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

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

JORDAN BATICE MITCHELL,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

Case No. F-2018-78

An Appeal from the District Court of Tulsa County
the Honorable William D. Lafortune, 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 Jordan Batice Mitchell was tried by jury and convicted of First Degree Murder in the District Court of Tulsa County, Case No. CF-2015-4207. In accordance with the jury's recommendation, the Honorable William D. LaFortune sentenced Mitchell

to life imprisonment with the possibility of parole. Mitchell appeals raising the following issues:

- (1) whether the State of Oklahoma had jurisdiction to prosecute him;
- (2) whether the Information was unconstitutionally amended after trial began resulting in a denial of due process;
- (3) whether evidence presented at trial was sufficient to sustain his conviction for first degree murder;
- (4) whether the admission of other crimes evidence violated his rights to due process of law;
- (5) whether his trial was rendered unfair by the admission of improper law enforcement opinion testimony;
- (6) whether the trial court abused its discretion in admitting a gruesome and inflammatory photograph; and
- (7) whether he received the effective assistance of trial counsel.

We find relief is required on Mitchell's jurisdictional challenge in Proposition 1, rendering his other claims moot. Mitchell 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) Mitchell's status as an Indian; and (b)

whether the crime occurred within the boundaries of the Muscogee Creek 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 for a status conference. The parties agreed at the status conference and subsequently entered a written Amended Stipulation in which they agreed: (1) that Mitchell has some Indian blood; (2) that he was a registered citizen 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 Reservation. The district court accepted the parties' stipulation.

On November 12, 2020, the District Court filed its Findings of Fact and Conclusions of Law. The District Court found the facts recited above in accordance with the stipulation. The District Court concluded that Mitchell is an Indian under federal law and that the charged crimes occurred within the boundaries of the Muscogee Creek Reservation. The District Court's findings are supported by the record. The ruling in *McGirt* governs this case and requires us to find the District Court of Tulsa County did not have jurisdiction to prosecute Mitchell. Accordingly, we grant relief on Proposition 1.

DECISION

The Judgment and Sentence of the district court is **VACATED** and the matter is **REMANDED WITH INSTRUCTION TO DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2020), the **MANDATE** 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
WILLIAM D. LAFORTUNE, DISTRICT JUDGE**

APPEARANCES AT TRIAL AND REMAND

Donn F. Baker
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District Attorney
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Counsel for State

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313 N.E. 21st Street
Oklahoma City, OK 73105
Counsel for Appellee

Opinion by: Rowland, V.P.J.

Kuehn, P.J.: Concur

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.¹ The result seems to be some form of “social justice” created out of whole cloth rather than a continuation of the solid precedents the Court has established over the last 100 years or more.

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*

¹ Senator Elmer Thomas, D-Oklahoma, was a member of the Senate Committee on Indian Affairs. After hearing the Commissioner’s speech regarding the Indian Reorganization Act (IRA) in 1934, Senator Thomas opined as follows:

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

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

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, FINDINGS OF FACT
AND CONCLUSIONS OF LAW
(NOVEMBER 12, 2020)**

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

JORDAN BATICE MITCHELL,

Defendant/Appellant,

v.

THE STATE OF OKLAHOMA,

Plaintiff/Appellee.

Tulsa County District Court Case No. CF-2015-4207

Court of Criminal Appeals Case No. F-2018-78

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. Jamie D. Pybas appeared on behalf of Defendant/Appellant, Jordan Batice Mitchell, whose appearance was waived. Assistant Attorney General Julie Pittman appeared for Plaintiff/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 his crime occurred within the boundaries of the Muscogee (Creek) Nation 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. Jordan Batice Mitchell'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) Mitchell has some Indian blood, and (2) is recognized as an Indian by a tribe or the federal government.¹ The Court finds as follows:

Findings of Fact

1. Jordan Batice Mitchell is the named Defendant/Appellant in the above-entitled matter.

2. The parties hereto stipulated that the defendant, Jordan Batice Mitchell, is an enrolled member of the Muscogee (Creek) Nation, with a blood quantum of 15/128. His Roll Number is 52844, and his date of enrollment is December 5, 1995. Mr. Mitchell's Muscogee

¹ *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) Nation Tribal Enrollment Verification form is attached to this stipulation and the parties agree it should be admitted into the record of this case. The Muscogee (Creek) Nation is an Indian Tribal Entity recognized by the federal government.²

