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OPINION OF THE COURT OF CRIMINAL APPEALS, STATE OF OKLAHOMA (AUGUST 12, 2021)

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

SAMANTHA ANN PERALES,

Appellant,

v.

STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

Case No. F-2018-383

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

SUMMARY OPINION

LEWIS, JUDGE:

Samantha Ann Perales, Appellant, was tried and convicted of Count 1, first degree manslaughter, in violation of 21 O.S.2011, § 711; Count 2, possession of controlled dangerous substance-methamphetamine, in violation of 63 O.S. Supp.2012, § 2-402; Count 3,

unlawful possession of drug paraphernalia, in violation of 63 O.S.2011, § 2-405; and Count 4, no valid driver's license, in violation of 47 O.S.2011, § 6-303, in Delaware County District Court, Case No. CF-2015-355. The Honorable Barry V. Denney, District Judge, presided at Perales' jury trial and sentenced her to life imprisonment on Count 1, ten (10) years imprisonment on Count 2, one (1) year imprisonment on Count 3, and thirty (30) days on Count 4.[1] Judge Denny ordered the sentences to be served concurrently, gave credit for time served, and imposed various fees and costs. Perales filed an appeal from the Judgments and Sentences raising four propositions of error. We find that the claim raised in her first proposition entitles Perales to relief, thus the remaining propositions are moot.

In her first proposition, Perales claims the District Court lacked jurisdiction to try her. Perales argues that she is a citizen of the Osage Nation and the crimes occurred within the boundaries of the Cherokee Nation Reservation. Perales, in her direct appeal, relies on *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).

Perales' claim raises two separate questions: (a) her Indian status and (b) whether the crime occurred in Indian Country. This Court remanded the case back to the district court because we determined that

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[1] Perales must serve 85% of her sentence in Count 1 before being eligible for consideration for parole. 21 O.S.Supp.2015, § 13.1 (3).

her claim required fact-finding on the two separate questions.

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

We also directed the District Court that in the event the parties agreed as to what the evidence would show with regard to the questions presented, the parties 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. The District Court was also ordered to file written findings of fact and conclusions of law with this Court.

An evidentiary hearing was timely held before the Honorable Barry Denney, District Judge, and Findings of Fact and Conclusions of Law were timely filed with this Court. The record indicates that appearing before the District Court were attorneys from the Delaware County District Attorney's office, the Oklahoma Attorney General's office, the Attorney General's office of the Cherokee Nation, and the Oklahoma Indigent Defense System.

In its Findings of fact, the District Court found:

1. Perales has 1/8 Osage blood and was a member of the Osage Nation at the time of the crimes. The Osage Nation is an Indian Tribal Entity recognized by the federal government.

2. The crimes occurred in Delaware County, Oklahoma, . . . and the location of the crimes falls within the geographic area set out by the Treaties with the Cherokee Nation. . . . Through the . . . treaties, Congress established a reservation for the Cherokee Nation. Congress has not erased the boundaries of the reservation described. . . .

Based on the evidence presented, the trial court concluded, "The State of Oklahoma lacked jurisdiction to prosecute and try Ms. Perales for the crimes charged since they were committed in Indian Country by an Indian."

We find that the trial court's findings of fact and conclusions of law are supported by the record. The parties stipulated that Perales was indeed a member of the Osage Nation at the time of the crimes and the location of the crimes was within the geographic area

of the historical boundaries of the Cherokee Nation Reservation. Exhibits supporting the stipulations were offered by Perales and the Cherokee Nation. The exhibits were admitted by the trial court without objection by the State. The State, in its argument, made clear that it did not take a position on Perales' status as an Indian for the purposes of the law, The State also announced it held no position as to whether or not the reservation for the Cherokee Nation existed at the time of the crimes. The Delaware County District Attorney argued that years of jurisprudence has been undone and the *McGirt* decision does not serve justice. The District Attorney noted that the federal statute of limitations for manslaughter, Perales' crime, is five years. Her crimes occurred on April 12, 2015. On the hearing date, October 14, 2020, the federal government was outside the statute of limitations. He argued that Perales potentially escapes justice.

