

## APPENDIX TABLE OF CONTENTS

Opinion of the Court of Criminal Appeals, State of Oklahoma (March 18, 2021) .....	1a
District Court of Tulsa County, State of Oklahoma, Amended Findings of Fact and Conclusions of Law (November 12, 2020).....	10a
Stipulations (September 25, 2020).....	16a
Order of the Court of Criminal Appeals, State of Oklahoma, Remanding for Evidentiary Hearing (August 19, 2020) .....	23a

**OPINION OF THE COURT OF  
CRIMINAL APPEALS, STATE OF OKLAHOMA  
(MARCH 18, 2021)**

---

IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

---

SHANNON JAMES KEPLER,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

---

Case No. F-2017-1186

An Appeal from the District Court of Tulsa County  
the Honorable Sharon K. Holmes, District Judge

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

---

**ROWLAND, VICE PRESIDING JUDGE:**

Appellant Shannon James Kepler was tried by jury in the District Court of Tulsa County, Case No. CF-2014-3952, and found guilty of First Degree Manslaughter, in violation of 21 O.S.2011, § 711. The jury assessed punishment at fifteen years imprisonment and a fine of \$10,000.00. The Honorable Sharon K. Holmes,

District Judge, presided at Kepler's jury trial and sentenced him in accordance with the jury's verdict. Kepler raises seven issues for review. Kepler's jurisdiction challenge, contesting the State's jurisdiction to prosecute him, requires relief. We address only that claim and find Kepler's other claims are moot.

Kepler claims the State of Oklahoma did not have jurisdiction to prosecute him. He relies on 18 U.S.C. § 1153 and *McGirt v. Oklahoma*, 591 U.S., 140 S. Ct. 2452 (2020). On August 19, 2020, this Court remanded this case to the District Court of Tulsa County for an evidentiary hearing. The District Court was directed to make findings of fact and conclusions of law on two issues: (a) Kepler's status as an Indian; and (b) whether the crime occurred within the boundaries of the Muscogee Creek Nation Reservation. Our Order provided that, if 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, and no hearing would be necessary.

On September 25, 2020, the parties appeared before the Honorable Tracy L. Priddy and entered a written joint stipulation in which they agreed: (1) that Kepler has some Indian blood; (2) that he was a registered member of the Muscogee Creek Nation on the date of the charged offense; (3) that the Muscogee Creek Nation is a federally recognized tribe; and (4) that the charged crime occurred within the Muscogee Creek Nation Reservation. The district court accepted the parties' stipulation.

The District Court filed its Amended Findings of Fact and Conclusions of Law in this Court on November

16, 2020.<sup>1</sup> The District Court found the facts recited above in accordance with the stipulation. The District Court concluded that Kepler is an Indian under federal law and that the charged crimes occurred within the boundaries of the Muscogee Creek Nation Reservation. The District Court's findings and conclusions are supported by the record. The ruling in *McGirt* governs this case and requires us to find the State of Oklahoma was without jurisdiction to prosecute Kepler. Accordingly, we grant Kepler's Proposition 1.

### DECISION

The Judgment and Sentence of the district court is **VACATED** and the matter is **REMANDED WITH INSTRUCTIONS TO DISMISS**. The Clerk of this Court shall **SEAL** the un-redacted Enrollment Verification appended to the original Findings of Fact and Conclusions of Law filed November 16, 2020. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2021), the **MANDATE**

---

<sup>1</sup> The district court granted Kepler's motion to substitute the exhibit of Kepler's tribal enrollment verification appended to the original Findings of Fact and Conclusions of Law because the exhibit contained protected personal material. The court substituted a redacted Enrollment Verification for the un-redacted Enrollment Verification attached to both the September 25, 2020 stipulations and the November 6, 2020 Findings of Fact and Conclusions of Law. Our record contains both the original and amended Findings of Fact and Conclusions of Law. Because the original Findings of Fact and Conclusions of Law contains the un-redacted exhibit containing protected information, we, on our own motion, order the un-redacted exhibit **SEALED**. Rule 2.7, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2021).

