

APPENDIX TABLE OF CONTENTS

Opinion of the Court of Criminal Appeals, State of Oklahoma (September 2, 2021)	1a
District Court of Carter County, State of Oklahoma, Findings of Fact and Conclusions of Law (July 1, 2021)	10a
Court of Criminal Appeals, State of Oklahoma, Order Remanding for Evidentiary Hearing (March 26, 2021)	15a

**OPINION OF THE COURT OF CRIMINAL
APPEALS, STATE OF OKLAHOMA
(SEPTEMBER 2, 2021)**

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

STEPHEN TANNER VINEYARD,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

No. F-2020-245

NOT FOR PUBLICATION

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

SUMMARY OPINION

LUMPKIN, JUDGE:1

¹ 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*, 591 U.S. ___, 140 S.Ct. 2452 (2020). However, I continue to share the position of Chief Justice

Appellant Stephen Tanner Vineyard was tried by jury and convicted of Second Degree Felony Murder, in violation of 21 O.S.2011, § 701(A), in the District Court of Carter County, Case No. CF-2018-424. The trial court sentenced Appellant in accordance with the jury's recommendation to twenty-seven years imprisonment. Appellant appeals from this conviction and sentence.

In Proposition I, Appellant contends the District Court lacked jurisdiction to try him. Appellant argues that he is a citizen of the Chickasaw Nation and the crime occurred within the boundaries of the Chickasaw Reservation.

Pursuant to *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452 (2020), Appellant's claim raises two separate questions: (a) his Indian status and (b) whether the crime occurred in Indian Country. These issues require fact-finding. We therefore remanded this case to the District Court of Carter County for an evidentiary hearing.

The District Court was ordered to determine whether Appellant 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 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 Chickasaw Nation, and (2) if so, whether Congress specifically

Roberts' dissent in *McGirt*, 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.

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 facts and conclusions of law with this Court.

An evidentiary hearing in this case was held before the Honorable Dennis R. Morris, 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 Carter County District Attorney's Office and the Oklahoma Indigent Defense System.

In its Findings of Fact and Conclusions of Law, the District Court set forth that the State of Oklahoma and Appellant stipulated "(1) that defendant/appellant, was at the time of his crime an enrolled member of the Chickasaw Nation (membership Number ___74), a federally recognized tribe, with one eighth Chickasaw Indian Blood."

Thereafter, the District Court found Appellant Vineyard "(1) has 1 /8 Indian blood quantum; and (2) Appellant Vineyard was a member of the Chickasaw Nation, an Indian Tribal Entity recognized by the federal government, (Membership Number 74) at the time

of the crime.” (internal footnote omitted). The District Court ultimately found “Appellant is an Indian for purposes of criminal jurisdiction.”

Regarding whether the crime occurred in Indian country, the Findings of Fact and Conclusions of Law states that based upon the parties’ stipulations, the Court finds as follows: “(1) [t]he crime occurred in the City of Ardmore, Carter County, Oklahoma; (2) Ardmore, Oklahoma is within the historical boundaries of the Chickasaw Nation, as set forth in, and adjusted by, the 1855 and 1866 treaties between the Chickasaw and [Choctaw Nations] and the United States; and (3) Congress established a reservation for the Chickasaw Nation in said treaties, and never erased the boundaries and disestablished the Chickasaw Nation Reservation.” (internal citation omitted). The District Court ultimately found the crime occurred within the boundaries of the Chickasaw Reservation and that the Chickasaw Reservation has not been disestablished by Congress.

Both Appellant and the State were given the opportunity to file response briefs addressing issues from the evidentiary hearing. The State has filed a response brief, Appellant has not.

After thorough consideration of this proposition 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. The State stipulated to the Appellant’s status as an Indian, and that the crime occurred within the historical boundaries of the Chickasaw Nation and acknowledged this Court’s holding that Congress established a reservation for the Chickasaw Nation which it has not disestablished. The State presented no stipulation, argument or evidence regarding the existence

of the Chickasaw Reservation. This acquiescence has created a legal void in this Court's ability to adjudicate properly the facts underlying Appellant's argument. This Court is left with only the trial court's Findings of Fact and Conclusions of Law to review for an abuse of discretion. An abuse of discretion is any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue. *State v. Delso*, 2013 OK CR 5, ¶ 5, 298 P.3d 1192, 1194.

