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**OPINION OF THE COURT OF CRIMINAL  
APPEALS, STATE OF OKLAHOMA  
(SEPTEMBER 23, 2021)**

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IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

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BRYCE MILLER,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

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NOT FOR PUBLICATION

Case No. C-2020-406

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

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**OPINION**

**ROWLAND, PRESIDING JUDGE:**

Bryce Miller appeals his Judgment and Sentence from the District Court of Pittsburg County, Case No. CF-2019-284, for Second Degree Murder, in violation of 21 O.S.2011, § 701.8. The Honorable Brendon Bridges, Associate District Judge, who presided at trial, sentenced Miller in accordance with the jury's verdict to

twenty years imprisonment. Miller raises ten issues for review.

We find relief is required on Miller’s jurisdictional challenge in Proposition 1, rendering his other nine claims moot. He claims the State of Oklahoma did not have jurisdiction to prosecute and punish him because his victim was Indian and the crimes occurred in Indian Country. *McGirt v. Oklahoma*, 591 U.S. \_\_\_, 140 S. Ct. 2452 (2020).

On April 26, 2021, we remanded this case to the District Court of Pittsburg County for an evidentiary hearing.<sup>1</sup> We directed the District Court to make findings of fact and conclusions of law on two issues: (a) the victim’s status as an Indian; and, (b) whether the crime occurred within the boundaries of the Choctaw 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.

Judge Bridges set the evidentiary hearing for June 10, 2021. On June 7, 2021, the parties filed “Agreed Stipulations and Joint Motion to Strike Status Conference and Waive Evidentiary Hearing” in which they agreed: (1) that the victim, J.N., had some Indian blood; (2) that the victim was a recognized

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<sup>1</sup> In our order, we granted Miller’s request to supplement the record with documents showing the victim had some Indian blood and was a member of the Choctaw Nation and documents showing the site of the crime is located within the boundaries of the Choctaw Nation Reservation. We also granted the State’s motion to stay the briefing schedule pending the outcome of the evidentiary hearing.

member of the Choctaw Nation on the date of his death; (3) that the Choctaw Nation is a federally recognized tribe; (4) that the victim is an Indian for purposes of federal criminal jurisdiction; and (5) that the charged crime occurred within the historic boundaries of the Choctaw Nation.

The District Court accepted the parties' stipulations and, on June 10, 2021, issued its written Findings of Fact and Conclusions of Law. The District Court found the facts recited above as stipulated by the parties. The District Court concluded that the victim is an Indian under federal law and that the charged crimes occurred within the boundaries of the Choctaw Nation Reservation. *See Sizemore v. State*, 2021 OK CR 6, ¶¶ 15-16, 485 P.3d 867, 870-71 (holding Choctaw Nation Reservation was not disestablished by Congress and is Indian Country). The District Court's findings and conclusions are supported by the record. The ruling in *McGirt* governs this case and requires us to find that the District Court of Pittsburg County did not have jurisdiction to prosecute Miller. Accordingly, we grant relief based on the jurisdictional defect raised in Proposition 1.<sup>2</sup>

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<sup>2</sup> The State filed a Motion to Stay and Abate Proceedings and a supplemental brief after the conclusion of the remand proceedings in the district court. The State maintains it has concurrent jurisdiction to prosecute Miller, a non-Indian, for the murder of an Indian and asks the Court to reserve ruling in this case pending the outcome of the ongoing litigation concerning concurrent jurisdiction in *Bosse v. State*, 2021 OK CR 3, 484 P.3d 286, *opinion vacated and withdrawn by* 2021 OK CR 23, \_\_\_ P.3d \_\_\_. We continue to reject the State's concurrent jurisdiction argument. *Roth v. State*, 2021 OK CR 27, \_\_\_ P.3d \_\_\_. Accordingly, we decline to grant the State's request to stay and abate Miller's direct appeal.

**DECISION**

The Judgment and Sentence of the district court is **VACATED** and the matter is **REMANDED WITH INSTRUCTIONS TO DISMISS**. The State's Motion to Stay and Abate Proceedings is **DENIED**. 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 PITTSBURG COUNTY,  
THE HONORABLE BRENDON BRIDGES,  
ASSOCIATE DISTRICT JUDGE**

**APPEARANCES AT TRIAL**

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**APPEARANCES AT EVIDENTIARY HEARING**

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Counsel for Appellee

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

Hudson, V.P.J.: Specially Concur

Lumpkin, J.: Concur in Results

Lewis, J.: Concur

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

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Today's decision dismisses a second degree murder conviction from the District Court of Pittsburg 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*. The parties have stipulated that the victim was a registered member of the Choctaw Tribe at the time of the murder, that he had some Indian blood and the murder in this case took place within the historic boundaries of the Choctaw Reservation. *See Rogers v. United States*, 45 U.S. 567, 572-573 (1846); *Goforth v. State*, 1982 OK CR 48, ¶ 6, 644 P.2d 114, 116; *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012). Under *McGirt*, the State has no jurisdiction to prosecute Appellant for the murder in this case. Instead, Appellant must be prosecuted in federal court where the exclusive jurisdiction for this crime lies. *See Roth v. State*, 2021 OK CR 27, \_\_\_ P.3d \_\_\_. 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, e.g., Sizemore v. State*, 2021 OK CR 6, 485 P.3d 867 (Hudson, J., Concur in Results).



