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**OPINION OF THE COURT OF CRIMINAL
APPEALS, STATE OF OKLAHOMA
(APRIL 8, 2021)**

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

JOSES RIC-E BECK,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

Case No. F-2019-115

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

OPINION

ROWLAND, VICE PRESIDING JUDGE:

Appellant Beck was tried by jury in the District Court of Johnston County, Case No. CF-2017-23, and convicted of First Degree Burglary (Count 1), in violation of 21 O.S.2011, § 1431; Aggravated Assault and Battery (Count 2), in violation of 21 O.S.2011,

646(A)(2); and three counts of Assault with a Dangerous Weapon (Counts 3, 4, and 5), in violation of 21 O.S. 2011, § 645, each after former conviction of two or more felonies. In accordance with the jury's verdict, the Honorable Wallace Coppedge, District Judge, sentenced Beck to thirty years imprisonment on Count 1, life imprisonment on Count 2, and thirty-five years imprisonment on each of Counts 3, 4, and 5, and ordered Counts 1 through 4 to run consecutively and Count 5 to run concurrently with Count 4.

Beck raises the following errors on appeal:

- (1) His convictions for Counts 3, 4, and 5 violate the constitutional prohibition against double jeopardy and statutory prohibition against multiple punishment;
- (2) The evidence was insufficient to support three convictions for Assault with a Dangerous Weapon and Counts 3 and 5 should be reversed;
- (3) He was denied a fair trial by the admission of prejudicial evidence of other crimes and bad acts;
- (4) The district court failed to adequately instruct the jury;
- (5) He was denied a fair trial because of prosecutorial misconduct;
- (6) The district court abused its discretion when it ordered his sentences to be served consecutively; and

- (7) The State of Oklahoma lacked jurisdiction to prosecute him because he is an “Indian” and the crime occurred in “Indian Country”.

This appeal turns on whether Beck is an Indian as defined by federal law, and whether he committed first degree burglary and the various assaults within Indian country as that term is defined by federal law. Because the answer to both questions is yes, federal law grants exclusive criminal jurisdiction to the federal government on at least the burglary charge, and possibly the assault charges as well. In any event, the State of Oklahoma was without jurisdiction to prosecute him on any of the counts. Because we find relief is required on Beck’s jurisdictional challenge in Proposition 7, his other claims are moot.

1. Jurisdiction and The Major Crimes Act

Title 18 Section 1153 of the United States Code, known as the Major Crimes Act, grants exclusive federal jurisdiction to prosecute certain enumerated offenses committed by Indians within Indian country. It reads in relevant part as follows:

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.

18 U.S.C. § 1153(a) (2013).

Count 1, the first degree burglary charge, fits squarely within the Major Crimes Act and its exclusive federal jurisdiction. Whether Counts 2 through 5 are among the enumerated crimes is less clear. The assaults may constitute a “felony assault under section 113”, but that is not something we must decide today. If the assaults are not covered under Section 1153, they are subject to the Act’s sister statute, 18 U.S.C. § 1152 (1948), which applies to other offenses and provides for federal or tribal jurisdiction. In either event, the State of Oklahoma is without jurisdiction to prosecute such an assault by an Indian within Indian country. *See State v. Klindt*, 1989 OK CR 75, ¶ 3, 782 P.2d 401, 403 (“[T]he State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country.”)

2. Controlling Law: *McGirt v. Oklahoma*

In *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452 (2020) the Supreme Court held that land set aside for the Muscogee-Creek Nation in the 1800’s was intended by Congress to be an Indian reservation, and that this reservation exists today for purposes of federal criminal law because Congress has never explicitly disestablished it. Although the case now before us involves the lands of the Chickasaw Nation, *McGirt’s* reasoning is nevertheless controlling.

3. Two Questions Upon Remand

A. Beck's Status as Indian

After *McGirt* was decided, this Court, on August 19, 2020, remanded this case to the District Court of Johnston County for an evidentiary hearing. We directed the District Court to make findings of fact and conclusions of law on two issues: (a) Beck's status as an Indian; and (b) whether the crime occurred in Indian Country, namely within the boundaries of the Chickasaw 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 October 1, 2020, the parties filed an Agreed Stipulation, agreeing that: (1) Beck has some Indian blood (49/64 degree Indian blood); (2) he was a recognized citizen of the Chickasaw Nation on the date of the charged offenses; (3) the Chickasaw Nation is a federally recognized tribe; and (4) the charged crimes occurred within the historical boundaries of the Chickasaw Nation.