Based upon the record before us, the District Court's Findings of Fact and Conclusions of Law are supported by the evidence presented at the evidentiary hearing. We therefore find Appellant has met his burden of establishing his status as an Indian, having 1/8 degree Indian blood and being a member of the Chickasaw Nation on the date of the crime. We also find the District Court appropriately applied *McGirt* to determine that Congress did establish a Chickasaw Reservation and that no evidence was presented showing that Congress explicitly erased or disestablished the boundaries of the Chickasaw Reservation or that the State of Oklahoma had jurisdiction in this matter. We find the State of Oklahoma did not have jurisdiction to prosecute Appellant in this matter.² The Judgment and Sentence in this case is hereby reversed and the

² 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.

case remanded to the District Court of Carter County with instructions to dismiss the case.³

DECISION

The **JUDGMENT and SENTENCE is 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.

AN APPEAL FROM THE DISTRICT COURT
OF CARTER COUNTY THE HONORABLE
DENNIS R. MORRIS, DISTRICT JUDGE

APPEARANCES AT EVIDENTIARY HEARING

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

Craig Ladd
District Attorney
107 First Avenue
Southwest
Ardmore, OK 73401
Counsel for the State

³ This resolution renders the other proposition of error raised in Appellant's brief moot.

APPEARANCES ON APPEAL

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

Dawn Cash
Acting Attorney General of Oklahoma
Sheri M. Johnson
Asst. 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

RD

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

Today's decision applies *McGirt v. Oklahoma*, 140 S. Ct, 2452 (2020) to the facts of this case and dismisses a conviction for second degree felony murder from the District Court of Carter County. This decision is unquestionably correct as a matter of *stare decisis* based on the Indian status of Appellant and the occurrence of this crime within the historic boundaries of the Chickasaw Nation. Under *McGirt*, the State has no jurisdiction to prosecute Appellant 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., Hogner v. State*, 2021 OK CR 4, ___ P.3d ___ (Hudson, V.P.J., Specially Concur).

LEWIS, JUDGE, CONCURRING IN RESULTS:

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 CARTER COUNTY,
STATE OF OKLAHOMA, FINDINGS OF FACT
AND CONCLUSIONS OF LAW
(JULY 1, 2021)**

IN THE DISTRICT COURT OF CARTER COUNTY,
STATE OF OKLAHOMA

STEPHEN TANNER VINEYARD,

Defendant/Appellant,

v.

THE STATE OF OKLAHOMA,

Plaintiff/Appellee.

Case No.: CF-2018-424

OCCA No. F-2020-245

Before: Dennis MORRIS, District Judge.

**FINDINGS OF FACT AND CONCLUSIONS OF
LAW ON REMAND FROM THE OKLAHOMA
COURT OF CRIMINAL APPEALS**

Stephen Tanner Vineyard, Defendant/Appellant (Vineyard), was tried by jury and convicted of Second Degree Murder on February 7, 2020. On March 18, 2020, this Court, as per the jury's verdict, sentenced Vineyard to twenty-seven (27) years imprisonment. Vineyard timely appealed the jury's verdict and this Court's imposition of sentence.

On March 26, 2021, the Oklahoma Court of Criminal Appeals entered its Order Remanding for Evidentiary Hearing, directing this Court to hold an evidentiary hearing on Appellant Vineyard's Proposition I, that this Court lacked jurisdiction to try him. Appellant's Proposition I contends that Vineyard is a citizen of the Chickasaw Nation, as such an Indian, and that his crime occurred within the boundaries of the Chickasaw Nation.

The remand order specifically states that this Court shall address only two (2) issues:

First, the Appellant's (Vineyard) 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.

Second, whether the crime occurred in Indian Country. The District Court is directed to determine:

- (1) Whether Congress established a reservation for the Chickasaw Nation, and
- (2) If so, whether Congress specifically erased those boundaries and disestablished the reservation.

The matter came on for evidentiary hearing on May 20, 2021. Appellant appeared by counsel, Michael Morehead. Appellee, Attorney General, appeared not. State appeared by District Attorney, Craig Ladd. This Court heard stipulations and statements of counsel and took the matter under advisement.

Stipulations of the Parties

On May 20, 2021, immediately prior to the evidentiary hearing, the parties submitted factual stipulations to this Court, as follows:

- (1) “That defendant/appellant, was at the time of his crime an enrolled member of the Chickasaw Nation (membership Number 27774), a federally recognized tribe, with 1/8 Chickasaw Indian Blood.”
- (2) “That the crime in this case was committed in Ardmore, Carter County, Oklahoma, within the historical boundaries of the Chickasaw Nation boundaries as set forth in, and adjusted by, the 1855 and 1866 treaties between the Chickasaw and Choctaw Nations and the United States.
- (3) “That the Court of Criminal Appeals recently held in *Bosse v. State*, 2021 OK CR 3, ___ P.3d ___, that Congress established a reservation for the Chickasaw Nation in said treaties, and never erased the boundaries and disestablished the Chickasaw Nation Reservation.”