**LUMPKIN, JUDGE, CONCURRING IN RESULTS:**

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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.<sup>1</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

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<sup>1</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 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).

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.

**DISTRICT COURT OF PITTSBURGH COUNTY,  
STATE OF OKLAHOMA, JOURNAL ENTRY OF  
FACTS AND CONCLUSIONS OF LAW  
(JUNE 17, 2021)**

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IN THE DISTRICT COURT OF PITTSBURGH  
COUNTY, STATE OF OKLAHOMA

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BRYCE MILLER,

*Defendant/Appellant,*

v.

STATE OF OKLAHOMA,

*Plaintiff/Appellee.*

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Case No. CF-2019-284

Court of Criminal Appeal Number: F-2020-406

Before: Brendon BRIDGES, Associate District Judge.

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**JOURNAL ENTRY OF FACTS AND  
CONCLUSIONS OF LAW IN ACCORDANCE  
WITH ORDER REMANDING FOR  
EVIDENTIARY HEARING  
ISSUED APRIL 29, 2021**

Now on the 10th day of June, 2021, comes on for evidentiary hearing for the purpose of determining the following: (a) the victim's Indian status and (b) whether the crimes occurred on the Choctaw Nation

Reservation, Both parties request this Court decide this matter on the written arguments and evidentiary stipulations of the parties. On the basis of this request, the Court accepts the evidentiary stipulations as set forth in the parties *Agreed Stipulations*, filed June 7, 2021 (Court's Exhibit 1). This includes the Court admitting for consideration The attachment in each parties' respective brief, including State's Exhibit A and B and the Defendant's Exhibit 1 and 2.

After receiving argument and evidentiary stipulations the Court hereby FINDS and ORDERS as follows:

### **FINDINGS OF FACT AND CONCLUSION OF LAW**

The first issue for adjudication is the victim's status as an Indian as defined by federal law. The Tenth Circuit's decision in *United States v. Diaz*, 679 F.3d 1183 (10th Cir. 2012) articulates *the* test for making such determination. As *Diaz* states:

To find that a person is an Indian the court must first make factual findings that the person has some Indian blood and, second, that the person is recognized as at Indian by a tribe or by the federal government.

*Id.* at 1187 (internal quotations omitted); *see also Goforth v. Stale*, 1982 OK CR 48, 644 P.2d 114. Applied to the present matter, the parties jointly stipulate in writing the evidence will show "J.N. [the victim] was at the time of his death an enrolled member of the Choctaw Nation (Membership Number CN004696), a federally recognized tribe, with some degree of Indian Blood." *See Agreed Stipulation, filed June 7,*

2021. The Court accepts these stipulations to the Court's Findings of Facts and Conclusions of Law. Applying elements of *Diaz* to the evidentiary stipulations in the present matter, the Court finds the victim has "some Indian blood" and is also "recognized as an Indian by a tribe and the federal government." For this reason, the Court finds the victim is an Indian under federal law.

Having found the victim is an Indian under federal law, this Court must now determine if the crime occurred on the Choctaw Nation Reservation. The parties in this matter stipulate "the crime at issue was committed in McAlester, Pittsburg County, Oklahoma, within the historical boundaries of the Choctaw Nation—boundaries as set forth in, and adjusted by the 1830, 1855, and 1866 treaties between the Choctaw Nation and the United States." The Court adopts the stipulation and finds the crime occurred on the Choctaw Nation Reservation.

In accordance with the directives of the Oklahoma Court of Criminal Appeals, the court reporter shall file an original and two certified copies of the transcript of this hearing within (20) days. This District Court Clerk shall transmit the record of the evidentiary hearing, this Journal Entry of Findings of Facts and Conclusions of Law with attachments, and the transcript of this proceeding to the Clerk of the Court of Criminal Appeals.

**BE IT SO ORDERED!**

/s/ Brendon Bridges  
Associate District Judge  
McIntosh County  
State of Oklahoma

**AGREED STIPULATIONS  
(JUNE 7, 2021)**

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IN THE DISTRICT COURT OF PITTSBURGH  
COUNTY, STATE OF OKLAHOMA

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BRYCE MILLER,

*Defendant/Appellant,*

v.