is **ORDERED** to issue in twenty (20) days from the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT  
OF TULSA COUNTY THE HONORABLE  
SHARON K. HOLMES, DISTRICT JUDGE**

**APPEARANCES AT TRIAL AND REMAND**

Richard O'Carroll  
Attorney at Law  
2171 N. Vancouver Ave.  
Tulsa, OK 74127

Scott Troy  
Attorney at Law  
406 S. Boulder Ave.  
Suite 405  
Tulsa, OK 74103  
Attorneys for Defendant

Stephen Kunzweiler  
District Attorney Kevin Gray  
Asst. District Attorneys  
500 South Denver Suite 900  
Tulsa, OK 74103  
Attorneys for State

Erik Grayless  
First Assistant  
District Attorney of Tulsa County  
500 S. Denver Ave. Suite 900  
Tulsa, OK 74103  
Appeared at Status Conference

**APPEARANCES ON APPEAL AND REMAND**

Katrina Conrad-Legler  
Appellate Defense Counsel  
P.O. Box 926  
Norman, OK 73070  
Attorney for Appellant

Mike Hunter  
Attorney General of Oklahoma  
Tessa L. Henry  
Jennifer Crabb  
Asst. Attorney General  
313 N. E. 21st Street  
Oklahoma City, OK 73105  
Attorneys for Appellee

**Opinion by: Rowland, V.P.J.**

Kuehn, P.J.: Recuse

Lumpkin, J.: Concur in Results

Lewis, J.: Concur

Hudson, J.: Specially Concur

**LUMPKIN, JUDGE:  
CONCURRING IN RESULTS**

---

Bound by my oath and the Federal-State relationships dictated by the U.S. Constitution, I must at a minimum concur in the results of this opinion. While our nation's judicial structure requires me to apply the majority opinion in the 5-4 decision of the U.S. Supreme Court in *McGirt v. Oklahoma*, U.S. 140 S. Ct. 2452 (2020), I do so reluctantly. Upon the first reading of the majority opinion in *McGirt* I initially formed the belief that it was a result in search of an opinion to support it. Then upon reading the dissents by Chief Justice Roberts and Justice Thomas I was forced to conclude the Majority had totally failed to follow the Court's own precedents, but had cherry picked statutes and treaties, without giving historical context to them. The Majority then proceeded to do what an average citizen who had been fully informed of the law and facts as set out in the dissents would view as an exercise of raw judicial power to reach a decision which contravened not only the history leading to the disestablishment of the Indian reservations in Oklahoma, but also willfully disregarded and failed to apply the Court's own precedents to the issue at hand.

My quandary is one of ethics and morality. One of the first things I was taught when I began my service in the Marine Corps was that I had a duty to follow lawful orders, and that same duty required me to resist unlawful orders. Chief Justice Roberts' scholarly and judicially penned dissent, actually following the Court's precedents and required analysis, vividly reveals the failure of the majority opinion to follow the rule of law and apply over a century of precedent and

history, and to accept the fact that no Indian reservations remain in the State of Oklahoma.<sup>2</sup> The result seems to be some form of “social justice” created out of whole cloth rather than a continuation of the solid precedents the Court has established over the last 100 years or more.

The question I see presented is should I blindly follow and apply the majority opinion or do I join with Chief Justice Roberts and the dissenters in *McGirt*

---

<sup>2</sup> Senator Elmer Thomas, D-Oklahoma, was a member of the Senate Committee on Indian Affairs. After hearing the Commissioner’s speech regarding the Indian Reorganization Act (IRA) in 1934, Senator Thomas opined as follows:

I can hardly see where it (the IRA) could operate in a State like mine where the Indians are all scattered out among the whites and they have no reservation, and they could not get them into a community without you would go and buy land and put them on it. Then they would be surrounded very likely with thickly populated white section with whom they would trade and associate. I just cannot get through my mind how this bill can possibly be made to operate in a State of thickly-settled population. (emphasis added).