Conclusions of Law

Regarding the first determination, the Court answers the first inquiry in the affirmative. The Court adopted the Amended Stipulations including the attached documentation and made findings of fact thereon. Jordan Batice Mitchell is the named Defendant/Appellant in this matter. Jordan Batice Mitchell has a quantum of Creek Indian blood of 15/128. Although the term “Indian” is not statutorily defined and various terms such as “sufficient”³, “substantial”⁴, “significant percentage of”⁵ or “some”⁶ 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 Mitchell had some Indian blood.”⁷ Thus, according to the term used by the OCCA in its Order, this Court concludes that Jordan Batice Mitchell has some Indian blood.

² Exhibit 1, Amended Stipulations 2.

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

⁴ *Vialpando v. State*, 640 P.2d 77, 79-80 (Wyo. 1982).

⁵ *Goforth v. State*, 1982 OK CR 48, ¶6, 644 P.2d 114, 116.

⁶ *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012).

⁷ Order Remanding for Evidentiary Hearing August 19, 2020.

The Court answers the second part of the inquiry in the affirmative. The Court adopted the Amended Stipulations including the Muscogee (Creek) Nation Tribal Enrollment Verification form and made findings of fact thereon. Jordan Batice Mitchell has been an enrolled member of the Muscogee (Creek) Nation since December 5, 1995 and was enrolled at the time the crime was committed. The Muscogee (Creek) Nation is an Indian Tribal Entity recognized by the federal government. Therefore, Jordan Batice Mitchell is recognized as an Indian by a tribe or the federal government.

Having answered both inquiries in the affirmative, this Court concludes Jordan Batice Mitchell in an Indian.

II. Whether the Crime Occurred in Indian Country

The OCCA further ordered the District Court to determine whether the crime occurred within the boundaries of the Creek Reservation, referred to as Indian Country.⁸ The Court finds as follows:

Findings of Fact

1. The parties hereto stipulated that the crime in this case occurred at 7169 South 77th East Avenue, in Tulsa, OK 74133. This address is within the boundaries of the Muscogee (Creek) Nation Reservation—boundaries established through a series of treaties between

⁸ *McGirt v. Oklahoma*, 140 S. Ct.2452 (2020); 18 U.S.C. §§ 1152, 1153.

the Muscogee (Creek) Nation and the United States government.⁹

2. The parties hereto stipulated that as determined by the United States Supreme Court in *McGirt v. Oklahoma*, 140 S. Ct. 2452, 207 L.Ed.2d 985 (2020), the boundaries have been explicitly recognized as establishing a reservation, and Congress has never explicitly erased those boundaries and disestablished the Muscogee (Creek) Nation Reservation, thus the crimes occurred within Indian Country as defined by 18 U.S.C. § 1151(a).¹⁰

Conclusions of Law

The final inquiry is answered in the affirmative. This Court adopted the Amended Stipulations including 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 Muscogee (Creek) Nation's Reservation. These boundaries were established through a series of treaties between the Creek Nation and the United States, and are explicitly recognized as a reservation defined by 18 U.S.C. § 1151(a). This Court concludes that the crime for which Appellant was convicted occurred within the Creek [Nation] Reservation. Based upon the Supreme Court's ruling in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), Muscogee (Creek) Nation Reservation is Indian Country.

WHEREFORE, this Court finds that Jordan Batice Mitchell is an Indian and the crime for which

⁹ Exhibit 1, Stipulations 1a.

¹⁰ Exhibit 1, Stipulations 1b.

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

**AMENDED STIPULATIONS
(NOVEMBER 12, 2020)**

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

JORDAN BATICE MITCHELL,

Defendant/Appellant,

v.

THE STATE OF OKLAHOMA,

Plaintiff/Appellee.

Tulsa County District Court Case No. CF-2015-4207
Court of Criminal Appeals Case No. F-2018-78

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 only two issues: (1) first, Jordan Mitchell's Indian status, specifically whether he 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 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 7169 South 77th East Avenue, in Tulsa Oklahoma, 74133. This address is within the boundaries of the Muscogee (Creek) Nation Reservation—boundaries established through a series of treaties between the Muscogee (Creek) Nation and the United States government.
- b. As determined by the United States Supreme Court in *McGirt v. Oklahoma*, ___ U.S. ___, 140 S. Ct. 2452, 207 L.Ed.2d 985 (2020), these boundaries have been explicitly recognized as establishing a reservation, and Congress has never explicitly erased those boundaries and disestablished the Muscogee (Creek) Nation Reservation, thus the crimes occurred within Indian Country as defined by 18 U.S.C. § 1151(a).