STATE OF OKLAHOMA,

*Plaintiff/Appellee.*

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Pittsburgh County District Court  
Case No. CF-2019-284

Court of Criminal Appeal Case No. F-2020-406

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**AGREED STIPULATIONS AND JOINT  
MOTION TO STRIKE STATUS CONFERENCE  
AND WAIVE EVIDENTIARY HEARING**

This case is before the court pursuant to an Order remanding for an evidentiary hearing from the Oklahoma Court of Criminal Appeals, dated April 26, 2021. In that order, the court of Criminal Appeals directed this court to make findings of fact on two issues: (1) the victim's Indian status, and (2) whether the crime occurred within the boundaries of the Choctaw Nation Reservation (Remand Order, p. 4). The Court of Criminal Appeals ordered that the evidenti-

ary hearing be held within sixty (60) days from the date of the order, which would require a hearing to be held on or before June 25, 2021. On May 6, 2021, the Court set this matter for status conference on May 17, 2021, at 11:30 a.m.

The parties wish to see the matter resolved with judicial efficiency and economy. This sentiment is in accordance with the Court of Criminal Appeals directive that in the event the parties agree as to what the evidence will show at any such hearing—and thus enter into written stipulation—“no hearing on the question presents is necessary” (Remand Order p.5). Accordingly, the parties agree that the matter can be addressed by stipulation, thus eliminating the need to an evidentiary hearing or status conference. As such in response to the two question this court has been directed to answer, the parties hereby announce and request this court to accept the following stipulation:

In response to the two issues that this Court has been directed to address, the parties have reached the following stipulation:

1. As to the status of the victim, J.N., the parties hereby stipulate and agree as follows.

That J.N. was at the time of his death an enrolled member of the Choctaw Nation (Membership Number CN004696), a federally recognized tribe with some degree of Indian Blood.

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

That the crime at issue was committed in McAlester, Pittsburg County, Oklahoma,



within the historical boundaries of the Choctaw Nation— boundaries-as set forth in, and adjusted by the 1830, 1855 and 1866 treaties between the Choctaw Nation and the United States.

Respectfully submitted this \_\_\_\_ day of May, 2021.

/s/ Kristi Christopher

Oklahoma Indigent Defense System  
Counsel for Defendant/Appellant

/s/ Sheri M. Johnson

Oklahoma Attorney General Office  
Counsel for Plaintiff/Appellee

/s/ Chuck Sullivan

Pittsburg County District Attorney

**LETTERS CERTIFYING  
TRIBAL MEMBERSHIP  
(MARCH 18, 2021 AND NOVEMBER 18, 2021)**

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**Choctaw Nation of Oklahoma  
CDIB/ Tribal Membership**

To Whom It May Concern:

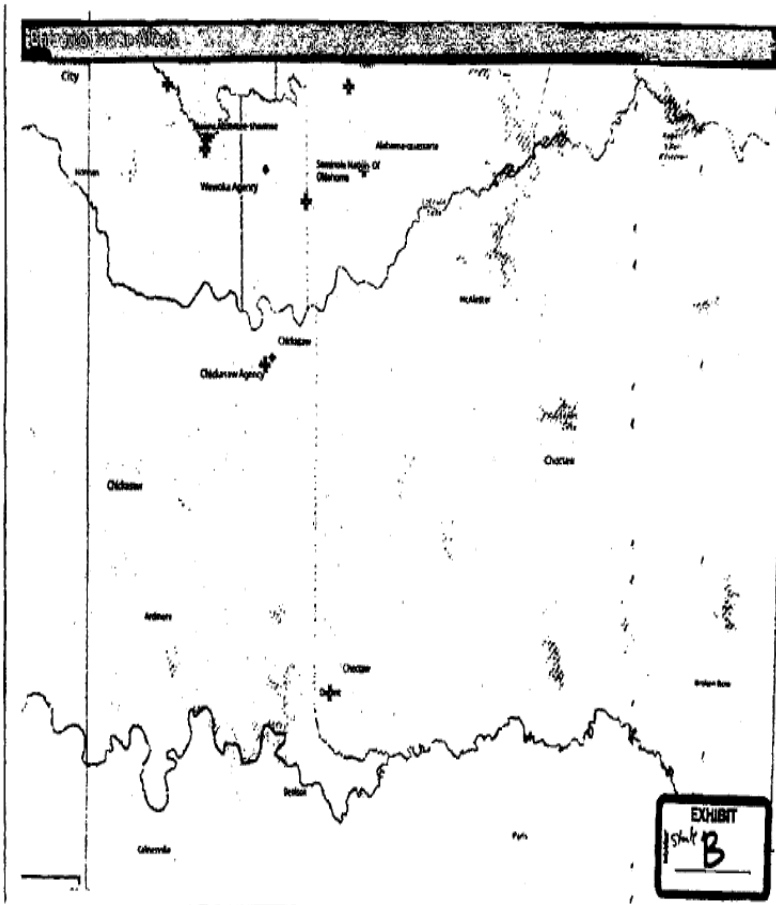
This letter is to certify that Jaylen Marquise Nelson, born 09/24/2002, social security number XXX-XX-5221, has a Certificate of Degree of Indian Blood (CDIB). Jaylen Marquise Nelson is a Tribal Member of the Choctaw Nation of Oklahoma (Membership #CN004696). Jaylen was approved tribal membership 1/13/2012.