Perales' counsel reminded Judge Denney that his was a Court of law and not one of equity. He argued that the issues were answered and Perales is an Indian and her crimes occurred in Indian Country. He pointed out that no evidence was presented to show that the Cherokee Reservation was disestablished.

The parties were given the opportunity to file response briefs addressing issues from the evidentiary hearing. Their briefs mirrored their arguments at the hearing and the stipulations and evidence presented at the trial court. The State asks that the mandate be stayed for thirty (30) days to ensure that the proper authorities may secure custody of Perales. *See* 22 O.S.2011, § 846.

Based on the record before us, we find that the District Court's findings of fact and conclusion of law

is supported by the entire record. We find, therefore, that Perales has met her burden of establishing her status as an Indian as having 1/8 degree of Indian blood and being a member of the Osage Tribe at the time of the crimes. We also find that the trial court's finding that the crimes occurred within the historical boundaries of the reservation set aside for the Cherokee Nation is supported by the record. This Court has previously held that the Cherokee Nation was granted a reservation in Oklahoma and that reservation has not been disestablished by Congress. *Spears v. State,* 2021 OK CR 7, ¶ 15, ___ P.3d ___, *Hogner v. State,* 2021 OK CR 4, ¶ 18, ___ P.3d ___. We therefore find that the State of Oklahoma did not have jurisdiction to prosecute Perales in this matter. The Judgments and Sentences in this case are hereby reversed and the case remanded to the District Court of Delaware County with instructions to dismiss.[2]

DECISION

The Judgments and Sentences of the District Court of Delaware County are **REVERSED** and the case 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 **STAYED** for twenty (20) days from the delivery and filing of this decision.

APPEAL FROM THE DISTRICT COURT OF DELAWARE COUNTY THE HONORABLE BARRY V. DENNEY, DISTRICT JUDGE

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[2] The Application of the Cherokee Nation to file Amicus Brief is DENIED as Moot. Counsel for the Cherokee Nation appeared at the evidentiary hearing.

APPEARANCES AT TRIAL

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Opinion by: Lewis, J.
Rowland, P.J.: Dissent
Hudson, V.P.J.: Concur in Result
Lumpkin, J.: Concur in Result
Kuehn, J.: Concur in Result

ROWLAND, PRESIDING JUDGE, DISSENTING:

I dissent to dismissing Perales's First Degree Manslaughter conviction based on her jurisdictional challenge. The Major Crimes Act (MCA), in my view, does not preempt the State of Oklahoma's criminal jurisdiction when there is no prosecutable federal crime due to the expiration of the federal statute of limitations. Three points support this conclusion. First, this Court cannot properly apply the MCA when federal authority to prosecute is absent and this inoperability of the MCA leaves no authority preempting the State's coterminous jurisdiction. Second, the underlying purposes of the MCA are frustrated and perverted by holding that state jurisdiction is preempted when no concomitant and preempting federal jurisdiction is present. Third, the majority's approach unnecessarily creates just the sort of jurisdictional gap this Court warned of in *Goforth v. State,* 1982 OK CR 48, 644 P.2d 114.

A.
A Summary of the Facts

This case involves a head-on crash in which Perales's pickup truck crossed the center line and violently smashed into Amberly Bradley's vehicle, killing her and injuring her seven passengers. An eyewitness testified that Perales's vehicle had been driving erratically for miles, drifting into the opposite lane of traffic and at times driving down the center line. It ultimately hit Bradley's truck head-on, sending both vehicles airborne. Perales's truck rolled and then burst into flames, and Bradley's truck, its

camper shell flung afar, was mangled. A mortally wounded Bradley languished inside the wreckage for a bit and then died at the scene. Her four adult and three child passengers sustained various injuries. A search of Perales's truck revealed a syringe containing a quantity of liquid methamphetamine. A search of Perales's blood revealed the presence of methamphetamine.