On October 15, 2020, the parties appeared before the Honorable Wallace Coppedge for the scheduled evidentiary hearing. The district court acknowledged receipt of the parties' stipulation, granted the Chickasaw Nation's motion to enter as *amicus curiae*, and accepted the *amicus* brief filed on behalf of the tribe. The district court heard brief argument and the State agreed the joint stipulation resolved the factual question of Beck's Indian status. Judge Coppedge correctly concluded in his Findings of Fact and Conclusions of Law, issued November 16, 2020,

that on the date of the charged crimes, Beck was an Indian for purposes of federal law.

**B. Whether Crimes Were
Committed in Indian Country**

As to the second question on remand, whether the crimes were committed in Indian country, the stipulation of the parties was less dispositive. They acknowledged only that the charged crimes occurred within the historical geographic area of the Chickasaw Nation as designated by various treaties. At the evidentiary hearing, the State took no position on whether Congress established a reservation for the Chickasaw Nation or whether Congress ever erased those boundaries and disestablished the reservation. The parties admitted, as a joint exhibit, the Findings of Fact and Conclusions of Law from *Bosse v. State* filed in McClain County District Court, concluding Congress established a reservation for the Chickasaws and never erased its boundaries. Based on the parties' stipulation and materials submitted at the evidentiary hearing, Judge Coppedge ruled the charged crimes against Beck occurred within the boundaries of the Chickasaw Nation and that Congress never disestablished the Chickasaw Nation Reservation. We agree and so held in *Bosse v. State*, 2021 OK CR 3, ___ P.3d ___.

In *Bosse*, we reviewed the rulings of the McClain County District Court that served, in part, as the basis for the district court's ruling in Beck's case. *Id.*, 2021 OK CR 3, ¶¶ 8-12. We considered the applicable treaties cited by the McClain County District Court and agreed that Congress established a reservation for the Chickasaw Nation. *Id.* We further agreed that

Congress had never erased those reservation boundaries, and, under the analysis in *McGirt*, the Chickasaw Nation Reservation remains intact and is Indian country. *Id.*

Our holding in *Bosse* requires a finding that for purposes of federal criminal law, the land upon which the parties agree Beck committed these crimes is within the Chickasaw Nation Reservation and is Indian country. Under the analysis in *McGirt*, we hold the District Court of Johnston County did not have jurisdiction to prosecute Beck. Accordingly, we grant Proposition 7.

DECISION

The Judgment and Sentence of the district court is **VACATED** and this matter is **REMANDED WITH INSTRUCTIONS TO DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2021), 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
JOHNSTON COUNTY, THE HONORABLE
WALLACE COPPEDGE, DISTRICT JUDGE**

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OPINION BY: ROWLAND, V.P.J.

Kuehn, P.J.: Concur
Lumpkin, J.: Concur in Result
Lewis, J.: Specially Concur
Hudson, J.: Concur in Result

**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's 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.

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 sections 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).

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* 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.

LEWIS, JUDGE, SPECIALLY CONCURRING:

Based on my special writings in *Bosse v. State*, 2021 OK CR 3, ___ P.3d ___ and *Hogner v. State*, 2021 OK CR 4, ___ P.3d ___, I concur in the decision to dismiss this case for the lack of state jurisdiction.

HUDSON, J., CONCUR IN RESULTS:

Today's decision applies *McGirt u. Oklahoma*, 140 S. Ct. 2452 (2020) to the facts of this case and dismisses convictions from Johnston County for first degree burglary, aggravated assault and battery, and three counts of assault with a dangerous weapon. I concur in the results of the majority's opinion based on the stipulations below concerning the Indian status of Appellant and the location of these crimes within the historic boundaries of the Chickasaw Reservation. Under *McGirt*, the State cannot prosecute Appellant because of his Indian status and the occurrence of these crimes within Indian Country as defined by federal law. I therefore as a matter of *stare decisis* fully concur in today's decision.

I disagree, however, with the majority's definitive conclusion that Congress never disestablished the Chickasaw Reservation. Here, the State took no position below on whether the Chickasaw Nation has, or had, a reservation. The State's tactic of passivity has created a legal void in this Court's ability to adjudicate properly the facts underlying Appellant's argument. This Court is left with only the trial court's conclusions of law to review for an abuse of discretion. We should find no abuse of discretion based on the record evidence presented. But we should not conclude definitively that the Chickasaw Nation was never disestablished based on this record.

Finally, 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, ___ P.3d ___ (Hudson, J., Specially Concurs); and *Krafft v. State*, No. F-2018-340 (Okl. Cr., Feb. 25, 2021) (Hudson, J., Specially Concurs) (unpublished).

**DISTRICT COURT OF JOHNSTON COUNTY,
STATE OF OKLAHOMA, FINDINGS OF FACT
AND CONCLUSIONS OF LAW
(SIGNED NOVEMBER 16, 2020,
FILED NOVEMBER 19, 2020)**

IN THE DISTRICT COURT OF
JOHNSTON COUNTY, STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff,

v.