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

Sincerely,

/s/ Terry Stephens

Director, CDIB/Membership  
Choctaw Nation of Oklahoma



**Choctaw Nation of Oklahoma  
CDIB/ Tribal Map View**



**Choctaw Nation of Oklahoma  
CDIB/ Tribal Membership**

To Whom It May Concern:

This letter is to certify that Jaylen Marquise Nelson, born 09/24/2002, social security number XXX-XX-5221, has a Certificate of Degree of Indian Blood (CDIB). Jaylen Marquise Nelson is a Tribal Member of the Choctaw Nation of Oklahoma (Membership #CN004696).

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

Sincerely,

/s/ Terry Stephens

Director, CDIB/Membership  
Choctaw Nation of Oklahoma

**LETTER VERIFYING CRIME LOCATION  
(NOVEMBER 25, 2020)**

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**Choctaw Nation of Oklahoma  
CDIB/ Tribal Membership**

Shreda Graham-Director  
1802 Chukka Hina Dr  
Durant, OK 74701  
580-924-8280 ext 4263  
sgraham@choctawnation.com

Deidra McCloud  
Capitol Post-Conviction  
Oklahoma Indigent Defense System PC. Box 926  
Norman, Oklahoma 73070-0926  
deidra.mccloud@choctawnation.com

Dear Ms. McCloud,

As per your request, this letter is to confirm that State Highway 113 & Mekko Road in McAlester, Oklahoma is located within the Choctaw Nation jurisdiction.

If you have any questions or if we may be of further assistance, please feel free to contact our office.

Sincerely,

/s/ Shreda Graham

Director,  
Real Property Management

**ORDER OF THE COURT OF CRIMINAL  
APPEALS, STATE OF OKLAHOMA,  
GRANTING APPELLANT'S REQUEST FOR  
REMAND AND SUPPLEMENTATION OF  
RECORD (APRIL 26, 2021)**

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IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

\_\_\_\_\_  
BRYCE MILLER,

*Appellant,*

v.

STATE OF OKLAHOMA,

*Appellee.*

\_\_\_\_\_

No. F-2020-406

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

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**ORDER GRANTING APPELLANT'S REQUEST  
FOR SUPPLEMENTATION OF RECORD AND  
REQUEST TO REMAND FOR EVIDENTIARY  
HEARING; REMANDING MATTER FOR  
EVIDENTIARY HEARING; AND GRANTING  
STATE'S MOTION TO STAY BRIEFING  
SCHEDULE PENDING OUTCOME OF  
EVIDENTIARY HEARING**

On January 15, 2021, Appellant Miller filed appellant's brief in chief as well as a request to supplement the appeal record and request for evidentiary hearing in this Court's Case No. F-2020-406, Pittsburg County Case No. CF-2019-284. Appellant challenges the State's jurisdiction pursuant to the Supreme Court's decision in *McGirt v. Oklahoma*, 591 U.S. \_\_\_, 140 S. Ct. 2452 (2020). Appellant claims that the victim in this case was an enrolled member of the Choctaw Nation and that the crime was committed within the boundaries of the Choctaw Nation Reservation. Appellant asks to supplement the record with material relevant to these issues, and asks this Court to remand the matter for an evidentiary hearing on that claim.

On March 8, 2021, this Court ordered Appellee to respond to Appellant's application to supplement the record and request for evidentiary hearing. Appellee filed that response on April 7, 2021. Appellee agrees that the record should be supplemented and asks this Court to stay the briefing schedule until the jurisdictional claim is decided.