B.
State Jurisdiction Is Not and Was Never Preempted in This Case

When an Indian commits certain offenses in Indian Country, the MCA gives the federal government exclusive jurisdiction to prosecute. This law is preemptive of state criminal jurisdiction when it applies. . . . ', *United States v. John,* 437 U.S. 634, 651 (1978) (emphasis added). If the MCA, or in the case of lesser crimes the Indian Country Crimes Act (ICCA), do not apply, then the State of Oklahoma, as a sovereign with general police powers, has inherent authority to prosecute and punish crimes within its borders.

When properly raised and proved the MCA acts to preempt state jurisdiction with federal jurisdiction, but it is not self-executing; one claiming a lack of state jurisdiction in a particular case must make a *prima facie* showing that the defendant or the victim is an Indian and that the crime was committed in Indian Country. *Parker v. State,* 2021 OK CR 17, ¶ 32, ___ P.3d ___; *Goforth v. State,* 1982 OK CR 48, ¶¶ 6-9, 644 P.2d 114, 116-17. Failure to prove either of these points results in the State of Oklahoma retaining jurisdiction over the prosecution. *Goforth,* 1982 OK

CR 48, ¶ 7, 644 P.2d at 116. Where these two factors are established, the MCA preempts the State of Oklahoma's jurisdiction to prosecute the major crime, vesting exclusive jurisdiction in the federal government. The preemption of state prosecution with federal prosecution cannot happen here because of the expiration of the federal statute of limitations for manslaughter. Accordingly, at best, only one-half of the MCA's operations can be effectuated, namely taking jurisdiction from the State since the uncontroverted evidence shows there is no longer a prosecutable federal crime.[1]

The majority treats the preemption of state jurisdiction as a fixed and unchallengeable feature of history, something which happened at the time of the commission of the crime but was only recently revealed when Perales raised her claim and presented evidence of her Indian status and the location of the crime in Indian Country. Were this viewpoint correct, even those whose convictions were final decades ago could erase them in post-conviction proceedings without running up against procedural bars. But, as the Tenth Circuit Court of Appeals noted years ago, where subsequent court rulings deny a sovereign of jurisdiction on an Indian reservation, those who were otherwise fairly prosecuted before that court decision are barred from raising the jurisdictional claim in a collateral attack once their appeals are final. *United*

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[1] If the federal court were to determine that the statute of limitations was equitably tolled during the pendency of the state prosecution, then of course my analysis herein would not apply. That issue does not appear to have been raised or briefed by the parties below. *See Benge v. United States,* 17 F.3d 1286, 1288 (10th Cir. 1994).

States v. Cuch, 79 F.3d 987, 993 (10th Cir. 1996) (refusing to retroactively apply subject matter jurisdictional rule change to convictions that were final when new rule was announced).

Even the *McGirt* majority opinion acknowledges that procedural defenses and legal doctrines such as laches might preclude federal preemption. "[B]ut, in seeking to defend the state-court judgment below, Oklahoma has put aside whatever procedural defenses it might have and asked us to confirm that the land once given to the Creeks is no longer a reservation today." *McGirt v. Oklahoma,* 140 S.Ct. 2452, 2460, 207 L.Ed.2d 985 (2020). Justice Gorsuch goes into more detail about these legal doctrines later in the opinion:

> Many other legal doctrines—procedural bars, res judicata, statutes of repose, and laches, to name a few—are designed to protect those who have reasonably labored under a mistaken understanding of the law. And it is precisely because those doctrines exist that we are "fre[e] to say what we know to be true . . . today, while leaving questions about . . . reliance interest[s] for later proceedings crafted to account for them." Ramos, 590 U.S., at ___, 140 S.Ct., at 1047 (plurality opinion). (emphasis added)

Id. at 2481.

Thus, a fair reading of *McGirt* shows the Supreme Court anticipates courts will apply limitations on its ruling, including construction of the MCA's preemption rule, to achieve fair results. This is so because it is not the various treaties with the tribes, nor Congress's

plenary power to regulate affairs with the tribes, which preempt state jurisdiction. To be sure, these authorities give Congress the power to preempt state jurisdiction through the MCA, but unless and until that statute and its preemption are operative, the State of Oklahoma has jurisdiction to prosecute crimes within its borders.

