

and 5, and ordered Counts 1 through 4 to run consecutively and Count 5 to run concurrently with Count 4.

Beck raises the following errors on appeal:

- (1) His convictions for Counts 3, 4, and 5 violate the constitutional prohibition against double jeopardy and statutory prohibition against multiple punishment;
- (2) The evidence was insufficient to support three convictions for Assault with a Dangerous Weapon and Counts 3 and 5 should be reversed;
- (3) He was denied a fair trial by the admission of prejudicial evidence of other crimes and bad acts;
- (4) The district court failed to adequately instruct the jury;
- (5) He was denied a fair trial because of prosecutorial misconduct;
- (6) The district court abused its discretion when it ordered his sentences to be served consecutively; and
- (7) The State of Oklahoma lacked jurisdiction to prosecute him because he is an "Indian" and the crime occurred in "Indian Country".

This appeal turns on whether Beck is an Indian as defined by federal law, and whether he committed first degree burglary and the various assaults within Indian country as that term is defined by federal law. Because the answer to both questions is yes, federal law grants exclusive criminal jurisdiction to the federal government on at

least the burglary charge, and possibly the assault charges as well. In any event, the State of Oklahoma was without jurisdiction to prosecute him on any of the counts. Because we find relief is required on Beck's jurisdictional challenge in Proposition 7, his other claims are moot.

1. Jurisdiction and The Major Crimes Act

Title 18 Section 1153 of the United States Code, known as the Major Crimes Act, grants exclusive federal jurisdiction to prosecute certain enumerated offenses committed by Indians within Indian country. It reads in relevant part as follows:

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

18 U.S.C. § 1153(a) (2013).

Count 1, the first degree burglary charge, fits squarely within the Major Crimes Act and its exclusive federal jurisdiction. Whether Counts 2 through 5 are among the enumerated crimes is less clear.

The assaults may constitute a “felony assault under section 113”, but that is not something we must decide today. If the assaults are not covered under Section 1153, they are subject to the Act’s sister statute, 18 U.S.C. § 1152 (1948), which applies to other offenses and provides for federal or tribal jurisdiction. In either event, the State of Oklahoma is without jurisdiction to prosecute such an assault by an Indian within Indian country. *See State v. Klindt*, 1989 OK CR 75, ¶ 3, 782 P.2d 401, 403 (“[T]he State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country.”)

2. Controlling Law: *McGirt v. Oklahoma*

In *McGirt v. Oklahoma*, 591 U.S. ___, 140 S.Ct. 2452 (2020) the Supreme Court held that land set aside for the Muscogee-Creek Nation in the 1800’s was intended by Congress to be an Indian reservation, and that this reservation exists today for purposes of federal criminal law because Congress has never explicitly disestablished it. Although the case now before us involves the lands of the Chickasaw Nation, *McGirt’s* reasoning is nevertheless controlling.

3. Two Questions Upon Remand

A. Beck's Status as Indian

After *McGirt* was decided, this Court, on August 19, 2020, remanded this case to the District Court of Johnston County for an evidentiary hearing. We directed the District Court to make findings of fact and conclusions of law on two issues: (a) Beck's status as an Indian; and (b) whether the crime occurred in Indian Country, namely within the boundaries of the Chickasaw Nation Reservation. Our Order provided that, if the parties agreed as to what the evidence would show with regard to the questions presented, the parties could enter into a written stipulation setting forth those facts, and no hearing would be necessary. On October 1, 2020, the parties filed an Agreed Stipulation, agreeing that: (1) Beck has some Indian blood (49/64 degree Indian blood); (2) he was a recognized citizen of the Chickasaw Nation on the date of the charged offenses; (3) the Chickasaw Nation is a federally recognized tribe; and (4) the charged crimes occurred within the historical boundaries of the Chickasaw Nation.

On October 15, 2020, the parties appeared before the Honorable Wallace Coppedge for the scheduled evidentiary hearing. The district court acknowledged receipt of the parties' stipulation, granted the Chickasaw Nation's motion to enter as amicus curiae, and accepted the amicus brief filed on behalf of the tribe. The district court heard brief argument and the State agreed the joint stipulation resolved the factual question of Beck's Indian status. Judge Coppedge correctly concluded in his Findings of Fact and Conclusions of Law, issued November 16, 2020, that on the date of the charged crimes, Beck was an Indian for purposes of federal law.

**B. Whether Crimes Were Committed
in Indian Country**

As to the second question on remand, whether the crimes were committed in Indian country, the stipulation of the parties was less dispositive. They acknowledged only that the charged crimes occurred within the historical geographic area of the Chickasaw Nation as designated by various treaties. At the evidentiary hearing, the State took no position on whether Congress established a reservation for the Chickasaw Nation or whether Congress ever erased those boundaries and disestablished the reservation. The

parties admitted, as a joint exhibit, the Findings of Fact and Conclusions of Law from *Bosse v. State* filed in McClain County District Court, concluding Congress established a reservation for the Chickasaws and never erased its boundaries. Based on the parties' stipulation and materials submitted at the evidentiary hearing, Judge Coppedge ruled the charged crimes against Beck occurred within the boundaries of the Chickasaw Nation and that Congress never disestablished the Chickasaw Nation Reservation. We agree and so held in *Bosse v. State*, 2021 OK CR 3, ___P.3d___.

In *Bosse*, we reviewed the rulings of the McClain County District Court that served, in part, as the basis for the district court's ruling in Beck's case. *Id.*, 2021 OK CR 3, ¶¶ 8-12. We considered the applicable treaties cited by the McClain County District Court and agreed that Congress established a reservation for the Chickasaw Nation. *Id.* We further agreed that Congress had never erased those reservation boundaries, and, under the analysis in *McGirt*, the Chickasaw Nation Reservation remains intact and is Indian country. *Id.*

Our holding in *Bosse* requires a finding that for purposes of federal criminal law, the land upon which the parties agree Beck

committed these crimes is within the Chickasaw Nation Reservation and is Indian country. Under the analysis in *McGirt*, we hold the District Court of Johnston County did not have jurisdiction to prosecute Beck. Accordingly, we grant Proposition 7.

DECISION

The Judgment and Sentence of the district court is **VACATED** and this 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 JOHNSTON
COUNTY, THE HONORABLE WALLACE COPPEDGE,
DISTRICT JUDGE**

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OPINION BY: ROWLAND, V.P.J.

KUEHN, P.J.: Concur

LUMPKIN, J.: Concur in Results

LEWIS, J.: Specially Concur

HUDSON, J.: Concur in Results

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

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

justice” created out of whole cloth rather than a continuation of the solid precedents the Court has established over the last 100 years or more.

The question I see presented is should I blindly follow and apply the majority opinion or do I join 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

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).

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.

LEWIS, JUDGE, SPECIALLY CONCURRING:

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

HUDSON, J., 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 Johnston County for first degree burglary, aggravated assault and battery, and three counts of assault with a dangerous weapon. 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 Chickasaw Reservation. Under *McGirt*, the State cannot prosecute Appellant because of his Indian status and the occurrence of these crimes within Indian Country as defined by federal law. I therefore as a matter of *stare decisis* fully concur in today's decision.

I disagree, however, with the majority's definitive conclusion that Congress never disestablished the Chickasaw Reservation. Here, the State took no position below on whether the Chickasaw Nation has, or had, a reservation. The State's tactic of passivity 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 conclusions of law to review for an abuse of discretion. We should find no abuse of discretion based on the record

evidence presented. But we should not conclude definitively that the Chickasaw Nation was never disestablished based on this record.

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, __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).