiss.** The **MANDATE** is not to be issued until **twenty (20) days** from the delivery and filing of this decision.<sup>5</sup>

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<sup>3</sup> While Art. 7 of the Oklahoma Constitution vests the district courts of Oklahoma with “unlimited original jurisdiction of all justiciable matters,” the federal government has pre-empted the field as it relates to major crimes committed by or against Indians in Indian country.

<sup>4</sup> This resolution renders the other seven (7) propositions of error raised in Appellant’s brief moot.

<sup>5</sup> By withholding the issuance of the mandate for 20 days, the State’s request for time to determine further prosecution is rendered moot.

AN APPEAL FROM THE DISTRICT  
COURT OF TULSA COUNTY THE HONORABLE  
TRACY L. PRIDDY, DISTRICT JUDGE

**APPEARANCES IN DISTRICT COURT**

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Counsel for the State

**Opinion by: Lumpkin, J.**

Rowland, P.J.: Concur

Hudson, V.P.J.: Specially Concurring

Lewis, J.: Concur in Results

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

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I concur in the results of this case, but I write separately to reiterate my belief that where the federal statute of limitations has expired rendering federal prosecution impossible, the state's jurisdiction is not preempted and dismissal is inappropriate. While circumstances indicate that is likely the case here, there is no evidence in this record specifically addressing the applicable statute of limitations on these crimes. Furthermore, even were there such evidence in this record, *stare decisis* would dictate this outcome based upon this Court's holding in *Roth v. State*, 2021 OK CR 27, \_\_\_ P.3d \_\_\_.

**HUDSON, VICE PRESIDING JUDGE,  
SPECIALLY CONCURS:**

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Today's decision dismisses convictions for knowingly concealing stolen property, first degree burglary, unauthorized dissection, disturbing or interrupting a funeral, and unlawful removal of body part from deceased from the District Court of Tulsa County based on the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). This decision is unquestionably correct as a matter of *stare decisis* based on the Indian status of the victim and the occurrence of this crime on the Creek Reservation. Under *McGirt*, the State has no jurisdiction to prosecute Appellant for the crimes. Instead, Appellant must be prosecuted in federal court. I therefore as a matter of *stare decisis* fully concur in today's decision. Further, I maintain my previously expressed views on the significance of *McGirt*, its far-reaching impact on the criminal justice system in Oklahoma and the need for a practical solution by Congress. *See Hogner v. State*, 2021 OK CR 4, \_\_\_ P.3d \_\_\_ (Hudson, J., Specially Concur).

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

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

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SHAYNNA LAUREN SIMS,

*Appellant.*

v.

THE STATE OF OKLAHOMA,

*Appellee,*

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Tulsa County District Court Case No. CF-2015-2252

Court of Criminal Appeals Case No. F-2017-635

Before: Tracy L. PRIDDY, District Judge.

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**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

This matter came on for a status conference on September 25, 2020 pursuant to the remand order of the Oklahoma Court of Criminal Appeals (“OCCA”) issued August 14, 2020. Nicollette Brandt appeared on behalf of Appellant, Shaynna Lauren Sims whose appearance was waived. Assistant Attorney General Jennifer Crabb appeared for Appellee. Tulsa County First Assistant District Attorney Erik M. Grayless also

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

The Appellant, in Proposition VII of her Brief-In-Chief asserted a claim that the District Court lacked jurisdiction to try her as her victim, Tabatha Lynch, was a citizen of the Muscogee (Creek) Nation and the crimes occurred within the boundaries of the Creek Nation [Reservation]. Appellant's claim raises two questions: (a) the Indian status of the victim, and (b) whether the crimes occurred in Indian Country. These issues require fact finding to be addressed by the District Court per the OCCA Order Remanding.