JOSES RIC-E BECK,

Defendant.

Case No. CF-2019-115

COCA No.19-115

Before: Wallace COPPEDGE, District Judge.

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW FOLLOWING HEARING**

Pursuant to the Oklahoma Court of Criminal Appeals (hereinafter "COCA") Order in the above case, this Court scheduled an evidentiary hearing to answer the specific questions of fact outlined by the COCA. The questions of fact were:

1. Does the Defendant, Joses Ric-E Beck, have some Indian blood and is he recognized as an Indian by a tribe or the Federal Government?
2. Whether the crime occurred in Indian Country.

In an attempt to ascertain all relevant facts, this Court allowed the Chickasaw Nation to intervene in the case to provide input into the issues outlined above. This Court has reviewed the Amicus Brief of the Chickasaw Nation with all attachments and exhibits. The Chickasaw Nation appeared through attorney Debra Gee.

This Court also reviewed the Appellant's Brief and the Agreed Stipulations between the parties, filed in this case on October 1, 2020.

This Court finds that the agreed stipulations satisfy the Defendant's obligation to prove a prima facie case that the Defendant has some Indian Blood and that he is a recognized member of the Chickasaw Nation (a federally recognized Indian tribe). The State of Oklahoma did not offer any evidence to contradict, rebut, or disprove those facts, and therefore this Court concludes that the Defendant is an enrolled member of the Chickasaw Nation.

This Court further finds that the Agreed Stipulations satisfy the Defendants obligation to prove a prima facie case that the crime occurred within the boundaries of the Chickasaw Nation. The State of Oklahoma did not offer any evidence to contradict, rebut, or disprove this stipulation and therefore this Court concludes that the Defendant's crimes occurred

within the historical boundaries of the Chickasaw Nation.

Per instructions from the COCA, this Court has reviewed the analysis of the United States Supreme Court in *McGirt*, and applying that analysis to the record before this Court concludes that Congress never disestablished the Chickasaw Nation Reservation.

It is so ordered this 16th day of November, 2020.

/s/ Wallace Coppedge

District Judge

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

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

JOSES RIC-E BECK,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

Case No. F-2019-115

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

**ORDER REMANDING FOR
EVIDENTIARY HEARING**

Joses Ric-E Beck was tried by jury trial in the District Court of Johnston County, Case No. CF-2017-23, and convicted of First Degree Burglary (Count 1), in violation of 21 O.S.2011, § 1431; Aggravated Assault and Battery (Count 2), in violation of 21 O.S.2011,

646(A)(2); and three counts of Assault with a Dangerous Weapon (Counts 3,4, and 5), in violation of 21 O.S.2011, § 645, each after former conviction of two or more felonies. In accordance with the jury's recommendation, the Honorable Wallace Coppedge sentenced Beck to thirty years imprisonment on Count 1, life imprisonment on Count 2, and thirty-five years imprisonment on each of Counts 3, 4, and 5, and ordered Counts 1 through 4 to run consecutively and Count 5 to run concurrently with Count 4. Beck must serve 85% of his sentence on Count 1 before he is eligible for parole consideration. Beck appeals his Judgment and Sentence.

In Proposition 7 of his Brief-in-Chief, filed July 31, 2019, Beck claims the District Court lacked jurisdiction to try him. Beck argues that he is a citizen of the Chickasaw Nation and that the crimes occurred within the boundaries of the Chickasaw Nation Reservation. Beck, 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).¹

¹ On February 21, 2020, we held Beck'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 Beck's jurisdictional claim. Beck, post *McGirt*, asked to file a supplemental brief to address the decision in *McGirt* and tendered for filing a supplemental brief. Beck also asked to supplement the record or for an evidentiary hearing. In light of the present order, there is no need for additional responses from the parties at this time and their present requests are **DENIED**.

Beck's claim raises two separate questions: (a) his Indian status and (b) whether the crime occurred in Indian Country. These issues require fact-finding. We therefore **REMAND** this case to the District Court of Johnston 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 Beck'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, Beck's status as an Indian. The District Court must determine whether (1) Beck has some Indian blood, and (2) is recognized as an Indian by a tribe or the federal government.²

² 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.

Second, whether the crime occurred in Indian Country. The District Court is directed to follow the analysis set out in *McGirt*, determining (1) whether Congress established a reservation for the Chickasaw Nation, and (2) if so, whether Congress specifically erased those boundaries and disestablished the 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 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 Johnston County: Appellant's Brief in Chief filed July 31, 2019 and Appellee's Response Brief filed January 15, 2020.

IT IS SO ORDERED.

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

/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