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**OPINION OF THE COURT OF CRIMINAL  
APPEALS, STATE OF OKLAHOMA  
(AUGUST 26, 2021)**

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IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

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STEWART WAYNE COFFMAN,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

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NOT FOR PUBLICATION

No. F-2018-1268

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

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**OPINION**

**LUMPKIN, JUDGE:**<sup>1</sup>

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<sup>1</sup> As stated in my separate writing in *Bosse v. State*, 2021 OK CR 3, 484 P.3d 286 (Lumpkin, J., concurring in result), I am bound by my oath and adherence to the Federal-State relationship under the U.S. Constitution to apply the edict of the majority opinion in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). However, I continue to share the position of Chief Justice Roberts' dissent in *McGirt*, that at the time of Oklahoma Statehood in 1907, all

Appellant Stewart Wayne Coffman was tried by jury and convicted of First Degree Manslaughter (21 O.S.2011, § 711), After Former Conviction of Two or More Felonies in the District Court of McCurtain County, Case No. CF-2017-0301. In accordance with the jury's recommendation the Honorable Michael DeBerry, District Judge, sentenced Appellant to forty (40) years in prison. Appellant appeals from this conviction and sentence.

In Proposition I of his appellate brief, Appellant claims the District Court lacked jurisdiction to try him. Appellant argues that while he is not Indian, his victim, Joe Battiest, Jr. was a citizen of the Choctaw Nation and the crime occurred within the boundaries of the Choctaw Nation.

Pursuant to the recent decision in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020) Appellant's claim raises two separate questions: (a) the Indian status of the victim, Joe Battiest, and (b) whether the crime occurred in Indian Country. These issues require fact-finding. We therefore remanded this case to the District Court of McCurtain 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

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parties accepted the fact that Indian reservations in the state had been disestablished and no longer existed.

Country, the burden shifts to the State to prove it has subject matter jurisdiction. The District Court was ordered to determine whether the victim had some Indian blood and was recognized as an Indian by a tribe or the federal government,<sup>2</sup> and whether the crime 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 Choctaw 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 Order was timely filed with this Court by the Honorable Michael DeBerry, District Judge, stating that an evidentiary hearing had been held pursuant to this Court's remand order. The District Court's Order states that appearing before the court were attorneys from the office of the Attorney General of Oklahoma, the McCurtain County District Attorney's Office,

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<sup>2</sup> See *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. Prentiss*, 273 F.3d 1277, 1280-81 (10th Cir. 2001).

defense counsel, and the Choctaw Nation. The order states that the District Attorney, defense counsel, and the Attorney General's Office entered into a stipulation, attached to the Order as Exhibit 1. This Exhibit states that the parties stipulate to the following:

The victim, Joe Battiest, had 11/16 degree of Indian blood of the Choctaw/Mississippi Choctaw Tribe and was a member of the Choctaw Nation of Oklahoma (Membership Number CN 183977) at the time of the crime. The Choctaw Nation is an Indian Tribal Entity recognized by the federal government.

Regarding the location of the crime, the stipulation provides:

The crime in this case occurred at 509 NE 4th St., in Idabel, McCurtain County, Oklahoma. This location is within the historical boundaries of the Choctaw Nation-boundaries set forth in, and adjusted by, the 1855 and 1866 treaties between the Chickasaw and Choctaw Nations and the United States.

Based upon Exhibit 1, the District Court found that the victim, Joe Battiest, Jr., is 11/16th degree of Indian blood of the Choctaw/ Mississippi Choctaw Tribe and is a tribal member of the Choctaw Nation of Oklahoma (Membership Number CN 183977). The District Court further found the crime occurred at 509 NE 4th St., in Idabel, McCurtain County, Oklahoma, which was within the boundaries of the Choctaw Nation as evidenced by a map attached to the order as Exhibit 2. The court further found there was no evidence presented that Congress has ever explicitly

erased those boundaries and disestablished the reservation.

In a supplemental brief filed after the remanded *McGirt* hearing, Appellant argues this Court should affirm the findings of the District Court, applying an abuse of discretion standard of review. Appellant asserts the factual findings and legal conclusions are supported by the evidence and the law.