2. As to the status of the defendant, the parties hereby stipulate and agree that the defendant, Jordan Batice Mitchell, is an enrolled member of the Muscogee (Creek) Nation, with a blood quantum of 15/128. His Roll Number is 52844, and his date of enrollment is December 5, 1995. Mr. Mitchell's Muscogee (Creek) Nation Tribal Enrollment Verification form is attached to this stipulation and the parties agree it should be admitted into the record of this case. The Muskogee (Creek) Nation is an Indian Tribal Entity recognized by the federal government.

App.18a

Respectfully submitted,

/s/ Jamie D. Pybas
Counsel for Defendant/
Appellant

/s/ Jennifer Crabb
Counsel for Plaintiff/
Appellee

/s/ Erik M. Grayless for
Steve Kunzweiler
Counsel for Plaintiff/ Appellee
Erik Grayless for #21197

**MUSCOGEE (CREEK) NATION
ENROLLMENT VERIFICATION
(AUGUST 1, 2018)**

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

Director
Nathan Wilson



Managers
Andy Proctor
Allan Colbert Jr.

Board Members
Joan Henson
Elizabeth Yahola
Clarence Johnson

To: Whom It May Concern

From: Muscogee (Creek) Nation
Citizenship Board
P.O. Box 580
Okmulgee, OK 74447

Subject: Enrollment Verification
Jordan Batice Mitchell

I hereby certify that

DOB: 11[REDACTED]1993, is enrolled with the Muscogee
(Creek) Nation.

Enrollment Date: 12/5/1995;

Roll #: 52844

Degree of Muscogee (Creek) blood 15/128

App.20a

Sincerely,

/s/ Kari Harjo
Enrollment Specialist
Muscogee (Creek) Nation
Citizenship

**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: Jamie Pybas, Attorney
P.O. Box 926
Norman, OK 73070

RE: 7169 S. 77th E. Ave., Tulsa, OK 74133

Dear Ms. Pybas:

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

Booth, Veronica
7169 S 77th East Ave
Tulsa, OK 741332820

Property Address

7169 S 77 Av E
W Tulsa 74133

{ 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

JORDAN BATICE MITCHELL,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

Case No. F-2018-78

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

Appellant Jordan Batice Mitchell was tried by jury and convicted of First Degree Murder in the District Court of Tulsa County, Case No. CF-2015-4027. In accordance with the jury's recommendation, the Honorable William D. LaFortune sentenced Mitchell to life imprisonment with the possibility of parole. Mitchell must serve 85% of his sentence before he is eligible for parole consideration. Mitchell appeals his Judgment and Sentence.

In Proposition 1 of his Brief-in-Chief, filed October 12, 2018, Mitchell claims the District Court lacked jurisdiction to try him. Mitchell argues that he is a citizen of the Muscogee (Creek) Nation and that his crime occurred within the boundaries of the Creek Reservation.¹ Mitchell, 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).²

Mitchell'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

¹ Mitchell also claims that defense counsel was ineffective for failing to raise the issue of jurisdiction and asks the Court to either supplement the record on appeal with documentation bearing on the issue of jurisdiction or to order an evidentiary hearing for the purpose of developing the record with regard to his ineffective assistance of counsel claim.

² On April 5, 2019, we held Mitchell's direct appeal in abeyance pending the resolution of the litigation in *Murphy*. Following *McGirt*, Mitchell filed a Motion to Vacate Conviction and Sentence and Remand to the District Court with Instructions to Dismiss.

the hearing process. Upon Mitchell'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.

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, Mitchell's status as an Indian. The District Court must determine whether (1) Mitchell has some Indian blood, and (2) is recognized as an Indian by a tribe or the federal government.³

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)

³ 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.

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 and Appellant's Motion to Supplement the Record on Appeal or, in the Alternative, Application for Evidentiary Hearing on Sixth Amendment Claim filed October 12, 2018; Appellee's Answer Brief filed February 11, 2019; and Appellant's Reply Brief filed March 1, 2020.

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

/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