## **I. Appellant's status as an Indian**

To determine the Indian status of the victim, the OCCA directed the District Court to make findings of fact as to whether (1) Lynch had some Indian blood, and (2) was recognized as an Indian by a tribe or the federal government.<sup>1</sup> The Court finds as follows:

### **Findings of Fact**

1. Shaynna Lauren Sims is the named Defendant/Appellant in the above-entitled matter.

2. The parties stipulated and agreed that Tabatha Nadine Lynch had 1/64 Indian blood and was a member of the Muscogee (Creek) Nation since July 13, 1981.<sup>2</sup>

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

<sup>2</sup> Exhibit 1, Agreed Stipulation 1a.

3. The Muscogee (Creek) Nation is a federally recognized tribe.<sup>3</sup>

4. Verification of Ms. Lynch's tribal membership and blood quantum are attached to this stipulation as Exhibit A and the parties agree they should be admitted into the record of this case.<sup>4</sup>

### **Conclusions of Law**

Regarding the first determination, the Court answers the first inquiry in the affirmative. The Court adopted the Agreed Stipulation of the parties, including the attached documentation filed on September 25, 2020 and made findings of fact thereon. Tabatha Nadine Lynch had 1/64 Indian blood. The Agreed Stipulation does not specifically identify Appellant's Indian bloodline, and the two prong test utilized by state and federal courts for the purpose of determining Indian status does not seem to contemplate a specific bloodline be named, but the attached Exhibit A of the Agreed Stipulation, Ms. Lynch's Muscogee (Creek) Nation Citizenship ID, indicates a Creek blood quantum of 1/64.<sup>5</sup> Although the term "Indian" is not statutorily defined and various terms such as "sufficient"<sup>6</sup>, "substantial"<sup>7</sup> "significant percentage of"<sup>8</sup> or "some"<sup>9</sup> have been used by courts in an

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<sup>3</sup> Exhibit 1, Agreed Stipulation 1b.

<sup>4</sup> Exhibit 1, Agreed Stipulation 1c.

<sup>5</sup> See *United States v. Bruce*, 394 F.3d 1215 (9th Cir. 2005)

<sup>6</sup> *United States v. LaBuff*, 658 F.3d 873, 874-75 (9th Cir. 2011)

<sup>7</sup> *Vialpando v. State*, 640 P.2d 77, 79-80 (Wyo. 1982).

<sup>8</sup> *Goforth v. State*, 1982 OK CR 48, ¶ 6, 644 P.2d 114, 116.

<sup>9</sup> *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012).



attempt to define the quantity of Indian blood required to satisfy this inquiry, the OCCA mandate ordered this Court to determine “whether the victim had *some* Indian blood.”<sup>10</sup> Thus, according to the term used by the OCCA in its Order, this Court concludes Tabatha Nadine Lynch had some Indian blood.

Additionally, the Court answers the second part of the inquiry in the affirmative. The Court adopted the Agreed Stipulation including the attached documentation and made findings of fact thereon. Tabatha Nadine Lynch was enrolled as a citizen of the Muscogee (Creek) Nation on July 13, 1981 and was recognized as a citizen of the Muscogee (Creek) Nation at the time of the offense. The Muscogee (Creek) Nation is a federally recognized tribe. Therefore, Tabatha Nadine Lynch was recognized as an Indian by a tribe or the federal government.

Having answered both inquiries in the affirmative, this Court concludes the victim, Tabatha Nadine Lynch, was an Indian.

## **II. Whether the Crime Occurred on the Creek Reservation**

The OCCA further ordered the District Court to determine whether the crime occurred in Indian Country.<sup>11</sup> The Court finds as follows:

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<sup>10</sup> Order Remanding for Evidentiary Hearing August 19, 2020.

<sup>11</sup> *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020); 18 U.S.C. §§ 1152, 1153.