John Collier, Commissioner of Indian Affairs, *Memorandum of Explanation* (regarding S. 2755), p. 145, hearing before the United States Senate Committee on Indian Affairs, February 27, 1934. Senator Morris Sheppard, D-Texas, also on the Senate Committee on Indian Affairs, stated in response to the Commissioner’s speech that in Oklahoma, he did not think “we could look forward to building up huge reservations such as we have granted to the Indians in the past.” *Id.* at 157. In 1940, in the Foreword to Felix S. Cohen, *Handbook of Federal Indian Law* (1942), Secretary of the Interior Harold Ickes wrote in support of the IRA, “[t]he continued application of the allotment laws, under which Indian wards have lost more than two-thirds of their reservation lands, while the costs of Federal administration of these lands have steadily mounted, must be terminated.” (emphasis added).



and recognize “the emperor has no clothes” as to the adherence to following the rule of law in the application of the *McGirt* decision?

My oath and adherence to the Federal-State relationship under the U.S. Constitution mandate that I fulfill my duties and apply the edict of the majority opinion in *McGirt*. However, I am not required to do so blindly and without noting the flaws of the opinion as set out in the dissents. Chief Justice Roberts and Justice Thomas eloquently show the Majority’s mischaracterization of Congress’s actions and history with the Indian reservations. Their dissents further demonstrate that at the time of Oklahoma Statehood in 1907, all parties accepted the fact that Indian reservations in the state had been disestablished and no longer existed. I take this position to adhere to my oath as a judge and lawyer without any disrespect to our Federal-State structure. I simply believe that when reasonable minds differ they must both be reviewing the totality of the law and facts.

**HUDSON, J., SPECIALLY CONCURS**

---

Today's decision dismisses convictions for endangering others while eluding/attempting to elude a police officer, possession of controlled dangerous substance and various misdemeanor crimes from the District Court of Okmulgee County based on the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). This decision is unquestionably correct as a matter of stare decisis based on the Indian status of Petitioner and the occurrence of the crimes on the Creek Reservation. Under *McGirt*, the State has no jurisdiction to prosecute Petitioner for the crimes in this case. Instead, Petitioner must be prosecuted in federal court. I therefore as a matter of stare decisis fully concur in today's decision. Further, I maintain my previously expressed views on the significance of *McGirt*, its far-reaching impact on the criminal justice system in Oklahoma and the need for a practical solution by Congress. See *Bosse v. State*, 2021 OK CR 3, \_\_\_ P.3d \_\_\_ (Hudson, J., Concur in Results); *Hogner v. State*, 2021 OK CR 4, (Hudson, J., Specially Concur); and *Krafft v. State*, No. F-2018-340 (Okl. Cr., Feb. 25, 2021) (Hudson, J., Specially Concur) (unpublished).

**DISTRICT COURT OF TULSA COUNTY,  
STATE OF OKLAHOMA, AMENDED FINDINGS  
OF FACT AND CONCLUSIONS OF LAW  
(NOVEMBER 12, 2020)**

---

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

---

SHANNON JAMES KEPLER,

*Defendant/Appellant,*

v.

THE STATE OF OKLAHOMA,

*Plaintiff/Appellee.*

---

Tulsa County District Court Case No. CF-2014-3952

Court of Criminal Appeals Case No. F-2017-1186

Before: Tracy L. PRIDDY, District Judge

---

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 19, 2020. Katrina Conrad-Legler appeared on behalf of Appellant, Shannon James Kepler, 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 1 of his Brief-In-Chief asserted a claim that the District Court lacked jurisdiction to try him as he is a citizen of the Muscogee (Creek) Nation and that his crime occurred within the boundaries of the Creek Reservation. Appellant's claim raises two questions: (a) his Indian status, and (b) whether the crime occurred on the Creek Reservation. 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 Appellant, the OCCA directed the District Court to make findings of fact as to whether (1) Kepler has some Indian blood, and (2) is recognized as an Indian by a tribe or the federal government.<sup>1</sup> The Court finds as follows:

### **Findings of Fact**

1. Shannon James Kepler is the named Defendant/Appellant in the above-entitled matter.

2. The parties hereto stipulated and agreed that the defendant, Shannon James Kepler, has 1/128

---

<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 Cir. 2001). *Generally Goforth v. State*, 1982 OK CR 48, ¶6, 644 P.2d 114, 116.