Appellant has asked to supplement the record on appeal with a letter from the Choctaw Nation CDIB/Tribal Membership office stating that the victim in this case had a Certificate of Degree of Indian blood and was a Tribal Member of the Choctaw Nation. Appellant also proffers a letter from the Choctaw Nation's Real Property Management Division stating that the scene of the crime is located within the boundaries of the Choctaw Nation Reservation. Also received was a map of the area within Choctaw Nation jurisdiction. In its Motion, the State does not dispute that the victim was an enrolled member of the Choctaw Nation, with some degree of Indian blood, and that

the crime occurred within the boundaries of the Choctaw Nation Reservation. Appellee includes in its Motion the same letter from the Choctaw Nation CDIB/Tribal Membership office provided by Appellant, as well as a map of the Choctaw Nation Reservation. This Court has already determined that the Choctaw Nation Reservation was not disestablished and is Indian Country. *Sizemore v. State*, 2021 OK CR 6, ¶¶ 15-16.

Appellant claims that, due to the *McGirt* decision, it must be determined he committed a crime against an Indian victim on an Indian reservation. The State requests briefing in this matter be stayed pending this Court's ruling on Appellant's motion to supplement and his request for an evidentiary hearing. Appellant's Motion to Supplement the Record is **GRANTED** for the narrow purpose of considering the necessity for an evidentiary hearing on these claims.

**IT IS THEREFORE THE ORDER OF THIS COURT** that Appellant's requests to supplement the record and to remand for evidentiary hearing are **GRANTED**. The State's motion to stay briefing schedule pending the outcome of the evidentiary hearing is **GRANTED**.

Appellant's claim raises two separate questions: (a) the victim's Indian status and (b) whether the crime occurred on the Choctaw Nation Reservation. These issues require fact-finding. We therefore **REMAND** this case to the District Court of Pittsburg 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 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 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, the victim's Indian status. The District Court must determine whether (1) the victim had some Indian blood, and (2) was recognized as an Indian by a tribe or the federal government.<sup>1</sup>

Second, whether the crime occurred within the boundaries of the Choctaw Nation 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)

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<sup>1</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).

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 Pittsburg County: Appellant's Brief in Chief and his Motion to Supplement the Record, each filed January 15, 2021; and the State's Response to Appellant's Application to Supplement Appeal Record and Application for Evidentiary Hearing and Motion to Stay Briefing Schedule, filed April 7, 2021.

The Clerk of this Court is **DIRECTED** to transmit a copy of this Order to the Court Clerk of Pittsburg County; the District Court of Pittsburg County; The District Court of McIntosh County, the Honorable Brendon Bridges, Associate District Judge (who heard

trial on assignment to Pittsburg County); Appellant,  
the State of Oklahoma, and all counsel of record.

**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF  
THIS COURT** this 26th day of April, 2021.

/s/ Dana Kuehn  
Presiding Judge

/s/ Scott Rowland  
Vice Presiding Judge

/s/ Gary L. Lumpkin  
Judge

/s/ David B. Lewis  
Judge

/s/ Robert L. Hudson  
Judge

ATTEST:

/s/ John D. Hadden  
Clerk

**SUPPLEMENTAL BRIEF OF  
APPELLEE STATE OF OKLAHOMA  
AFTER REMAND AND BRIEF IN SUPPORT OF  
MOTION TO STAY AND ABATE PROCEEDINGS  
(JULY 7, 2021)**

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IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

---

BRYCE MILLER,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

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Case No. F-2020-406

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**SUPPLEMENTAL BRIEF OF APPELLEE  
AFTER REMAND AND BRIEF IN  
SUPPORT OF MOTION TO STAY  
AND ABATE PROCEEDINGS**

Comes now Appellee, by and through Dawn Cash, Acting Attorney General of the State of Oklahoma, and provides the following post-remand supplemental brief and brief in support of its Motion to Stay and Abate Proceedings. Defendant's direct appeal should be stayed, as his case involves one of the same issues

being litigated in *Oklahoma v. Bosse* before the Supreme Court—whether the State has concurrent jurisdiction over crimes committed by non-Indians against Indian victims, regardless of the location of the crimes.<sup>1</sup> This Court should abate these proceedings immediately, to conserve judicial resources. In support, Appellee shows the following:

**Procedural History.** After being charged with Murder in the First Degree in Pittsburg County District Court Case No. CF-2019-284, defendant was tried by jury, convicted of the lesser offense of Murder in the Second Degree by Imminently Dangerous Conduct, and sentenced to twenty years in prison (Tr. V 291-92; Sent. Tr. 35-36; O.R. 271, 368-70). In Proposition I of his brief on appeal, defendant claimed the State lacked jurisdiction to prosecute him because the victim was an enrolled member of the Choctaw Nation with some degree of Indian blood, and the crime occurred within the boundaries of the Choctaw Nation Reservation (Appellant’s Brief at 21). *See McGirt v. Oklahoma*, \_\_\_ U.S. \_\_\_, 140 S. Ct. 2452, 2460-82 (2020) (holding the Muscogee (Creek) Nation’s Reservation had not been disestablished for purposes of the Major Crimes Act, 18 U.S.C. § 1153).<sup>2</sup> Defendant also raised a correlative

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<sup>1</sup> *Bosse* also involves the application of the rules of procedural default, which are not implicated in defendant’s direct appeal.