The Supreme Court has never held that the MCA divests a state of its criminal jurisdiction once the federal crime is no longer prosecutable, nor can I find any such decision by any of the federal circuits. Proceeding as we are in this case in the absence of such controlling authority is improvident and is akin to a child custody judge removing the children from one parent, but not placing them elsewhere. It makes no legal sense, it is commanded by no precedent, and it leaves violent crime victims in Indian Country without recourse to justice. The result is manifest injustice to the victim with no discernable advancement or protection of tribal sovereignty.

C.
Application of the MCA in This Case Frustrates the Underlying Purposes of the Act

One central purpose behind the MCA is to ensure that those who commit crimes in Indian Country are adequately punished. "Congress enacted the Major Crimes Act because Indian tribes, who had exclusive jurisdiction over crimes committed by Indians on Indian land, were not adequately punishing their people for major offenses such as murder." *United States v. Norquay,* 905 F.2d 1157, 1161 (8th Cir. 1990) (citing *Keeble v. United States,* 412 U.S. 205, 209-12 (1973)). This interest in criminal accountability

is to be balanced with protecting the sovereignty interest of the various tribes. *United States v. Begay,* 42 F.3d 486, 498 (9th Cir. 1994). Neither of these purposes is advanced, and indeed both are frustrated, by an interpretation of the MCA which extinguishes any ability to prosecute and punish this crime.

Another purpose behind the MCA was to fill jurisdictional gaps.

> The IMCA, the first version of which was enacted in 1885 . . . has likewise been described as providing a gap-filling function, *see United States v. Pluff,* 253 F.3d 490, 494 (9th Cir. 2001), as amended (Aug. 6, 2001) ("There is no difference relevant to this case between the purpose of the ACA and that of the [I]MCA. Both statutes were enacted to fill jurisdictional gaps.").

United States v. Jones, 921 F.3d 932, 935 (10th Cir. 2019).

This Court and our Supreme Court have long interpreted the Indian Country jurisdictional provisions of our state constitution to avoid a jurisdictional void where crimes go unpunished. In *Goforth,* 1982 OK CR 48, ¶ 4, 644 P.2d at 115, the appellant asserted that the State lacked jurisdiction over his crimes because they occurred in Indian Country, relying in part upon Article I, Section 3 of the Oklahoma Constitution which provides:

> The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said

> limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States.

Okla. Const. art. I, § 3.

Despite its broad language, this Court followed the lead of the Oklahoma Supreme Court in holding that Section 3 denies the State of Oklahoma criminal jurisdiction, only when the federal statutes grant jurisdiction to federal courts. The Court stated:

> In *Currey v. Corporation Commission,* 617 P.2d 177 (Old.1979), the Oklahoma Supreme Court indicated that section 3 was meant to disclaim jurisdiction over Indian lands only to the extent that the federal government claimed jurisdiction. Thus, where federal law does not purport to confer jurisdiction on the United States courts, the Oklahoma Constitution does not deprive Oklahoma courts from obtaining jurisdiction over the matter. (emphasis added)

Goforth, 1982 OK CR 48, ¶¶ 8-9, 644 P.2d at 116-17. Of course, this is not a Section 3 case, but *Goforth's* approach is instructive. When adjudicating a claim under the MCA where federal authority to prosecute has elapsed, we should avoid any construction or application of the MCA which creates a gap in jurisdiction, leaves an offender not subject to adequate prosecution, and does not advance the interests of tribal sovereignty. There is no reason to interpret this federal statute as creating such a void when we

do not interpret arguably broader language in our own Constitution in such a manner. Accordingly, I would hold that where the record shows that federal jurisdiction is absent due to the expiration of the statute of limitations, the State of Oklahoma's jurisdiction is not preempted by the MCA.

For these reasons, I respectfully dissent.

HUDSON, VICE PRESIDING JUDGE, CONCUR IN RESULTS:

Today's decision applies *McGirt v. Oklahoma,* 140 S.Ct. 2452 (2020) to the facts of this case and dismisses convictions from the District Court of Delaware County for first degree manslaughter, possession of methamphetamine and possession of drug paraphernalia. 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 Cherokee Reservation. Under *McGirt,* the State has no jurisdiction to prosecute Appellant. Instead, Appellant must be prosecuted in federal court. I therefore as a matter of *stare decisis* fully concur in today's decision.