Creek blood and was a member of the Muscogee Creek Nation (Roll Number 31936) at the time of the crime.<sup>2</sup>

3. Shannon James Kepler has been enrolled as a citizen of the Muscogee (Creek) Nation since January 1, 1981.<sup>3</sup>

4. The Muscogee Creek Nation is an Indian Tribal Entity recognized by the federal government.<sup>4</sup>

### **Conclusions of Law**

Regarding the first determination, the Court answers the first inquiry in the affirmative. The Court adopted the Stipulations of the parties, including the attached documentation filed on September 25, 2020 and made findings of fact thereon. Shannon James Kepler has 1/128 Creek Blood. Although the term “Indian” is not statutorily defined and various terms such as “sufficient”<sup>5</sup>, “substantial”<sup>6</sup>, “significant percentage of”<sup>7</sup> or “some”<sup>8</sup> have been used by courts in an attempt to define the quantity of Indian blood required to satisfy this inquiry, the OCCA mandate ordered this Court to determine “whether Kepler had

---

<sup>2</sup> Exhibit 1, Stipulations 2a.

<sup>3</sup> Exhibit 1, attachment Muscogee (Creek) Nation Enrollment Verification.

<sup>4</sup> Exhibit 1, Stipulations 2a.

<sup>5</sup> *United States v. LaBuff*, 658 F. 3d 873, 874-75 (9th Cir. 2011)

<sup>6</sup> *Vialpando v. State*, 640 P.2d 77, 79-80 (Wyo. 1982).

<sup>7</sup> *Goforth v. State*, 1982 OK CR 48, ¶ 6, 644 P.2d 114, 116.

<sup>8</sup> *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012).

some Indian blood.”<sup>9</sup> Thus, according to the term used by the OCCA in its Order, this Court concludes Shannon James Kepler has some Indian blood.

Additionally, the Court answers the second part of the inquiry in the affirmative. The Court adopted the Stipulations including the attached documentation and made findings of fact thereon. Shannon James Kepler was enrolled as a citizen of the Muscogee (Creek) Nation on January 1, 1981 and was recognized as a citizen of the Muscogee (Creek) Nation at the time of the offense. The Muscogee (Creek) Nation is an Indian Tribal Entity recognized by the federal government. Therefore, Shannon James Kepler is recognized as an Indian by a tribe or the federal government.

Having answered both inquiries in the affirmative, this Court concludes Shannon James Kepler in an Indian.

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

The OCCA further ordered the District Court to determine whether the crime occurred on the Creek Reservation, referred to as Indian Country.<sup>10</sup> The Court finds as follows:

---

<sup>9</sup> Order Remanding for Evidentiary Hearing August 19, 2020.

<sup>10</sup> *McGirt v. Oklahoma*, 140 S. Ct.2452 (2020); 18 U.S.C. §§ 1152, 1153.

### **Findings of Fact**

1. The parties hereto stipulated that the crime occurred at 202 N. Maybelle Ave., Tulsa, OK 74127.<sup>11</sup>

2. The parties further stipulated that this address is within the boundaries of the Muscogee (Creek) Nation — boundaries established through a series of treaties between the Muscogee Creek Nation and the United States Government.<sup>12</sup>

3. Additionally, these boundaries have been explicitly recognized as establishing a reservation as defined by 18 U.S.C. § 1151(a), and reaffirmed by the United States Supreme Court in *McGirt v. Oklahoma*, 140 S. Ct. 2452, 207 L.Ed.2d 985 (2020).<sup>13</sup>

### **Conclusions of Law**

The final inquiry is answered in the affirmative. This Court adopted the parties' Stipulations as well as the attached documentation and made findings of fact thereon. The crime occurred at a location 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 establishing 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

---

<sup>11</sup> Exhibit 1, Stipulations 1a.

<sup>12</sup> Exhibit 1, Stipulations 1a.

<sup>13</sup> Exhibit 1, Stipulations 1b and attached correspondence to Ms. Legler from the Muscogee (Creek) Nation.

crime occurred on the Creek Reservation which is Indian Country.

