

accordance with the jury's recommendation the Honorable Dwayne Steidley, District Judge, sentenced Appellant to twenty-five (25) years imprisonment in Count I, two (2) years imprisonment in Count II, one year imprisonment in Count III, and one year in the county jail in Count IV. All sentences were ordered to be served concurrently.² 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 Cherokee Nation and the crime occurred within the boundaries of the Cherokee Nation.

Pursuant to *McGirt v. Oklahoma*, 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 Rogers County for an evidentiary hearing.

Recognizing the historical and specialized nature of this remand for evidentiary hearing, we requested the Attorney General and District Attorney work in coordination to effect uniformity and completeness in

² Appellant must serve 85% of his sentence in Count I before becoming eligible for parole consideration.

the hearing process. Upon Appellant's presentation of *prima facie* evidence as to his legal status as an Indian and as to the location of the crime as Indian Country, the burden shifts to the State to prove it has subject matter jurisdiction. 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.³ 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 Cherokee 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

³ 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).

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 evidentiary hearing was timely held before the Honorable Kassie McCoy, Associate District Judge, and an Order on Remand from that hearing was timely filed with this Court. The order states that appearances were made by attorneys from the Rogers County District Attorney's, the office of the Attorney General for the State of Oklahoma, defense counsel, and the Attorney General for the Cherokee Nation.

In its order, the District Court stated that based upon stipulations and evidence presented by the parties, briefs and argument of counsel, Appellant was shown to be a citizen of the Cherokee Nation, Congress had established a reservation for the Cherokee Nation, and Congress had not disestablished the reservation. In its order, the District Court did not address the evidentiary basis for its finding that Appellant is Indian. However, filed with this Court is the original record of the proceedings in the District Court upon remand. Contained therein are the following stipulations agreed upon by the parties:

The defendant/appellant, Dakota Shriver, has 17/128 Cherokee blood and was a member of the Cherokee Nation at the time of the crimes. Verification of Mr. Shriver's tribal membership from the Cherokee Nation is appended to this Stipulation as Exhibit 1. The Cherokee Nation is an Indian Tribal Entity recognized by the federal government.

...

The crimes alleged in this case occurred in Rogers County, Oklahoma at Gordon Road (E/W 530) 2/10 Mile East of Highway 266, Verdigris, Oklahoma. This address is within the geographic area set out in the Treaty with the Cherokee, December 29, 1835, 7 Stat. 478, as modified under the Treaty of July 19, 1866, 14 Stat. 799, and as modified under the 1891 agreement ratified by the Act of March 3, 1893, 27 Stat. 612. Verification that the above address is located within the aforementioned boundaries from the Cherokee Nation Real Estate Services Division is appended to this Stipulation as Exhibit 2.

Based upon this evidence, the District Court found Appellant is Indian and the crimes in this case occurred in Indian Country.

Regarding the establishment/disestablishment of the reservation, the District Court applied the analysis set forth in *McGirt* in its consideration of numerous treaties, federal statutes, federal case law and other official documents. This evidence was the basis for the District Court's finding that Congress had established a reservation for the Cherokee and only Congress could disestablish that Reservation. The court stated on that point, "regardless of where the burden of

production is placed, no evidence was presented to this Court to establish Congress explicitly erased or disestablished the boundaries of the Cherokee Nation or that the State of Oklahoma has jurisdiction in this matter. As a result, the Court finds Dakota Shriver is an Indian and that the crime occurred in Indian Country.”

Both Appellant and the State were given the opportunity to file response briefs addressing issues from the evidentiary hearing. In its response brief, 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. Appellant notes that the State did not present any evidence at the evidentiary hearing and made no argument regarding any of the questions upon which this Court remanded for an evidentiary hearing.

In its response brief, the State acknowledges the District Court’s findings as to Appellant’s Indian status, the location of the crime as occurring in Indian Country, the establishment of a reservation for the Cherokee Nation, and that no evidence had been presented establishing that Congress had erased or disestablished that reservation. The State contends that should this Court find Appellant

is entitled to relief based on the District Court's findings, this Court should stay any order reversing the conviction for thirty (30) days so that the appropriate authorities can review the case and determine whether it is appropriate to file charges and take custody of Appellant. *Cf.* 22 O.S. 2011, § 846.

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. 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 establishing his status as Indian, having 17/128 Cherokee blood, that he was a member of the Cherokee Nation at the time of the crimes, and the crimes in this case occurred within the Cherokee Nation Reservation.

We also find the District Court appropriately applied *McGirt* to determine that Congress did establish a reservation for the Cherokee Nation and that no evidence was presented showing that Congress explicitly erased or disestablished the boundaries of the Cherokee

Reservation or that the State of Oklahoma had jurisdiction in this matter. See *Hogner v. State*, 2021 OK CR 4, ¶ 18, ___ P.3d. ___. We therefore find that pursuant to *McGirt*, the State of Oklahoma did not have jurisdiction to prosecute Appellant in this matter.⁴ The Judgments and Sentences in this case are hereby reversed and the case remanded to the District Court of Rogers County with instructions to dismiss the case.⁵

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.⁶

AN APPEAL FROM THE DISTRICT COURT OF ROGERS COUNTY
THE HONORABLE KASSIE McCOY, ASSOCIATE DISTRICT JUDGE

⁴ 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.

⁵ This resolution renders the other six (6) propositions of error raised in Appellant’s brief moot.

⁶ By withholding the issuance of the mandate for 20 days, the State’s request for time to determine further prosecution is rendered moot.

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OPINION BY: LUMPKIN, J.

KUEHN, P.J.: Concur in Results
ROWLAND, V.P.J.: Concur
LEWIS, J.: Concur in Results
HUDSON, J.: Specially Concur

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LEWIS, JUDGE, CONCURRING IN RESULTS:

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 results in the decision to dismiss this case for the lack of state jurisdiction.

HUDSON, J., SPECIALLY CONCURS:

Today's decision applies *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020) to the facts of this case and dismisses convictions for second degree murder, accessory after the fact and misdemeanor obstructing an officer from Rogers County. 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 Cherokee 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.

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 Concur); and *Krafft v. State*, No. F-2018-340 (Okl.Cr., Feb. 25, 2021) (Hudson, J., Specially Concur) (unpublished).