I disagree, however, with the majority's definitive conclusion based on *Spears v. State,* 2021 OK CR 7, P.3d and *Hogner v. State,* 2021 OK CR 4, ___ P.3d ___, that Congress never disestablished the Cherokee Reservation. We should find instead no abuse of discretion based on the record evidence presented. I also join Judge Rowland's observation in his special writing in *Hogner* that the Major Crimes Act does not affect the State of Oklahoma's subject matter jurisdiction in criminal cases but, rather, involves the exercise of federal criminal jurisdiction to effectively preempt the exercise of similar state authority. *Id.* at ¶ 4 (Rowland, V.P., Concurring in Result).

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, 484 P.3d 286 (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.

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.

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[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.

DISTRICT COURT OF DELEWARE COUNTY, STATE OF OKLAHOMA, ORDER NUNC PRO TUNC (NOVEMBER 3, 2020)

IN THE DISTRICT COURT OF DELEWARE COUNTY, STATE OF OKLAHOMA

SAMANTHA PERALES

v.

STATE OF OKLAHOMA

Case # CF-15-355

Court of Criminal Appeals Case # F-18-383

Before: Barry DENNEY,
District Judge of Delaware Co.

ORDER NUNC PRO TUNC

Findings of Fact and Conclusions of Law

Based on the evidence presented, the arguments presented by Kenny Wright for the State, Michael Morehead for Ms. Perales and Chissi Nimmo for the Cherokee Nation, and the court's review of all exhibits including the pertinent treaties between the United States of America and the Cherokee Tribe, the court makes the following findings of facts and conclusions of law:

Findings of Fact

1. The Defendant/Appellant Samantha Ann Perales has 1/8 Osage blood and was a member of the Osage Nation (Membership Number 9469) at the time of the crimes. The Osage Nation is an Indian Tribal Entity recognized by the federal government.

2. The crime occurred in Delaware County Oklahoma on State Highway 59, just three or four miles north of Kansas, Oklahoma, and just south of the Colcord turnoff. The location of the crimes falls within the geographic area set out by the Treaty with the Cherokee Nation, December 29, 1835, 7 Stat. 478, as modified by the Treaty of July 19, 1866, 14 Stat. 799, and as modified by the 1891 agreement ratified by the act on March 3rd, 1893, 27 Stat. 612. Through the above-mentioned treaties, Congress established a reservation for Cherokee Nation. Congress has not erased the boundaries of the reservation described in Finding of Fact #2.

Conclusions of Law

1. The State of Oklahoma and this court lacked jurisdiction to prosecute and try Ms. Perales for the crimes charged since they were committed in Indian Country by an Indian. *McGirt vs. Oklahoma*, 591 U.S. (2020) [No.18-9526]

/s/ Barry Denney
District Judge of Delaware Co

COURT OF CRIMINAL APPEALS, STATE OF OKLAHOMA, ORDER REMANDING FOR AN EVIDENTIARY HEARING (AUGUST 24, 2020)

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

SAMANTHA ANN PERALES,

Appellant,

v.

STATE OF OKLAHOMA,

Appellee.

Case No. F-2018-383

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

ORDER REMANDING FOR AN EVIDENTIARY HEARING

Samantha Ann Perales, Appellant, was tried and convicted of, Count 1, first degree manslaughter, in violation of 21 O.S.2011, § 711; Count 2, possession of controlled dangerous substance-methamphetamine, in violation of 63 O.S.Supp.2012, § 2-402; Count 3, unlawful possession of drug paraphernalia, in violation

of 63 O.S.2011, § 2-405; and Count 4, no valid driver's license, in violation of 47 O.S.2011, § 6-303, in Delaware County District Court, Case No. CF-2015-355. The Honorable Barry V. Denny, Associate District Judge, presided at Perales' jury trial and sentenced her to life imprisonment on Count 1, ten (10) years imprisonment on Count 2, one (1) year imprisonment on Count 3, and thirty (30) days on Count 4.[1] Judge Denny ordered the sentences to be served concurrently, gave credit for time served, and imposed various fees and costs.