<sup>2</sup> The State of Oklahoma argued in the *McGirt* litigation that the Muscogee (Creek) Nation did not have a reservation. The State recognizes that this Court is bound by *McGirt*, and that it has recently applied *McGirt* to hold that the Choctaw Nation has a reservation. *See Bosse v. Oklahoma*, \_\_\_ U.S. \_\_\_, 137 S. Ct. 1, 2 (2016) (only the Supreme Court can overrule itself); *Sizemore v. State*, 2021 OK CR 6, 1 16, 485 P.3d 867, 871 (affirming the district court’s finding that the Choctaw Nation

ineffective assistance of counsel claim in Proposition IX of his brief on appeal, challenging, *inter alia*, trial counsel's failure to preserve his Indian Country jurisdictional claim in the proceedings below (Appellant's Brief at 43-45; 3.11 Application, Attachment 1, Exs. 1-3).

**Remand Proceedings.** After ordering a limited response from Appellee, wherein Appellee preserved its concurrent jurisdiction argument, this Court, on April, 26, 2021, issued an Order remanding this case for an evidentiary hearing,<sup>3</sup> directing the district court to hold and hearing to determine: (1) the victim's Indian status, and (2) whether the crime occurred within the boundaries of the Choctaw Nation Reservation (Remand Order, p. 4). The Order advised that the parties could "enter into a written stipulation setting forth those facts upon which they agree and which

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has a reservation that has not been disestablished by Congress). However, the State strenuously disagrees with the holdings in *McGirt* and *Sizemore*, and preserves the right to ask the Supreme Court to review those holdings. As explained by Chief Justice Roberts in his dissent, Congress disestablished any reservations created for the Muscogee (Creek), Choctaw, Cherokee, Chickasaw, and Seminole Nations. *See McGirt*, 140 S. Ct. at 2482-2500 (Roberts, C.J., dissenting). *McGirt* is inconsistent with the Supreme Court's cases that do not require the use of any particular words to disestablish a reservation. *Id.* at 2486-89 (Roberts, C.J., dissenting). For these reasons and others, the State should have jurisdiction in this case because the crime was not committed within Indian Country as defined by 18 U.S.C. § 1151(a).

<sup>3</sup> In its Order, this Court stayed the briefing schedule in the instant case pending the outcome of the evidentiary hearing (Remand Order, p. 3).

answer the questions presented and provide the stipulation to the District Court.” (Remand Order, p. 5).

On June 10, 2021, the Honorable Brendan Bridges, Associate District Judge of McIntosh County, held an evidentiary hearing in accordance with this Court’s Order. Prior to the hearing, counsel for the defendant and the State presented the district court with Agreed Stipulations (attached as Court’s Exhibit 1 to the Journal Entry of Facts and Conclusions of Law in Accordance with Order Remanding for Evidentiary Hearing Issued April 29, 2021), and pre-hearing briefs;<sup>4</sup> the parties jointly requested that the district court issue its ruling based on the pleadings and evidentiary stipulations. On June 11, 2021, the district court issued its Journal Entry of Facts and Conclusions of Law in Accordance with Order Remanding for Evidentiary Hearing Issued April 29, 2021 (hereinafter “Findings and Conclusions”).<sup>5</sup>

The parties stipulated that the victim “was at the time of his death an enrolled member of the Choctaw Nation (Membership Number CN004696), a federally recognized tribe, with some degree of Indian Blood”; and “that the crime at issue was committed in McAlester, Pittsburg County, Oklahoma, within the historical boundaries of the Choctaw Nation[.]” (Findings and Conclusions, Court’s Exhibit 1). The district court accepted the parties’ stipulations (Findings and Conclusions at 2).

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<sup>4</sup> In its Pre-Evidentiary Hearing Brief on Indian Country Remand filed in the district court, the State preserved its legal argument that it has concurrent jurisdiction over the non-Indian defendant’s crimes, irrespective of the victim’s status.

<sup>5</sup> The Findings and Conclusions are attached hereto as Exhibit A.

Applying the test for determining whether a person is an Indian in *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012), and based on the stipulations, the district court found the victim “is an Indian under federal law.” (Findings and Conclusions at 2). The district court also found that “the crime occurred on the Choctaw Nation Reservation.” (Findings and Conclusions at 2).

This Court should affirm the defendant’s conviction, because as the State has fully briefed, it has concurrent jurisdiction over crimes committed by non-Indians, even in alleged Indian Country. Alternatively, this Court should stay this appeal pending the Supreme Court’s review of the State’s assertion of concurrent jurisdiction.