The State also filed a supplemental brief. The State asserts that it takes no position as to the existence of a Choctaw Reservation, but argues even if the existence of the Choctaw Reservation is assumed, the State has concurrent jurisdiction with the federal government to prosecute Appellant. The State argues that 18 U.S.C. § 1152, the General Crimes Act, does nothing to preempt state jurisdiction over crimes committed by non-Indians like that perpetrated by Appellant. The State further argues that should this Court find Appellant is entitled to relief, this Court should stay any order reversing the conviction for thirty (30) days to allow the United States Attorney's Office for the Eastern District of Oklahoma to secure custody of Appellant. *Cf.* 22 O.S. 2011, § 846.

Additionally, this Court granted Appellant's request to file a supplemental brief addressing the State's claim of concurrent jurisdiction. In that supplemental brief, Appellant argues that this Court has rejected a claim of concurrent jurisdiction *Bosse v. State*, 2021 OK CR 3, ¶¶ 23-28, 484 P.3d at 294-295. Appellant asserts the arguments raised by the State in the current case are the same as those raised and addressed in *Bosse* and should therefore be summarily rejected.

After thorough consideration of the arguments and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we find that under the law and the evidence relief is warranted. Under the record before us, we find the District Court did not abuse its discretion and its findings are supported by the evidence presented at the evidentiary hearing. *See State v. Delso*, 2013 OK CR 5, ¶ 5, 298 P.3d 1192, 1194. We find Appellant has met his burden of showing that his victim, Joe Battiest, Jr., is 11/16th degree of Indian blood of the Choctaw/Mississippi Choctaw Tribe and is a tribal member of the Choctaw Nation of Oklahoma (Membership Number CN 183977). We further find Appellant has met his burden of showing that the crime occurred within the boundaries of the Choctaw Nation and that no evidence has been presented that Congress has ever explicitly erased those boundaries and disestablished the Choctaw reservation.

Further, this Court addressed and rejected an argument concerning concurrent jurisdiction between the state and federal governments in *Bosse*, 2021 OK CR 3, ¶¶ 23-28, 484 P.3d at 294-295. The State's argument in the present case is similar and we find it is not persuasive.

We therefore find that pursuant to *McGirt*, the State of Oklahoma did not have jurisdiction to prosecute Appellant in this matter.<sup>3</sup> The Judgments and

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<sup>3</sup> While Art. 7 of the Oklahoma Constitution vests the district courts of Oklahoma with "unlimited original jurisdiction of all justiciable matters," the federal government has pre-empted the field as it relates to major crimes committed by or against Indians in Indian country.

Sentences in this case are hereby reversed and the case remanded to the District Court of McCurtain County with instructions to dismiss the case.<sup>4</sup>

### DECISION

The **JUDGMENTS and SENTENCES are REVERSED AND REMANDED with instructions to Dismiss.** The **MANDATE** is not to be issued **until twenty (20) days** from the delivery and filing of this decision.<sup>5</sup>

AN APPEAL FROM THE DISTRICT COURT  
OF MCINTOSH COUNTY THE HONORABLE  
MICHAEL DEBERRY, DISTRICT JUDGE

### APPEARANCES AT TRIAL

Michael D. Morehead  
Okla. Indigent Defense  
P.O. Box 926  
Norman, OK 73070  
Counsel for Defendant

Mark Matloff  
District Attorney  
Idabel, OK

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<sup>4</sup> This resolution renders the other three (3) propositions of error raised in Appellant's brief moot.

<sup>5</sup> By withholding the issuance of the mandate for 20 days, the State's request for time to determine further prosecution is rendered moot.



