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**OPINION OF THE COURT OF CRIMINAL  
APPEALS, STATE OF OKLAHOMA  
(JUNE 10, 2021)**

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IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

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TED ROOSEVELT YARGEE,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

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Case No. F-2019-392

NOT FOR PUBLICATION

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

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**SUMMARY OPINION**

**LEWIS, JUDGE:**

Ted Roosevelt Yargee, Appellant, was tried by jury and found guilty of Count 1, assault and battery with a dangerous weapon, in violation of 21 O.S.Supp.2011, § 645, and Count 2, threatening an act of violence, in

violation of 21 O.S.2011, § 1378, both after former conviction of two or more felonies, in the District Court of Tulsa County, Case No. CF-2018-4926, before the Honorable Tracy Priddy, District Judge. The jury set punishment at sixty (60) years imprisonment in Count 1 and six (6) months in jail in Count 2 and Judge Priddy sentenced accordingly ordering the sentences be served concurrently. Yargee appeals in the following propositions of error:

1. The trial court abused its discretion when it allowed extensive testimony and evidence concerning multiple prior instances of allegations of abuse against Mr. Yargee because the admission was unduly prejudicial;
2. Prosecutorial Misconduct deprived Mr. Yargee of a fair trial in violation of the Fourteenth Amendment to the United States Constitution;
3. Mr. Yargee's sentence of 60 years imprisonment is excessive and should be modified.

On January 22, 2021, this Court granted Appellant leave to file a supplemental brief out of time and remanded the case for an evidentiary hearing based on his claim that the trial court lacked jurisdiction to enter a Judgment and Sentence against him based on the United States Supreme Court's decision in *McGirt v. Oklahoma*, 591 U.S. \_\_\_, 140 S.Ct. 2452 (2020). Appellant claims that he is a member of the Muscogee (Creek) Nation and that the crime occurred within the historical boundaries of the Muscogee (Creek) Nation Reservation. We find that the claim raised in his supplemental brief has merit, thus the remaining propositions are moot.

Appellant's supplemental claim raises two separate questions: (a) his Indian status and (b) whether the crime occurred in Indian Country. This Court remanded the case to the District Court because we determined that his 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 Appellant's presentation of *prima facie* evidence as to his 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 Appellant 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.

We 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 scheduled before the Honorable Kelly Greenough, District Judge. The parties stipulated that Appellant was an enrolled member of the Muscogee (Creek) Nation at the time of the crimes and had 9/32 degree of Indian blood. The parties also stipulated that the location of the crimes

was within the historical boundaries of the Muscogee (Creek) Nation Reservation. The parties agreed that no evidentiary hearing was necessary based on these stipulations.

In its findings of fact, the District Court found:

1. Yargee has 9/32 degree of Indian blood and has been enrolled with the Muscogee (Creek) Nation since August 6, 1987. The Muscogee (Creek) Nation is an Indian Tribal Entity recognized by the federal government.
2. The crimes occurred in Tulsa, Oklahoma and the location falls within the historical boundaries of the Muscogee (Creek) Nation Reservation.

Based on the evidence presented, the District Court concluded, that Appellant was an Indian at the time of the crimes; the crimes occurred within the boundaries of the Muscogee (Creek) Reservation; and there is no evidence that the reservation has been explicitly disestablished or the boundaries erased by Congress. The District Court's *Findings of Fact and Conclusions of Law* are supported by the record.

We find that Appellant has met his burden of establishing his status as an Indian at the time of the crimes. We also find that the crimes occurred within the historical boundaries of the reservation set aside for the Muscogee (Creek) Nation. This case is consistent with the United States Supreme Court's holding in *McGirt*. The Judgments and Sentences in this case are hereby reversed and the case remanded to the District Court of Tulsa County with instructions to dismiss.

**DECISION**

The judgments and sentences of the District Court are **REVERSED** and the 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 TULSA COUNTY THE HONORABLE  
TRACY PRIDDY, DISTRICT JUDGE**

**APPEARANCES AT TRIAL**

Jason Lollman  
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Attorney for Defendant

Tara Britt  
Asst. District Attorney  
500 S. Denver, Ste. 900  
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**APPEARANCES ON APPEAL**

Nicole Dawn Herron  
423 S. Boulder Ave., Ste. 300  
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Attorney for Appellant

Mike Hunter  
Attorney General  
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Asst. Attorneys General  
313 N.E. 21st Street  
Oklahoma City, OK 73105  
Attorneys for Appellee

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

**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.

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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).

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.