**Motion to Stay and Abate Proceedings.** Defendant’s Indian Country jurisdictional claim should not be entertained. Appellee recognizes this Court’s decision in *Bosse v. State*, 2021 OK CR 3, ¶¶ 23-28, 484 P.3d 286, 294-295, wherein this Court rejected the State’s assertion that it had concurrent jurisdiction. However, the United States Supreme Court, granted a stay of *Bosse’s* mandate as part of the State’s certiorari appeal:

The application to stay the mandate of the Court of Criminal Appeals of Oklahoma, case No. PCD-2019-124, presented to Justice Gorsuch and by him referred to the Court is granted pending the timely filing and disposition of a petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall termin-



ate upon the issuance of the mandate of this Court.

Order in Pending Case, *Oklahoma v. Bosse*, Case No. 20A161 (May 26, 2021).

The State's application for a stay in the Supreme Court included argument that the Court is likely to grant certiorari on the State's assertion of concurrent jurisdiction (as well as on procedural matters not implicated here). In granting the State's motion, the Court indicated that it agrees. *See White v. Florida*, 458 U.S. 1301, 1302 (1982) (Powell, J., in chambers) (a stay of the mandate will be issued when (1) there is a reasonable probability that four members of this Court will be of the opinion that the issues are sufficiently meritorious to warrant a grant of certiorari; (2) there is a significant possibility of reversal of the lower court's decision; and (3) it is likely that irreparable harm will result from issuance of the mandate). Therefore, this Court should not decide any cases that might be affected by the Supreme Court's decision in *Bosse*, just as this Court stayed its hand pending Supreme Court review of the Tenth Circuit's decision in *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017). Indeed, this Court recently granted indefinite stays in direct appeals involving concurrent jurisdiction challenges to Indian Country jurisdictional claims. *See Castro-Huerta v. State*, Case No. 2017-1203, Order Staying Issuance of Mandate Indefinitely (Old. Cr. June 2, 2021) (attached as Exhibit B); *McDaniel v. State*, Case No. F-2017-357, Order Staying Issuance of Mandate Indefinitely (Okl. Cr. June 2, 2021) (attached as Exhibit C). The same action is warranted here.

There is no federal statute of limitations on first degree murder. *See United States v. Gallaher*, 624 F.3d

934 (9th Cir. 2010) (holding there is no federal statute of limitations on first degree murder—because murder is a capital offense for which there is no statute of limitations under 18 U.S.C. § 3281—even for a defendant charged with murder in Indian Country who may not be eligible for the death penalty). Accordingly, the requested stay will not impact the ability of the federal government to try defendant should the State lose *Bosse*.<sup>6</sup>

For all the foregoing reasons, this Court should abate this direct appeal as a result of the ongoing litigation in *Bosse*. The instant motion is made in good faith and not for the purpose of delay.

In conclusion, the State respectfully asks this Court to abate Petitioner’s direct appeal until the Supreme Court denies certiorari, or rules on the merits, in *Bosse*.

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<sup>6</sup> Even if there were an applicable federal statute of limitations, there would be no impact to future prosecution. The State will provide the relevant United States Attorneys’ Offices with a list of cases that have been stayed so that the statute of limitations can be monitored. The claims at issue in *Bosse* do not implicate the federal government’s ability to attempt to obtain a conviction. See *United States v. Kepler*, No. 20-CR-276-GKF, 2021 WL 66654, \*2-3 (N.D. Okla. Jan. 7, 2021) (unpublished) (denying motion to dismiss, on double jeopardy grounds, federal charges pending before this Court determined the defendant was entitled to relief from his state convictions).

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Respectfully submitted,

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**PRE-EVIDENTIARY HEARING BRIEF OF  
APPELLEE STATE OF OKLAHOMA  
ON INDIAN COUNTRY REMAND  
(MAY 20, 2021)**

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IN THE DISTRICT COURT OF PITTSBURGH  
COUNTY STATE OF OKLAHOMA

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BRYCE MILLER,

*Defendant/Appellant,*

v.

THE STATE OF OKLAHOMA,

*Plaintiff/Appellee.*

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Appellate Case No. F-2020-406

District Court Case No. CF-2019-284

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**STATE'S PRE-EVIDENTIARY HEARING  
BRIEF ON INDIAN COUNTRY REMAND**

Bryce Miller, hereinafter referred to as Defendant, was convicted of Second Degree Murder by Imminently Dangerous Conduct in Case No. CF-2019-284, in the District Court of Pittsburg County. Defendant was sentenced to twenty (20) years in prison. Defendant is now before this Court for an evidentiary hearing on his claim that the State lacked jurisdiction over his crime pursuant to 18 U.S.C. § 1153.