Mike Hunter  
Attorney General of Oklahoma  
Tessa L. Henry  
Taylor Ledford  
Asst. Attorneys General  
313 N.E. 21st St.  
Oklahoma City, OK 73105  
Counsel for the State

Jacob Keyes  
Counsel for the Choctaw Nation  
Durant, OK

**APPEARANCES ON APPEAL**

Michael D. Morehead  
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P.O. Box 926  
Norman, OK 73070  
Counsel for Appellant

Mike Hunter  
Attorney General of Oklahoma  
Tessa L. Henry  
Attorney General  
313 N.E. 21st St.  
Oklahoma City, OK 73105  
Counsel for the State

**Opinion by: Lumpkin, J.**

Rowland, P.J.: Concur  
Hudson, V.P.J.: Specially Concurring  
Lewis, J.: Concur in Results

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

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Today's decision applies *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020) to the facts of this case and dismisses a conviction from McCurtain County for first degree manslaughter. I concur in the results of the majority's opinion based on the stipulations below concerning the victim's Indian status and the location of this crime within the historic boundaries of the Choctaw Reservation. Under *McGirt*, the State cannot prosecute Appellant because of the Indian status of the victims and the location of this crime within Indian Country as defined by federal law. I therefore as a matter of *stare decisis* fully concur in today's decision.

I also join Presiding Judge Rowland's observation in his special writing in *Hogner v. State*, 2021 OK CR 4, \_\_\_ P.3d \_\_\_, 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, P.J., 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, V.P.J., Concur in Results); *Hogner v. State*, 2021 OK CR 4, \_\_\_ P.3d \_\_\_ (Hudson, V.P.J., Specially Concur); and *Krafft v. State*, No. F-2018-340 (Okl. Cr., Feb. 25, 2021) (Hudson, V.P.J., Specially Concur) (unpublished).

**LEWIS, JUDGE, CONCURRING IN RESULTS:**

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Based on my special writings in *Bosse v. State*, 2021 OK CR 3, 484 P.3d 286 and *Hogner v. State*, 2021 OK CR 4, \_\_\_ P.3d \_\_\_, I concur in results in the decision to dismiss this case for the lack of state jurisdiction.

**DISTRICT COURT OF MCCURTAIN COUNTY,  
STATE OF OKLAHOMA, FINDINGS OF  
FACT AND CONCLUSIONS OF LAW  
(OCTOBER 9, 2020)**

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IN THE DISTRICT COURT IN AND FOR  
MCCURTAIN COUNTY, STATE OF OKLAHOMA

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THE STATE OF OKLAHOMA,

*Plaintiff/Appellee,*

v.

STEWART WAYNE COFFMAN,

*Defendant/Appellant.*

---

Case No.: CF-17-391  
CCA F-2018-1268

Before: Michael D. DEBERRY, District Judge.

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**ORDER**

This matter comes on this 5th day of October, 2020, before the undersigned Judge of the District Court, with the State of Oklahoma represented by District Attorney Mark Matloff, the defendant represented by Michael D. Morehead, the Choctaw Nation of Oklahoma represented by Jacob Keyes, The State of Oklahoma represented by Tessa Henry and Taylor Ledford of the Oklahoma Attorney General's Office, and the Court, being fully advised in the premises, finds and adjudges:

The Court of Criminal Appeals of the State of Oklahoma has remanded this case to the trial court for an evidentiary hearing.

The District Attorney, the attorney for the defendant/appellant, and the Attorney General's Office have entered into a stipulation which is attached hereto as Exhibit 1.

The Court finds the victim, Joe Freeman Battiest, Jr., is a 11/16th degree of Indian Blood of the Choctaw/Mississippi Choctaw Tribe and is a Tribal Member of the Choctaw Nation of Oklahoma (Membership #CN183977) as evidenced by the letter from the Choctaw Nation of Oklahoma attached hereto as Exhibit A-1.

The Court further finds the alleged crime occurred at 509 NE 4th Street, Idabel, McCurtain County, Oklahoma which was within the boundaries of the Choctaw Nation as evidenced by the map attached hereto as Exhibit 2. The Court further finds there is no evidence presented to the Court that Congress has ever explicitly erased those boundaries and disestablished that reservation.

/s/ Michael D. DeBerry

District Judge

**STIPULATIONS  
(DECEMBER 13, 2020)**

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IN THE DISTRICT COURT IN AND FOR  
MCCURTAIN COUNTY, STATE OF OKLAHOMA

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STEWART WAYNE COFFMAN,

*Defendant/Appellant,*

v.