**WHEREFORE**, this Court finds that Shannon James Kepler is an Indian and that the crime for which he 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 12th day of November, 2020.

/s/Tracy L. Priddy

District Judge



**STIPULATIONS  
(SEPTEMBER 25, 2020)**

---

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

---

SHANNON JAMES KEPLER,

*Defendant/Appellant,*

v.

THE STATE OF OKLAHOMA,

*Plaintiff/Appellee.*

---

Tulsa County District Court Case No. CF-2014-3952

Court of Criminal Appeals Case No. F-2017-1186

Before: Tracy L. PRIDDY, District Judge

---

**STIPULATIONS**

This case is before the Court pursuant to an Order Remanding for Evidentiary Hearing from the Oklahoma Court of Criminal Appeals, dated August 19, 2020. In that Order, the Court of Criminal Appeals directed this Court to make findings of fact on two issues: (1) whether the defendant, Shannon James Kepler, has “some Indian blood” and “is recognized as an Indian by a tribe or the federal government” and (2) whether the crime occurred within the boundaries of the Muscogee Creek Reservation.

In response to the two questions this Court has been directed to answer, the parties have reached the following stipulations:

1. As to the location of the crime, the parties hereby stipulate and agree as follows:

- a. The crime in this case occurred at 202 N. Maybelle Ave., Tulsa, OK, 74127. This address is within the boundaries of the Muscogee Creek Nation-boundaries established through a series of treaties between the Muscogee Creek Nation and the United States Government.
- b. These boundaries have been explicitly recognized as establishing a reservation, as defined by 18 U.S.C. § 1151(a), and reaffirmed by the United States Supreme Court in *McGirt v. Oklahoma*, U.S., 140 S. Ct. 2452, 207 L.Ed.2d 985 (2020).

2. As to the status of the defendant, the parties hereby stipulate and agree as follows:

- a. The defendant, Shannon James Kepler, has 1/128 Creek blood and was a member of the Muscogee Creek Nation (Roll Number 31936) at the time of the crime. The Muscogee Creek Tribe is an Indian Tribal Entity recognized by the federal government.

App.18a

/s/ Katrina Conrad-Legler  
Counsel for Defendant/Appellant

/s/Jennifer Crabb  
Counsel for Plaintiff/Appellee

/s/ Erik Grayless  
Counsel for Plaintiff/Appellee

**MUSCOGEE (CREEK)  
NATION ENROLLMENT VERIFICATION  
(SEPTEMBER 16, 2020)**

---

Director  
Nathan Wilson



Managers  
Allan Colbert Jr.  
Andy Proctor

Board Members  
Joan Henson  
Elizabeth Yahola  
Clarence Johnson  
LeAnn Nix  
Jason Nichols



RE: Name: Shannon James Kepler  
Address: [REDACTED] Tulsa OK  
Birthdate: 5/20/1960  
Enrollment Date: January 1, 1981  
Roll Number: 31936  
Degree of Creek Blood: 1/128

A handwritten signature in cursive script that reads "Shannon J. Kepler".

I hereby certify that Shannon James Kepler, DOB: 5/20/1960 is enrolled with the Muscogee (Creek) Nation. Enrollment Date: 1/1/1981 Roll Number: 31936, Degree of Creek Blood: 1/128.

I attest and certify that the above information is a correct compilation of official records of the Muscogee (Creek) Nation filed and recorded with the Muscogee (Creek) Nation Citizenship Office, the public office responsible for keeping records of enrolled citizens, and that I am an authorized custodian of said records.

App.20a

Executed this 16th day of September, 2020.

/s/ Nathan Wilson  
Director  
Muscogee (Creek) Nation  
Citizenship Office

**LETTER FROM MUSCOGEE (CREEK) NATION  
(SEPTEMBER 15, 2020)**

---

The Muscogee (Creek) Nation  
Soniya McIntosh, Realty Manager  
P.O. Box 580, Okmulgee, OK 74447  
Phone (918) 732-7713  
Fax (918) 758-0745



David Hill  
Principal Chief

Del Beaver  
Second Chief

Oklahoma Indigent Defense System  
Attn: Katrina Conrad-Legler  
P.O. Box 926  
Norman, OK 73070

RE: 202 N. Maybelle Ave., Tulsa, OK 74127

Dear Ms. Legler:

According to the records of this office, the property and/or address which is described above is within the Muscogee (Creek) Nation reservation boundaries.