### **Findings of Fact**

1. The parties stipulated that the crimes occurred at 1908 South Memorial Dr. East, Tulsa, OK 74112 and 4946 S. Mingo Rd., Apt. 245G Tulsa, OK 74146, which lie within the Muscogee (Creek) Reservation boundaries.<sup>12</sup>

### **Conclusions of Law**

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

The State of Oklahoma filed on October 2, 2020 the State's Brief on Concurrent Jurisdiction and the State's Right to Exercise Jurisdiction Over Victimless Crimes Committed by Non-Indians. Appellant filed on October 13, 2020 Appellant's Reply Brief to Exclusive and Concurrent Jurisdiction. These pleadings are included with these Findings of Fact and Conclusions of Law.

**WHEREFORE**, this Court finds that Tabatha Nadine Lynch was an Indian and that the crimes for

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<sup>12</sup> Exhibit 1, Agreed Stipulation 2a.

which Shaynna Lauren Sims was convicted occurred in Indian Country for purposes of the General Crimes Act, 18 U.S.C. § 1152 and the Major Crimes Act, 18 U.S.C. § 1153.

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

/s/ Tracy L. Priddy  
District Judge

**AGREED STIPULATIONS  
(SEPTEMBER 25, 2020)**

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IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA

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SHAYNNA LAUREN SIMS,

*Appellant.*

v.

THE STATE OF OKLAHOMA,

*Appellee,*

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Case Nos. F-2017-635, CF-2015-2252

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**AGREED STIPULATIONS**

The Oklahoma Court of Criminal Appeals remanded this matter for an evidentiary hearing pursuant to the recent decision in *McGirt v. Oklahoma*, 18-9526 (U.S. July 9, 2020) to determine the victim's (a) Indian status and (b) whether the crime occurred on the Muscogee (Creek) Reservation. The parties have reached the following stipulations:

1. As to the status of the victim, the parties hereby stipulate and agree as follows:
  - a. Tabatha Nadine Lynch had 1/64 Indian blood and was a member of the Muscogee (Creek) Nation since July 13, 1981.

- b. The Muscogee (Creek) Nation is a federally recognized tribe.
  - c. Verification of Ms. Lynch's tribal membership and blood quantum are attached to this stipulation as Exhibit A and the parties agree they should be admitted into the record of this case.
2. As to the location of the crimes, the parties hereby stipulate and agree as follows:
- a. The crimes occurred at 1908 South Memorial Dr. East, Tulsa, OK 74112 and 4946 S. Mingo Rd. Apt. 245G Tulsa, OK 74146, which lie within the Muscogee (Creek) Reservation boundaries.

The parties therefore request that this Court accept the stipulations.

Respectfully submitted

/s/ Nicollette Brandt

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App.21a

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(918) 596-4805



**THE MUSCOGEE (CREEK) NATION OF OKLAHOMA  
CITIZENSHIP BOARD**

Date: 8/20/2020

To: Whom it May Concern

From: Muscogee (Creek) Nation  
Citizenship Board

PO Box 580

Okmulgee, OK 74447



*Tabatha N. Lynch*

Subject: Enrollment Verification

RE: Name: Tabatha Nadine Lynch (Nixon)

Address: 6945 S 155th West Ave

Sapulpa OK 74066-2912

Birthdate: 5/23/1976

Enrollment Date: July 13, 1981

Roll Number: 15448

Degree of Creek Blood: 1/64

I hereby certify that Tabatha Nadine Nixon,  
DOB: 5/23/1976 is enrolled with the Muscogee (Creek)  
Nation Enrollment Date: 7/13/1981 Roll Number:  
15448, Degree of Creek Blood: 1/64

Sincerely,

/s/ Nathan Wilson

Director, Muscogee (Creek)  
Nation Citizenship Office

**COURT OF CRIMINAL APPEALS,  
STATE OF OKLAHOMA, ORDER REMANDING  
FOR EVIDENTIARY HEARING  
(AUGUST 14, 2020)**

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IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

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SHAYNNA LAUREN SIMS,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

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No. F-2017-635

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

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**ORDER REMANDING FOR  
EVIDENTIARY HEARING**

