

**ORIGINAL**



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

**CHARLES ISSAC JACOBS,** )  
 )  
 **Appellant,** )  
 )  
 **v.** )  
 )  
 **THE STATE OF OKLAHOMA,** )  
 )  
 **Appellee.** )

**NOT FOR PUBLICATION**  
  
**Case No. F-2019-912**

**FILED**  
COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

**AUG 25 2022**

**JOHN D. HADDEN**  
CLERK

**SUMMARY OPINION**

**ROWLAND, PRESIDING JUDGE:**

Appellant Charles Issac Jacobs was charged in the District Court of McCurtain County, Case No. CF-2018-113, with Aggravated Assault and Battery, in violation of 21 O.S.2011, § 646. The jury found Jacobs guilty and assessed punishment at two years imprisonment. The Honorable Gary Brock, Special Judge, who presided over Jacobs' jury trial, sentenced him accordingly.<sup>1</sup> Jacobs appeals raising the following issues:

- (1) Whether the State lacked jurisdiction to prosecute him;

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<sup>1</sup> Under 21 O.S.Supp.2015, § 13.1, Jacobs must serve 85% of his sentence of imprisonment before he is eligible for parole consideration.

- (2) whether the State proved beyond a reasonable doubt that he was not acting in self-defense;
- (3) whether the trial court failed to properly instruct the jury; and
- (4) whether the trial court's imposition of a monetary fine was authorized by law.

We affirm the Judgment and Sentence of the district court.

**1.**

Jacobs argues in his first proposition, as he did below, that the State lacked jurisdiction to prosecute him because the victim was Indian, and the crime occurred in Indian Country.<sup>2</sup> The trial court overruled Jacobs' jurisdictional challenge at trial and Jacobs complains on appeal that this ruling was in error.

On April 27, 2021, this Court issued an order remanding the matter to the district court for an evidentiary hearing to determine the victim's Indian status and whether the crime occurred on the Choctaw reservation, pursuant to *United States v. Diaz*, 679 F.3d

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<sup>2</sup> Although Jacobs notes that defense counsel argued below that both he and the victim were tribal members, he acknowledges that while he has a 15/64 degree of Cheyenne/Arapaho blood it is not a sufficient blood quantum for enrollment in that tribe. Jacobs is not a member of a federally recognized tribe and claims no other acknowledgment by or ties to the Cheyenne/Arapaho Tribe. Accordingly, Jacobs does not argue in support of his Indian status but rather focuses his argument on the Indian status of the victim.

1183, 1187 (10th Cir. 2012); *United States v. Prentiss*, 273 F.3d 1277, 1280 (10th Cir. 2001). The parties entered an agreed stipulation and joint motion to proceed without an evidentiary hearing. The trial court accepted the stipulation and found that Jacobs possesses a degree of Indian blood, that the victim was an enrolled member of the Choctaw Nation at the time of the crime, and that the crime occurred within the historic boundaries of the Choctaw Reservation. We afford a district court's factual findings that are supported by the record great deference and review those findings for an abuse of discretion. *Young v. State*, 2000 OK CR 17, ¶ 109, 12 P.3d 20, 48.

We find no abuse of discretion in the trial court's findings of fact. The record supports the finding that Jacobs is not an Indian for purposes of criminal jurisdiction, that the victim is an Indian for purposes of criminal jurisdiction, and that the crime occurred on the Choctaw Reservation which was never disestablished. *See Parker v. State*, 2021 OK CR 17, ¶¶ 35-36, 495 P.3d 653, 665-66 (discussing Indian status requirements for purposes of criminal jurisdiction); *Sizemore v. State*, 2021 OK CR 6, ¶¶ 10-16, 485 P.3d 867, 869-71

(holding that the Choctaw Reservation was established and remains in existence). However, the jurisdictional issue in this case turns on the United States Supreme Court's recent ruling in *Oklahoma v. Castro-Huerta*, 142 S.Ct. 2486, 2491 (2022) wherein the Supreme Court held that "the Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country." *See also State v. Ward*, 2022 OK CR 16, \_\_\_ P.3d \_\_\_ (following the holding in *Castro-Huerta*). Accordingly, Jacobs' jurisdictional challenge fails; the State did have jurisdiction to prosecute this case.