I: Appellant’s Status as Indian

Upon the Court’s finding of facts, as stipulated by the parties, this Court finds that: (1) Appellant Vineyard has 1/8 Indian blood quantum; and (2) Appellant Vineyard was a member of the Chickasaw Nation, an

Indian Tribal Entity recognized by the federal government, (Membership Number 27774) at the time of the crime.¹

THIS COURT FINDS AND ORDERS Appellant is an Indian for purposes of criminal jurisdiction.

II: Whether the Crime Occurred in Indian Country

Further, upon the Court's finding of facts, as stipulated by the parties, this Court finds that: (1) The crime occurred in the City of Ardmore, Carter County, Oklahoma; (2) Ardmore, Oklahoma is within the historical boundaries of the Chickasaw Nation, as set forth in, and adjusted by, the 1855 and 1866 treaties between the Chickasaw and Chickasaw Nations and the United States; and (3) Congress established a reservation for the Chickasaw Nation in said treaties, and never erased the boundaries and disestablished the Chickasaw Nation Reservation.²

THIS COURT FINDS AND ORDERS Congress established a reservation for the Chickasaw Nation and that Congress has not specifically or explicitly acted to disestablish the Chickasaw Nation Reservation.

¹ 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).

² See *Bosse v. State*, 2021 OK CR 3, ___ P.3d ___, *Bench v. State*, 2021 OK CR 12, ___ P.3d ___.

CONCLUSION

THIS COURT FINDS AND ORDERS that Congress established a reservation for the Chickasaw Nation and that Congress has not disestablished the Chickasaw Nation Reservation. That Appellant Vineyard is an Indian for purposes of criminal jurisdiction and the crime occurred in Indian Country for the purposes of the General Crimes Act, 18 U.S.C. §§ 1152, 1153.

IT IS SO ORDERED.

Dated this 1st day of July 2021.

/s/ Dennis Morris

District Judge

**COURT OF CRIMINAL APPEALS, STATE
OF OKLAHOMA, ORDER REMANDING
FOR EVIDENTIARY HEARING
(MARCH 26, 2021)**

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

STEPHEN TANNER VINEYARD,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

No. F-2020-245

CF 18-424

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

**ORDER REMANDING
FOR EVIDENTIARY HEARING**

Stephen Tanner Vineyard was tried by jury and convicted of Second Degree Murder in the District Court of Carter County, Case No. CF-2018-424. In accordance with the jury's recommendation the Honorable Dennis

R. Morris sentenced Appellant to 27 years imprisonment. 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 he is a citizen of the Chickasaw Nation and the crime occurred within the boundaries of the Chickasaw Nation Reservation.

Pursuant to *McGirt v. Oklahoma*, ___ U.S. ___, 140 S. Ct. 2452 (2020), Appellant's claim raises two separate questions: (a) his Indian status and (b) whether the crime occurred in Indian Country. These issues require fact-finding. We therefore **REMAND** this case to the District Court of Carter 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 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, 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.¹

Second, whether the crime occurred in Indian Country. The District Court is directed to follow the analysis set out in *McGirt*, determining (1) whether Congress established a reservation for the Chickasaw Nation, and (2) if so, whether Congress specifically erased those boundaries and disestablished the reservation. In making this determination the District Court should consider any evidence the parties provide, including but not limited to treaties, statutes, maps, and/or testimony.

The District Court Clerk shall transmit the record of the evidentiary hearing, the District Court's findings of fact and conclusions of law, and any other materials made a part of the record, to the Clerk of this Court, and counsel for Appellant, within five (5) days after the District Court has filed its findings of fact and conclusions of law. Upon receipt thereof, the Clerk of this Court shall promptly deliver a copy of that record to the Attorney General. A supplemental brief, addressing only those issues pertinent to the evidentiary hearing and limited to twenty (20) pages in length, may be filed

¹ 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).

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 question presented, that 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 Carter County: Appellant's Brief in Chief filed October 22, 2020; Appellant's Motion to Supplement the Record on Appeal/ Application for an Evidentiary Hearing filed October 22, 2020; Appellant's Reply Brief filed March 4, 2021; and Appellee's Response Brief, filed February 18, 2021.

IT IS SO ORDERED.

**WITNESS OUR HANDS AND THE SEAL OF
THIS COURT** this 26 day of March, 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