In Proposition One Appellant claims the District Court lacked jurisdiction to try her. Appellant argues that she is a citizen of the Osage Nation and the crimes occurred within the boundaries of the Cherokee Nation. Appellant, in her direct appeal relies on *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).

Appellant's claim raises two separate questions: (a) her Indian status and (b) whether the crimes occurred in Indian Country. These issues require fact-finding. We therefore **REMAND** this case to the District Court of Delaware County, for an evidentiary hearing to be held within sixty (60) days from the date of this Order.[2]

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[1] Appellant will be required to serve 85% of her sentence in Count 1 before becoming eligible for parole.

[2] In light of this order, Appellee's request to file a response filed July 16, 2020, is rendered moot.

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 Appellant's legal status as an Indian and as to the location of the crimes 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, the Appellant's status as an Indian. The District Court must determine whether (1) Appellant has some Indian blood, and (2) is recognized as an Indian by a tribe or the federal government.[3]

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 Cherokee Nation, and (2) if so, whether Congress specifically erased those boundaries and disestablished the reservation. In making this determination the District

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[3] *See e.g. Goforth v. State,* 1982 OK CR 48, ¶ 6, 644 P.2d 114, 116. *See also United States u. Diaz,* 679 F.3d 1183, 1187 (10th Cir. 2012); *United States v. Drewry,* 365 F.3d 957, 960-61 (10th Cir.2004); *United States v. Prentiss,* 273 F.3d 1277, 1280-81 (10th Cir. 2001).

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 Delaware County: Appellant's Brief in Chief filed October 31, 2018; Appellee's Response Brief, filed February 21, 2019; and Appellant's Reply Brief filed March 12, 2019.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 24th 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

COURT OF CRIMINAL APPEALS, STATE OF OKLAHOMA, ORDER DENYING MOTION TO STAY THE MANDATE (SEPTEMBER 10, 2021)

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

SAMANTHA ANN PERALES,

Appellant,

v.

STATE OF OKLAHOMA,

Appellee.

Case No. F-2018-383

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

ORDER DENYING MOTION TO STAY THE MANDATE

Samantha Ann Perales, Appellant, was tried and convicted of Count 1, first degree manslaughter, in violation of 21 O.S.2011, § 711; Count 2, possession of controlled dangerous substance-methamphetamine, in violation of 63 O.S.Supp.2012, § 2-402; Count 3, unlawful possession of drug paraphernalia, in violation of 63 O.S.2011, § 2-405; and Count 4, no valid driver's

license, in violation of 47 O.S.2011, § 6-303, in Delaware County District Court, Case No. CF-2015-355. The Honorable Barry V. Denney, District Judge, presided at Perales' jury trial and sentenced her to life imprisonment on Count 1, ten (10) years imprisonment on Count 2, one (1) year imprisonment on Count 3, and thirty (30) days on Count 4. Judge Denney ordered the sentences to be served concurrently, gave credit for time served, and imposed various fees and costs.

Perales appealed her conviction raising a jurisdictional claim based on the Indian status of the victims and the crime occurring in Indian Country relying on *McGirt v. Oklahoma,* 140 S.Ct. 2452 (2020). This Court reversed her conviction on August 12, 2021. The State is now requesting that the mandate issued on September 2, 2021, be stayed/recalled due to ongoing litigation in other cases where the State is actively seeking to overturn *McGirt.* We find that the State has not shown good cause for the stay or recall of the mandate in this case.

IT IS THEREFORE ORDERED that the issuance of the mandate in this case shall not be recalled or stayed.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 10th day of September, 2021.

/s/ Scott Rowland
Presiding Judge

/s/ Robert L. Hudson
Vice Presiding Judge

/s/ Gary L. Lumpkin
Judge

/s/ David B. Lewis
Judge

ATTEST:

/s/ John D. Hadden
Clerk