**HUDSON, JUDGE, SPECIALLY CONCURS:**

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Today's decision dismisses convictions for assault and battery with a dangerous weapon and threatening an act of violence from the District Court of Tulsa County based on the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S.Ct, 2452 (2020). This decision is unquestionably correct as a matter of *stare decisis* based on the Indian status of Appellant and the occurrence of these crimes on the Creek Reservation. Under *McGirt*, the State has no jurisdiction to prosecute Appellant for the crimes charged in this case. Instead, Appellant must be prosecuted in federal court. I therefore as a matter of *stare decisis* fully concur in today's decision. Further, I maintain my previously expressed views on the significance of *McGirt*, its far-reaching impact on the criminal justice system in Oklahoma and the need for a practical solution by Congress. See, e.g., *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 TULSA COUNTY,  
STATE OF OKLAHOMA, FINDINGS OF  
FACT AND CONCLUSIONS OF LAW  
(MARCH 12, 2021)**

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IN THE DISTRICT COURT OF TULSA  
COUNTY, STATE OF OKLAHOMA

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TED ROOSEVELT YARGEE,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

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Case Nos.: F-2019-392 CF-2018-4926

Before: Kelly GREENOUGH, District Court Judge.

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**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

The following Findings of Fact and Conclusions of Law follow the Oklahoma Court of Criminal Appeals' ("OCCA") January 22, 2021 Order Granting Motion to File Supplemental Brief Out of Time and Remanding for Evidentiary Hearing ("Remand Order"). Nicole Dawn Herron appeared on behalf of Appellant, Ted Roosevelt Yargee, whose appearance was waived. Randall Young, Assistant Attorney General for the Oklahoma Attorney General's Office appeared for Appellee. This Court

finds an evidentiary hearing is unnecessary, as “the parties agree as to what the evidence will show with regard to the questions presented,” and have accordingly entered “into a written stipulation setting forth those facts upon which they agree and which answer the questions presented.” Order Remanding, 4-5.

The Appellant, in his supplemental brief claims that the District Court lacked jurisdiction to try him as he is a citizen of the Muscogee Creek Nation and the crimes occurred within the boundaries of the Creek Nation Reservation. Appellant’s claim raises two questions: (a) his Indian status, and (b) whether the crimes occurred in the Creek Nation Reservation. These issues require fact-finding to be addressed by the District Court per the OCCA Order Remanding.

### **I. Appellant’s status as an Indian**

To determine the Indian status of Appellant, the OCCA directed the District Court to make findings of fact as to whether (1) Appellant has some Indian blood, and (2) is recognized as an Indian by a tribe or the federal government. The Court finds as follows:

#### **Findings of Fact**

1. Ted Roosevelt Yargee is the named Appellant in the above-styled matter.
2. The parties stipulated that the crimes alleged against defendant occurred on October 20, 2018;
3. The parties stipulated that Appellant has been enrolled with the Muscogee (Creek) Nation since August 6, 1987, and he possesses a 9/32 degree of Creek blood.

4. The parties stipulated that the Muscogee (Creek) Nation is an Indian Tribe Entity recognized by the federal government.
5. The parties stipulated that the crimes occurred at or near the intersection of West 71st Street and Riverside Parkway, in Tulsa, Oklahoma. This location falls within the Muscogee (Creek) Reservation.

### **Conclusions of Law**

Regarding the first determination, the Court answers the first question in the affirmative. The Court adopts the Agreed Stipulations including the attached documentation filed by the parties on February 19, 2021. Ted Roosevelt Yargee is the named Defendant in this matter and he has 9/32 degree of Creek blood.

Additionally, the Court answers the second part of the inquiry in the affirmative. The Court adopts the Agreed Stipulations including the attached documentation and makes findings of fact thereon. Ted Roosevelt Yargee has been recognized as a citizen of the Muscogee (Creek) Nation since August 6, 1987 and was recognized as a citizen of the Muscogee (Creek) Nation at the time of the offense. Finally, the Muscogee (Creek) Nation is a federally recognized tribe. Therefore, Ted Roosevelt Yargee is recognized as an Indian by a tribe or the federal government.

Having answered both inquires in the affirmative, this Court concludes that Ted Roosevelt Yargee is an Indian.

## **II. Whether the Crime Occurred in Indian Country**

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

### **Findings of Fact**

1. The parties stipulated that the crimes occurred at or near the intersection of West 71st Street and Riverside Parkway, in Tulsa, Oklahoma.
2. The parties stipulated that the above-described location falls within the Muscogee (Creek) Reservation.

### **Conclusions of Law**

The final inquiry is answered in the affirmative. This Court adopted the parties' Agreed Stipulations and made findings of fact thereon. The crime occurred at a location that is within the boundaries of the Creek Nation's Reservation. These boundaries were established through a series of treaties between the Creek Nation and the United States, and are explicitly recognized as a reservation defined by 18 U.S.C. § 1151(a). This Court concludes that the crimes for which Appellant was convicted occurred within the Creek Nation Reservation. Based upon the Supreme Court's ruling in *McGirt v. Oklahoma*, 140 S.Ct. 2452, 207 L.Ed.2d 985 (2020), the Creek Nation Reservation is Indian Country. There is no evidence that said reservation has been explicitly disestablished or its boundaries erased. *McGirt*.

WHEREFORE, this Court finds that Ted Roosevelt Yargee is an Indian and the crimes for which he was

convicted occurred in Indian Country for purposes of the General Crimes Act, 18 U.S.C. § 1152 and the Major Crimes Act, 18 U.S.C § 1153, Under *McGirt* this court has no choice but to conclude it is without jurisdiction over Mr. Yargee.

