

**IN THE COURT OF CRIMINAL APPEALS OF  
THE STATE OF OKLAHOMA**

**CHARLES MICHAEL COOPER, )**

**Appellant, )**

**v. )**

**THE STATE OF OKLAHOMA, )**

**Appellee. )**

**NOT FOR PUBLICATION**

**Case No. F-2018-830**

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

APR - 8 2021

JOHN D. HADDEN  
CLERK

**OPINION**

**ROWLAND, VICE PRESIDING JUDGE:**

Charles Michael Cooper was tried in a non-jury trial in the District Court of Pontotoc County, Case No. CF-2016-535. The Honorable C. Steven Kessinger, District Judge, found Cooper guilty of First Degree Murder (Count 1), in violation of 21 O.S.Supp.2012, § 701.7; First Degree Arson (Counts 2 and 5), in violation of 21 O.S.Supp.2013, § 1401; First Degree Burglary (Count 3), in violation of 21 O.S.2011, § 1431; and Second Degree Rape by Instrumentation (Count 4), in violation of 21 O.S.Supp.2015, § 1111.1. Judge Kessinger sentenced Cooper to life imprisonment without parole on Count 1, thirty-five years imprisonment on Counts 2 and 5, twenty

years imprisonment on Count 3, and fifteen years imprisonment on Count 4. All counts were ordered to be served consecutively.

Cooper appeals raising the following issues:

- (1) whether the State of Oklahoma had jurisdiction to prosecute him; and
- (2) whether he received effective assistance of counsel.

We find relief is required on Cooper's jurisdictional challenge in Proposition 1, rendering his other claim moot. Cooper claims the State of Oklahoma did not have jurisdiction to prosecute him. He relies on 18 U.S.C. § 1153 and *McGirt v. Oklahoma*, 591 U.S. \_\_\_, 140 S.Ct. 2452 (2020).

On August 19, 2020, this Court remanded this case to the District Court of Pontotoc County for an evidentiary hearing. The District Court was directed to make findings of fact and conclusions of law on two issues: (a) Cooper'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 8, 2020, the parties filed written stipulations in the District Court. On October 19, 2020, the parties appeared for an evidentiary hearing on the remand order. On November 19, 2020, the District Court filed its Findings of Fact and Conclusions of Law.

The parties agreed by stipulation that (1) Cooper has some Indian blood; (2) he was an enrolled member of the Chickasaw Nation on the date of the charged offense; and (3) the Chickasaw Nation is a federally recognized tribe. The District Court accepted this stipulation and reached the same conclusion in its Findings of Fact and Conclusions of Law.

As to the second question on remand, whether the crime was committed in Indian country, the stipulation of the parties was less dispositive. They agreed only that the charged crime occurred within the historical geographic area of the Chickasaw Nation as designated by various treaties.

In a thorough and well-reasoned order, the District Court examined the treaties between the Chickasaw Nation and the United States of America. The District Court concluded that the treaties established a reservation for the Chickasaw Nation and that no

evidence was presented showing that Congress had ever erased the boundaries of, or disestablished, the Chickasaw Reservation. This Court adopted this same conclusion of law in *Bosse v. State*, 2021 OK CR 3, ¶¶ 10, 12, \_\_\_ P.3d \_\_\_. For purposes of federal criminal law, the land upon which the parties agree Cooper allegedly committed the crime is within the Chickasaw Reservation and is thus Indian country.

The ruling in *McGirt* governs this case and requires us to find the District Court of Pontotoc County did not have jurisdiction to prosecute Cooper. Accordingly, we grant relief based upon argument raised in Proposition 1.

### **DECISION**

The Judgment and Sentence of the District Court is **VACATED**. 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 PONTOTOC  
COUNTY, THE HONORABLE C. STEVEN KESSINGER,  
DISTRICT JUDGE**

**APPEARANCES AT TRIAL**

JASON CHRISTOPHER  
ATTORNEY AT LAW  
1320 STONE BRIDGE DRIVE,  
SUITE A  
ADA, OK 74820  
COUNSEL FOR DEFENDANT

TARA PORTILLO  
ASST. DISTRICT ATTORNEY  
105 WEST 13<sup>TH</sup>  
ADA, OK 74820  
COUNSEL FOR STATE

**APPEARANCES AT  
EVIDENTIARY HEARING**

KRISTI CHRISTOPHER  
CHIEF, CAPITAL POST  
CONVICTION DIVISION  
OKLAHOMA INDIGENT  
DEFENSE SYSTEM  
P.O. BOX 926  
NORMAN, OK 73070  
COUNSEL FOR DEFENDANT

**APPEARANCES ON APPEAL**

KRISTI CHRISTOPHER  
CHIEF, CAPITAL POST  
CONVICTION DIVISION  
OKLAHOMA INDIGENT  
DEFENSE SYSTEM  
P.O. BOX 926  
NORMAN, OK 73070  
COUNSEL FOR APPELLANT

MIKE HUNTER  
ATTORNEY GENERAL  
OF OKLAHOMA  
THEODORE M. PEEPER  
ASSISTANT ATTORNEY  
GENERAL  
313 N.E. 21<sup>ST</sup> STREET  
OKLAHOMA CITY, OK 73105  
COUNSEL FOR APPELLEE

MIKE HUNTER  
ATTORNEY GENERAL  
OF OKLAHOMA  
THEODORE M. PEEPER  
JOSHUA R. FANELLI  
ASSISTANT ATTORNEYS  
GENERAL  
313 N.E. 21<sup>ST</sup> STREET  
OKLAHOMA CITY, OK 73105  
COUNSEL FOR STATE

PAUL B. SMITH  
DISTRICT ATTORNEY  
TARA PORTILLO  
ASST. DISTRICT ATTORNEY  
105 WEST 13<sup>TH</sup>  
ADA, OK 74820  
COUNSEL FOR STATE

DEBRA GEE  
CHICKASAW NATION DIVISION  
OF JUSTICE  
4001 N. LINCOLN BLVD.  
OKLAHOMA CITY, OK 73105  
COUNSEL FOR CHICKASAW  
NATION

**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.<sup>1</sup> The result seems to be some form of "social

---

<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



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 Pontotoc County for first degree murder, first degree arson, first degree burglary, and second degree rape by instrumentation. 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).