Appellant Shaynna Lauren Sims was tried by jury and convicted of Knowingly Concealing Stolen Property (21 O.S.2011, § 1713)(Count II); First Degree Burglary (21 O.S. 2011, § 1431) (Count III); Unauthorized Dissession (21 O.S. 2011, § 1155 (Count IV); Disturbing or Interrupting a Funeral (21 O.S.2011, § 1166 (Count V);



and Unlawful Removal of Body Part from Deceased (2 O.S. 2011, § 1161(B)) (Count VI) in the District Court of Tulsa County, Case No. CF-2015-2252.<sup>1</sup> In accordance with the jury's recommendation the Honorable Kelly Greenough, District Judge sentenced Appellant to two (2) years imprisonment and a \$500.00 fine in Count II, seven (7) years imprisonment in Count III, one year imprisonment and a \$500.00 fine in each of Counts IV and V and five (5) years imprisonment and a \$5,000.00 fine in Count VI. The sentences were ordered to run consecutively. Appellant appeals from these convictions and sentences.

In Proposition VII, Appellant claims the District Court lacked jurisdiction to try her. Appellant argues that while she is not Indian, her victim, Tabatha Lynch, was a citizen of the Muscogee (Creek) Nation and the crimes occurred within the boundaries of the Creek Nation.

Pursuant to the recent decision in *McGirt v. Oklahoma*, No. 18-9526 (U.S. July 9, 2020), Appellant's claim raises two separate questions: (a) the Indian status of the victim, Tabatha Lynch and (b) whether the crime occurred in Indian Country. These issues require fact-finding. We therefore **REMAND** this case to the District Court of Tulsa County, for an evidentiary hearing to be held within sixty (60) days from the date of this Order.

Recognizing the historical and specialized nature of this remand for evidentiary hearing, we request the Attorney General and District Attorney work in coordination to effect uniformity and completeness in

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<sup>1</sup> Count I, Larceny from a Person (21 O.S.2011, § 1704.2) was dismissed prior to trial.

the hearing process. Upon Appellant's presentation of *prima facie* evidence as to the victim's legal status as an Indian and as to the location of the crime in Indian Country, the burden shifts to the State to prove it has subject matter jurisdiction.

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

First, to establish the status of Tabatha Lynch as an Indian, the District Court must determine whether (1) Lynch had some Indian blood, and (2) is/was recognized as an Indian by a tribe or the federal government.<sup>2</sup>

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

The District Court Clerk shall transmit the record of the evidentiary hearing, the District Court's findings of fact and conclusions of law, and any other materials made a part of the record, to the Clerk of this Court, and counsel for Appellant, within five (5)

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

days after the District Court has filed its findings of fact and conclusions of law. Upon receipt thereof, the Clerk of this Court shall promptly deliver a copy of that record to the Attorney General. A supplemental brief, addressing only those issues pertinent to the evidentiary hearing and limited to twenty (20) pages in length, may be filed by either party within twenty (20) days after the District Court's written findings of fact and conclusions of law are filed in this Court.

Provided however, in the event the parties agree as to what the evidence will show with regard to the questions presented, they may enter into a written stipulation setting forth those facts upon which they agree and which answer the questions presented and provide the stipulation to the District Court. In this event, no hearing on the questions presented is necessary. Transmission of the record regarding the matter, the District Court's findings of fact and conclusions of law and supplemental briefing shall occur as set forth above. **IT IS FURTHER ORDERED** that the Clerk of this Court shall transmit copies of the following, with this Order, to the District Court of Tulsa County: Appellant's Brief in Chief filed October 10, 2017; and Appellee's Response Brief, filed February 6, 2018.

**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 14 day of August, 2020.

App.27a

/s/ David B. Lewis  
Presiding Judge

/s/ Dana Kuehn  
Vice Presiding Judge

/s/ Gary L. Lumpkin  
Judge

/s/ Robert L. Hudson  
Judge

/s/ Scott Rowland  
Judge

ATTEST:

/s/ John D. Hadden  
Clerk