**IT IS SO ORDERED this 11th day of March, 2021.**

/s/ Kelly Greenough  
District Court Judge



**AGREED STIPULATION  
(FEBRUARY 19, 2021)**

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IN THE DISTRICT COURT OF TULSA  
COUNTY, STATE OF OKLAHOMA

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TED ROOSEVELT YARGEE,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

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Case Nos.: F-2019-392 CF-2018-4926

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**AGREED STIPULATION**

Following the United States Supreme Court's decision in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), the Oklahoma Court of Criminal Appeals remanded Appellant's case to this Court on January 22, 2021, for an evidentiary hearing to determine (1) the status of the defendant as an Indian, and (2) whether the crimes occurred in Indian Country. The parties hereby announce, and request this Court to accept, the following stipulations:

1. The crimes alleged against the defendant occurred on October 20, 2018.

2. The defendant has been enrolled with the Muscogee (Creek) Nation since August 6, 1987.
3. The defendant possesses a 9/32 degree of Creek Blood.
4. The Muscogee (Creek) Nation is an Indian Tribal Entity recognized by the federal government.
5. The defendant's crimes occurred at or near the intersection of West 71st Street and Riverside Parkway, in Tulsa, Oklahoma.
6. The above-listed location falls within the Muscogee (Creek) Reservation.

Respectfully submitted this \_\_\_th day of February, 2021.

/s/ Nicole Herron

Counsel for Petitioner

/s/ Randall Young

Assistant Attorney General

Digitally Signed<sup>1</sup>

/s/ Erik M. Grayless

First Assistant District Attorney

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<sup>1</sup> An electronic signature is being used due to current COVID-19 restrictions. A signed original can be provided to the Court upon request once restrictions are lifted.



**MUSCOGEE (CREEK) NATION  
ENROLLMENT VERIFICATION**

Re: Name: Ted Roosevelt Yargee  
Address: 1020 N Sherman Ave  
Okmulgee OK 74447-2232

Birthdate: 10/8/1961  
Enrollment Date: August 6, 1987  
Roll Number: 37819  
Degree of Creek Blood: 9/32



*Ted R. Yargee*

I hereby certify that Ted Roosevelt Yargee, DOB: 10/8/1981 is enrolled with the Muscogee (Creek) Nation. Enrollment Date: 8/8/1987 Roll Number: 37819, Degree of Creek Blood: 9/32.

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

Executed this 6th day of October, 2020.

/s/ Nathan Wilson

Director—Muscogee (Creek) Nation  
Citizenship Office



**COURT OF CRIMINAL APPEALS,  
STATE OF OKLAHOMA, ORDER  
REMANDING FOR EVIDENTIARY HEARING  
(JANUARY 22, 2021)**

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IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

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TED ROOSEVELT YARGEE,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

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Case No. F-2018-392

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

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**ORDER GRANTING MOTION TO FILE  
SUPPLEMENTAL BRIEF OUT OF TIME AND  
REMANDING FOR EVIDENTIARY HEARING**

Ted Roosevelt Yargee, Appellant, was tried by jury and found guilty of Count 1, assault and battery with a dangerous weapon, in violation of 21 O.S.Supp. 2011, § 645, and threatening an act of violence, in vio-

lation of 21 O.S.2011, § 1378, both after former conviction of two or more felonies, in the District Court of Tulsa County, Case No. CF-2018-4926, before the Honorable Tracy Priddy, District Judge. The jury set punishment at sixty (60) years imprisonment in Count 1 and six months in jail in Count 2 and Judge Priddy sentenced accordingly ordering that the sentences be served concurrently. Appellant filed a direct appeal which is pending with this Court. He has now filed a supplemental proposition of error claiming that the trial court lacked jurisdiction to try him.

Appellant relies on *McGirt v. Oklahoma*, 591 U.S. \_\_\_, 140 S.Ct. 2452 (2020), and claims his supplemental brief should be allowed because it is a subject matter issue which can be raised at any time and is not subject to the time restraints of Rule 3.4, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2020).

In the supplemental brief, Appellant argues that he is a citizen of the Muscogee (Creek) Nation and the crimes occurred within the boundaries of the Muscogee (Creek) Nation. He has attached documentation to support this assertion.

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

Recognizing the historical and specialized nature of this remand for evidentiary hearing, we request the Attorney General and District Attorney work in

coordination to effect uniformity and completeness in the hearing process. Upon 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 Indian by a tribe or the federal government.<sup>1</sup>

Second, whether crimes occurred within the boundaries of the Creek Nation. 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. With regard to crimes occurring in the Creek Nation, the District Court is directed to follow the analysis set out in *McGirt*, determining (1) whether Congress established a reservation for the Creek Nation, and (2) if so, whether Congress specifically erased those boundaries

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<sup>1</sup> See e.g. *Goforth v. State*, 1982 OK CR 48, ¶ 6, 644 P.2d 114, 116. See also *United States v. 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).

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 Tulsa County: Appellant's Supplemental Brief filed January 12, 2021.



**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF  
THIS COURT** this 22nd day of January, 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