THE STATE OF OKLAHOMA,

*Plaintiff/Appellee.*

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McCurtain County District Court  
Case No. CF-2017-0301

Court of Criminal Appeals  
Case No. F-2018-1268

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**STIPULATIONS**

This case is before the Court pursuant to an Order Remanding for Evidentiary Hearing from the Oklahoma Court of Criminal Appeals, dated August 14, 2020. In that Order, the Court of Criminal Appeals directed this Court to make findings of fact on two issues: (1) whether the victim in this case, Mr. Joe Battiest, has “some Indian blood” and “is recognized as an Indian by a tribe or the federal government” and (2) whether the crime occurred within “Indian Country.”

In response to the two questions this Court has been directed to answer, the parties have reached the following stipulations:

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

The victim, Mr. Joe Battiest, had 11/16 degree of Indian Blood of the Choctaw/Mississippi Choctaw Tribe and was a member of the Choctaw Nation of Oklahoma (Membership Number CN183977) at the time of the crime. The Choctaw Nation is an Indian Tribal Entity recognized by the federal government.

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

The crime in this case occurred at 509 NE 4th St. in Idabel, McCurtain County, Oklahoma. This location is within the historical boundaries of the Choctaw Nation—boundaries as set forth in, and adjusted by, the 1855 and 1866 treaties between the Chickasaw and Choctaw Nations and United States.

/s/ Michael D. Morehead  
Oklahoma Indigent Defense System  
Counsel for Defendant/Appellant

/s/ Tessa Henry

/s/ Taylor Ledford  
Oklahoma Attorney General's Office  
Counsel for Plaintiff/Appellee

/s/ Mark Matloff  
McCurtain County District Attorney



**CHOCTAW NATION OF OKLAHOMA  
CDIB/TRIBAL MEMBERSHIP**

PO Box 1210  
Durant, Oklahoma 74702-1210  
580-924-8280, Ext. 4030  
1-800-522-6170

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June 27, 2019

To Whom It May Concern:

This letter is to certify that Joe Freeman Battiest Jr., born on 10/23/1964, with social security number XXX-XX-0108 has a Certificate of Degree of Indian Blood (CDIB), and is 11/16 degree of Indian Blood of the Choctaw/Mississippi Choctaw Tribe, and is a Tribal Member of the Choctaw Nation of Oklahoma (Membership # CN183977).