**Procedural History.** Defendant perfected a direct appeal of his conviction to the Oklahoma Court of Criminal Appeals (OCCA), in Case No. F-2020-406, arguing *inter alia* that the State lacked jurisdiction to prosecute him because the victim, J.N. was a member of the Choctaw Nation and the crime occurred within the boundaries of the Choctaw Nation reservation. On April 26, 2021, the OCCA remanded this case for an evidentiary hearing to determine: (1) the victim’s Indian status, and (2) whether the crime occurred within the boundaries of the Choctaw Nation Reservation (Remand Order, p. 4). The Order advised that 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.” (Remand Order, p. 5). On May 6, 2021, this Court issued an Order Setting Status Conference for the Purpose of Setting Evidentiary Hearing; the status conference was scheduled for May 17, 2021, at 11:30 a.m. On May 14, 2021, all parties (the Attorney General’s Office, the Pittsburg County District Attorney’s Office, and counsel for Defendant) consented to strike the status conference and provide agreed stipulations to the District Court in lieu of an evidentiary hearing; the Agreed Stipulations and Joint Motion to Strike Status Conference and Waive Evidentiary Hearing will be filed separately.

**Indian Status.** This issue is not in dispute.<sup>1</sup> The State has confirmed that J.N. was an enrolled mem-

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<sup>1</sup> Although the State does not dispute that the victim was Indian, the State preserves its position that the State has jurisdiction under the General Crimes Act over this non-Indian-on-Indian crime. While the OCCA recently disagreed with the State’s position regarding the General Crimes Act, *see Bosse v. State*, 2021

ber of the Choctaw Nation, a federally recognized tribe, with some degree of Indian Blood at the time of his murder.<sup>2</sup> The State has also confirmed that the Choctaw Nation is an Indian Tribal Entity recognized by the federal government. *See United States v. Antelope*, 430 U.S. 641, 646 n.7 (1977) (members of non-federally recognized tribes are not subject to the Major Crimes Act).

**Indian Country.** The State does not dispute that the crime in this case was committed in McAlester, Oklahoma, a situs within the historical boundaries of the Choctaw Nation—boundaries as set forth in, and adjusted by, the 1830, 1855 and 1866 treaties between the Choctaw Nation and the United States (Exhibit B, Map of the Choctaw Nation).<sup>3</sup> The State also acknowledges that the OCCA recently held in *Sizemore v. State*, 2021 OK CR 6, ¶ 16, \_\_\_ P.3d \_\_\_, that Congress established a reservation for the Choctaw Nation in said treaties, and never erased the boundaries and disestablished the Choctaw Nation Reservation.

Defendant’s Indian-Country jurisdictional claims predicated on the United States Supreme Court’s decision in *McGirt v. Oklahoma*, \_\_\_ U.S. \_\_\_, 140 S. Ct. 2452 (2020), holding that the Creek Nation’s Reser-

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OK CR 3, ¶ 28, 484 P.3d 286, 295, the State is seeking certiorari review in the United States Supreme Court on that issue.

<sup>2</sup> The State has attached a copy of a letter from the Choctaw Nation of Oklahoma CDIB/Tribal Membership office listing the victim’s enrollment date as January 13, 2012, and verifying that the victim was issued a CDIB (Exhibit A).

<sup>3</sup> Bureau of Indian Affairs, *U.S. Domestic Sovereign Nations: Land Areas of Federally-recognized Tribes*, <https://biamaps.doi.gov.indianlands> (last visited March 26, 2021).

vation had not been disestablished. On the same day it decided *McGirt*, and for the same reasons, the Supreme Court also affirmed the Tenth Circuit's decision in *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017). *Sharp v. Murphy*, \_\_\_ U.S. \_\_\_, 140 S. Ct. 2412 (2020). The State of Oklahoma argued strenuously at the United States Supreme Court in both *McGirt* and *Murphy* that the reservations were disestablished. The State of Oklahoma still strongly believes that *McGirt* was wrongly decided and therefore, Defendant's Indian County jurisdictional claim is without merit. However, lower courts are bound to follow Supreme Court precedent as only the United States Supreme Court can overrule itself. *Bosse v. Oklahoma*, \_\_\_ U.S. \_\_\_, 137 S. Ct. 1, 2 (2016).

**Conclusion.** The State does not dispute that the victim, J.N., was an enrolled member of the Choctaw Nation, a federally recognized tribe, with some degree of Indian Blood and that the crime in this case occurred within the historical boundaries of the Choctaw Nation Reservation. The State asks this Court to accept the agreed stipulations and issue its findings of fact and conclusions of law without requiring further development of the record.

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Respectfully submitted,

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