Should you have any questions concerning this report, please do not hesitate to call Rachel Langley, Realty Specialist, at (918) 732-7704.

Sincerely,

/s/ Sonya McIntosh  
Realty Manager

**LEGAL DESCRIPTION  
TULSA COUNTY RECORDS (OK)  
(SEPTEMBER 15, 2020)**

---

Owner Information

Flatt KG Jr.  
9705 S 33rd West Ave  
Tulsa, OK 741323813

Property Address

1202 N Maybelle Av  
W Tulsa 74127

{ Note: Additional property information such as  
maps, photos, assessments, etc. omitted }

**ORDER OF THE COURT OF CRIMINAL  
APPEALS, STATE OF OKLAHOMA,  
REMANDING FOR EVIDENTIARY HEARING  
(AUGUST 19, 2020)**

---

IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

---

SHANNON JAMES KEPLER,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

---

Case No. F-2017-1186, CF 14-3952

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

---

Appellant Shannon James Kepler was tried by jury and convicted of First Degree Manslaughter in the District Court of Tulsa County, Case No. CF-2014-3952. In accordance with the jury's recommendation, the Honorable Sharon K. Holmes sentenced Kepler to fifteen years imprisonment and a \$10,000.00 fine. Kepler must serve 85% of his sentence before he is eligible for parole consideration. Kepler appeals his Judgment and Sentence.



In Proposition 1 of his Brief-in-Chief filed January 28, 2019, Kepler claims the District Court lacked jurisdiction to try him. Kepler argues that he is a citizen of the Muscogee (Creek) Nation and that his crime occurred within the boundaries of the Creek Reservation. Kepler, in his direct appeal, relied on jurisdictional issues addressed in *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017), which was affirmed by the United States Supreme Court in *Sharp v. Murphy*, 591 U.S., 140 S. Ct. 2412 (2020) for the reasons stated in *McGirt v. Oklahoma*, 591 U.S., 140 S. Ct. 2452 (2020).<sup>1</sup>

Kepler's claim raises two separate questions: (a) his Indian status and (b) whether the crime occurred on the Creek Reservation. 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 the hearing process. Upon Kepler's presentation of *prima facie* evidence as to his 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.

---

<sup>1</sup> On July 30, 2019, we held Kepler's direct appeal in abeyance pending the resolution of the litigation in *Murphy*. Following the decision in *McGirt*, the State asked to file a supplemental response to Kepler's jurisdictional claim and he objected. In light of the present order, there is no need for an additional response from the State at this time and that request is **DENIED**.

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, Kepler's status as an Indian. The District Court must determine whether (1) Kepler has some Indian blood, and (2) is 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 Reservation. In making this determination the District Court should consider any evidence the parties provide, including but not limited to treaties, statutes, maps, and/or testimony.

The District Court Clerk shall transmit the record of the evidentiary hearing, the District Court's findings of fact and conclusions of law, and any other materials made a part of the record, to the Clerk of this Court, and counsel for Appellant, within five (5) days after the District Court has filed its findings of fact and conclusions of law. Upon receipt thereof, the Clerk of this Court shall promptly deliver a copy of that record to the Attorney General. A supplemental brief, addressing only those issues pertinent to the evidentiary hearing and limited to twenty (20) pages

---

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

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 January 28, 2019; Appellee's Answer Brief filed May 28, 2019; and Appellant's Reply Brief filed June 7, 2019.

**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 19th day of August, 2020.

App.27a

/s/ David B. Lewis  
Presiding Judge

RECUSED  
Dana Kuehn  
Vice Presiding Judge

/s/ Gary L. Lumpkin  
Judge

/s/ Robert L. Hudson  
Judge

/s/ Scott Rowland  
Judge

ATTEST:

John D. Hadden  
Clerk