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

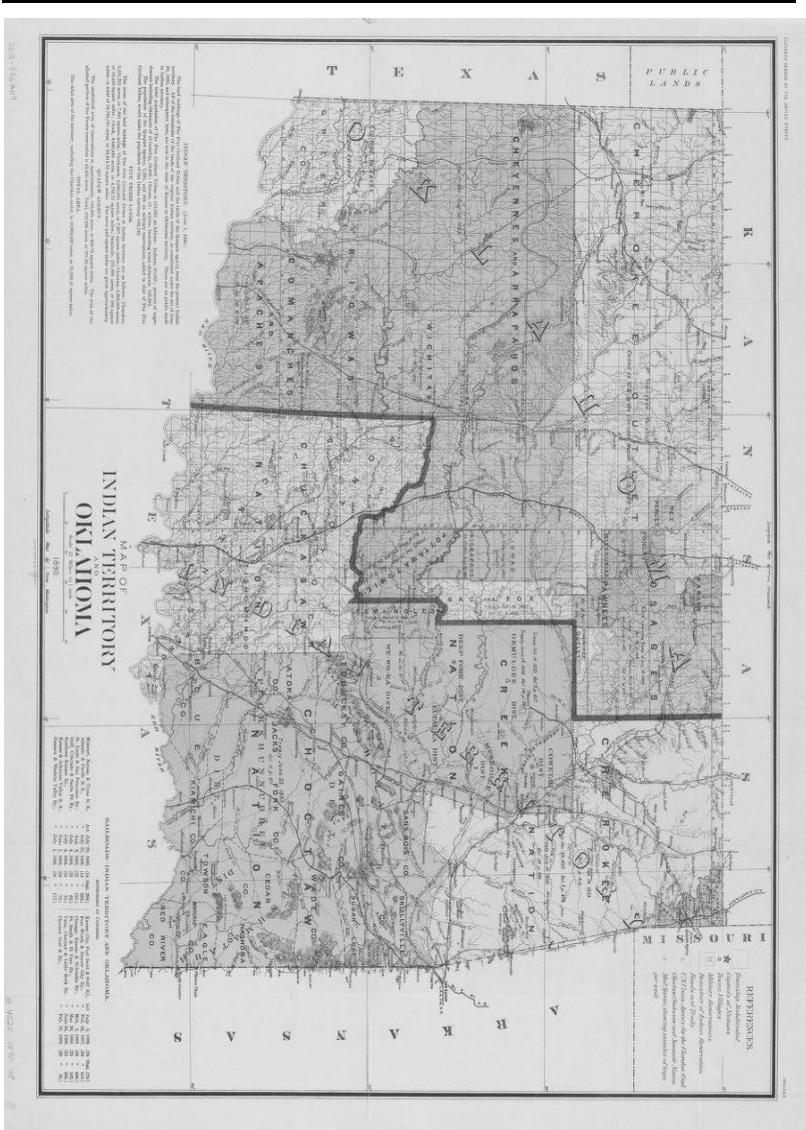
Sincerely,

/s/ Terry Stephens

Director, CDIB/Membership  
Director, CDIB/Membership



# MAP OF INDIAN TERRITORY AND OKLAHOMA (1890)



**COURT OF CRIMINAL APPEALS,  
STATE OF OKLAHOMA, ORDER  
REMANDING FOR EVIDENTIARY HEARING  
(AUGUST 14, 2020)**

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IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

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STEWART WAYNE COFFMAN,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

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No. F-2018-1268

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

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**ORDER REMANDING FOR  
EVIDENTIARY HEARING**

Appellant Stewart Wayne Coffman was tried by jury and convicted of First Degree Manslaughter (21 O.S.2011, § 711), After Former Conviction of Two or More Felonies in the District Court of McCurtain County, Case No. CF-2017-0301. In accordance with the jury's recommendation the Honorable Michael

DeBerry, District Judge, sentenced Appellant to forty (40) years in prison. Appellant must serve 85% of his sentence before becoming eligible for parole consideration. Appellant appeals from this conviction and sentence.

In Proposition I, Appellant claims the District Court lacked jurisdiction to try him. Appellant argues that while he is not Indian, his victim, Joe Battiest was a citizen of the Choctaw Nation and the crime occurred within the boundaries of the Choctaw Nation.

Pursuant to the recent decision in *McGirt v. Oklahoma*, No. 18-9526 (U.S. July 9, 2020), Appellant's claim raises two separate questions: (a) the Indian status of the victim, Joe Battiest, and (b) whether the crime occurred in Indian Country. These issues require fact-finding. We therefore **REMAND** this case to the District Court of McCurtain 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 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, to establish the status of Joe Battiest as an Indian, the District Court must determine whether (1) Battiest 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 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 Choctaw Nation, and (2) if so, whether Congress specifically erased those boundaries and disestablished the reservation. In making this determination the District Court should consider any evidence the parties provide, including but not limited to treaties, statutes, maps, and/or testimony.

The District Court Clerk shall transmit the record of the evidentiary hearing, the District Court's findings of fact and conclusions of law, and any other materials made a part of the record, to the Clerk of this Court, and counsel for Appellant, within five (5) days after the District Court has filed its findings of fact and conclusions of law. Upon receipt thereof, the Clerk of this Court shall promptly deliver a copy of that record to the Attorney General. A supplemental brief, addressing only those issues pertinent to the evidentiary hearing

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<sup>1</sup> See *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. Prentiss*, 273 F.3d 1277, 1280-81 (10th Cir. 2001).

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 McCurtain County: Appellant's Brief in Chief filed July 22, 2019; Appellant's Reply Brief filed December 9, 2019; and Appellee's Response Brief, filed November 19, 2019.

**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 14 day of August, 2020.

App.21a

/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