## 2.

Jacobs claims that the evidence was insufficient to support his conviction for aggravated assault and battery because the State failed to show that he was not acting in self-defense when he assaulted the victim. "Self-defense is an affirmative defense which admits the elements of the charge, but offers a legal justification for conduct which would otherwise be criminal." *Davis v. State*, 2011 OK CR 29, ¶ 95, 268 P.3d 86, 114. Once the defense of self-defense is raised, the State bears the burden to disprove it beyond a reasonable doubt.

See OUJI-CR(2d) 8-49; *McHam v. State*, 2005 OK CR 28, ¶ 10, 126 P.3d 662, 667. “Pursuant to Oklahoma law, a person is justified in using deadly force if a reasonable person in the circumstances and from the defendant’s viewpoint would reasonably have believed that he was in imminent danger of death or great bodily injury.” *Spruill v. State*, 2018 OK CR 25, ¶ 6, 425 P.3d 753, 755-56; OUJI-CR(2d) 8-46.

The evidence was sufficient to disprove both that Jacobs believed he faced imminent danger of death or great bodily harm and that any belief that he was in danger of death or great bodily harm was reasonable. Taken in the light most favorable to the State, sufficient evidence was presented at trial to allow any rational trier of fact to find, beyond a reasonable doubt, the absence of self-defense and the existence of the elements of the crime of aggravated assault and battery. *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04.

### 3.

Jacobs contends that the trial court erred in denying his request that the jury be given a “stand-your-ground” instruction. Jury

instructions are within the discretion of the trial court, and we review for abuse of discretion. *Newman v. State*, 2020 OK CR 14, ¶ 13, 466 P.3d 574, 581. An abuse of discretion is any unreasonable or arbitrary action made without proper consideration of the relevant facts and law, also described as a clearly erroneous conclusion and judgment, clearly against the logic and effect of the facts. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

A theory of defense instruction is warranted only when supported by the evidence. *Davis*, 2011 OK CR 29, ¶ 94, 268 P.3d at 114. This Court has held that by enacting 21 O.S.Supp.2017, § 1289.25, “the Legislature intended to allow Oklahoma citizens the right of defense in furtherance of their expectation of absolute safety in places they have a right to be, unless the citizens are engaging in unlawful activity at the time.” *Dawkins v. State*, 2011 OK CR 1, ¶ 10, 252 P.3d 214, 218. Title 21 O.S.Supp.2017, § 1289.25(D) provides that:

A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force, if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm

to himself or herself or another or to prevent the commission of a forcible felony.

While it is not entirely clear from the record that Jacobs was in a place he had a right to be at the time of the incident, it is clear from the record that Jacobs did not reasonably believe that the assault he inflicted upon the victim was necessary to prevent death or great bodily harm to himself or others or to prevent the commission of a forcible felony as the evidence showed that the victim was unconscious immediately after the impact of the collision. As the evidence does not support a finding that Jacobs was legally entitled to use defensive force against the victim, the trial court did not abuse its discretion in omitting a jury instruction on the “stand-your-ground” law. This claim is denied.

**4.**

The record shows that the jury assessed punishment at two years imprisonment. At sentencing, the trial court sentenced in accordance with the jury’s verdict and noted additionally and correctly that it was without authority to impose a fine since the jury could have done so but did not. Yet, the Judgment and Sentence reflects the imposition of a \$500.00 fine. Jacobs argues on appeal

that relief is warranted because the trial court was without authority to impose the fine.

The State agrees that the \$500.00 fine was not authorized in this case. It asserts, however, that because the trial court also acknowledged this and declined at sentencing to impose a fine, the fine noted in the Judgment and Sentence is a scrivener's error. We agree. This obvious clerical error should be corrected by order *nunc pro tunc*. *Neloms v. State*, 2012 OK CR 7, ¶ 44, 274 P.3d 161, 172. Upon remand, the district court is directed to enter an order *nunc pro tunc* correcting the Judgment and Sentence to accurately reflect that no fine was imposed at sentencing.

### **DECISION**

The Judgment and Sentence of the district court is **AFFIRMED**. However, the matter is **REMANDED** to the District Court with instructions to enter an order *nunc pro tunc* correcting the Judgment and Sentence document in conformity with this opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2022), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.



**AN APPEAL FROM THE DISTRICT COURT  
OF MCCURTAIN COUNTY,  
THE HONORABLE GARY BROCK, SPECIAL JUDGE**

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**OPINION BY: ROWLAND, P.J.**

HUDSON, V.P.J.: Concur  
LUMPKIN, J.: Concur  
LEWIS, J.: Concur  
MUSSEMAN, J.: Concur

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