

STATE OF NORTH CAROLINA  
COUNTY OF JACKSON

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

FILE NO. 12 CRS 1362-1363, 51719-51720

2013 NOV 26 PM 12:54

STATE OF NORTH CAROLINA )

VS

GEORGE LEE NOBLES  
\_\_\_\_\_ )

JACKSON CO. C.B.C.

BY 

**ORDER ON DEFENDANT'S  
MOTION TO DISMISS**

**THIS** matter is before the undersigned on the Defendant's Motion to Dismiss filed April 16, 2013 and the Amendment to Motion to Dismiss filed August 7, 2013. Present at the hearing was Jim Moore, Assistant District Attorney and Bridgette Aguirre, Assistant District Attorney representing the State. Todd Williams and Vincent F. Rabil, Assistant Capital Defenders were present representing the Defendant, and the Defendant George Lee Nobles was present. The Court makes the following

**FINDINGS OF FACT:**

**I.**

**A. Brief Summary of the Case at Bar**

In the parking lot of the Fairfield Inn located in Cherokee, North Carolina a shooting occurred resulting in the death of Barbra Wells Preidt on the evening of September 30, 2012. Following the death an exhaustive investigation lead by the Cherokee Indian Police Department culminated in the arrest of George Lee Nobles on November 30, 2012 (hereinafter referred to as the "Defendant"). On November 30, 2012 the Defendant was charged with two counts of possession of a firearm by a felon, robbery with a dangerous weapon, and first degree murder in the North Carolina State Court located in Jackson County, North Carolina. Because the Defendant was charged with first degree murder counsel was appointed by Robert M. Hurley, Capital Defender on November 30, 2012. The Defendant by and through counsel filed a motion to dismiss on April 16, 2013, claiming he is an Indian<sup>1</sup> as defined by law and alleging the State Court of North Carolina lacks jurisdiction over Defendant based upon his affiliation with the Eastern Band of Cherokee Indians since the homicide occurred on the Cherokee reservation<sup>2</sup>. The undersigned schedule for hearing this Motion to Dismiss on August 9, 2013. The hearing concluded on September 13, 2013.

<sup>1</sup> The terms "Indian" and "Native American" are synonyms and are used interchangeably throughout this order with "Indian" being used primarily throughout this opinion as that is the term employed in the statutes at issue in this motion to dismiss.

<sup>2</sup> The terms "Qualla Boundary" and "Cherokee Indian reservation" are synonyms connoting the same meaning of "Indian country" and are used interchangeably throughout this order.

## B. Facts

1. That the Court received testimony from Christian Clemmer. Mr. Clemmer is employed with the North Carolina Department of Public Safety in the Division of Adult Corrections (hereinafter referred to as "DAC"). He has been employed for the previous five years as a probation officer with his duty station located in Gaston County.
2. That Mr. Clemmer was employed as a probation officer on November 4, 2011 when a probation case was transferred to Gaston County, North Carolina from Polk County, Florida. The individual to be supervised was the Defendant.
3. That the Defendant was released from the custody of the Florida Department of Corrections on November 4, 2011, after being convicted of Armed Burglary and Grand Theft in Polk County, Florida on January 28, 1993.
4. That included in the information from Florida was a presentence report which was generated for the Florida Court on July 28, 1993. In the preparation of the presentence report in which Defendant participated, the document clearly states Defendant was white/Caucasian making no mention of any Indian affiliation. [See Attachment "A"].
5. That Mr. Clemmer first contacted the Defendant on November 10, 2011.
6. That in addition to Mr. Clemmer the Defendant was also supervised by Gaston County probation officers James Sparrow and Chelsea Harris.
7. That the Defendant upon his arrival in North Carolina resided with his mother Donna Lorraine Smith Crowe Mann at 5009 Tary Court, Kings Mountain, North Carolina.
8. That the home at 5009 Tary Court was approved as a suitable residence for the Defendant by the Gaston County probation department. Mr. Clemmer personally visited the residence on July 22, 2012.
9. That 5009 Tary Court, Kings Mountain is located in Gaston County, North Carolina.
10. That the probation officers in Gaston County interacted with Defendant approximately 15 times during the entire time of supervision between November 4, 2011 and the date of the homicide on September 30, 2012.
11. That Mr. Clemmer further testified and the Court would find that race is not an issue considered germane to, or of any relevance by, the DAC. In North Carolina issues of race have no bearing on who is accepted and supervised by the DAC. All persons subject to DAC supervision are treated in the same manner regardless

of race, sex, age, wealth or the lack thereof, religious affiliation and any other personal factor unrelated to the primary function and mission of the DAC which is the care, custody and supervision of adults and juveniles after conviction for a violation of North Carolina law.

12. That as Defendant asserts he is Indian based upon a relationship with the Eastern Band of Cherokee Indians, issues of ancestry are, however, germane to this motion to dismiss filed by the Defendant and accordingly detailed inquiry is necessary.
13. That the race of Defendant in the Interstate Commission Compact paperwork is white/Caucasian. [See Attachment "B" (page 1 of Probation Records)] This document is instructive since the Defendant was presented with the application which clearly described him as white/Caucasian. Notwithstanding this description the Defendant signed the application on August 11, 2011.
14. That the issue of race, a claim of being Native American or any affiliation with an Indian tribe by Defendant was never discussed with Mr. Clemmer. Moreover, Defendant neither asserted Native American ancestry nor questioned the various and divergent documentation which all identified Defendant as white/Caucasian at any time while being supervised with any DAC probation officer.
15. That the Defendant neither informed DAC of any unique Native American programs available to him nor sought assistance from any DAC employee seeking special programs available for Native American individuals either in the corrections system specifically or available to the broader Native American population in general.
16. That during the time of probation supervision the Defendant transferred his supervision from Gaston County to Swain County on March 26, 2012.
17. That the Court received testimony from Olivia Ammons. Ms. Ammons is employed with DAC. She has been employed for the previous nine years as a probation officer with her duty station located in Swain County.
18. That Ms. Ammons was employed as a probation officer during 2012 when the probation of Defendant transferred to Swain County from Gaston County on March 26, 2012.
19. That Ms. Ammons first met the Defendant March 28, 2012, at the residence located at 404 Furman Smith Drive, Cherokee, North Carolina. This residence is the home of Tonya Crowe, Aunt of the Defendant. In the mountainous and rural areas of Jackson and Swain Counties it can often be difficult to ascertain the exact boundary between counties. These occasional ambiguities are often exacerbated when locations are on the Cherokee reservation. It may be that the residence of Tonya Crowe was just inside the Jackson County portion of the Qualla

Boundary but since the location was so close to the Swain County boundary Ms. Ammons graciously decided to continue supervision of the Defendant. In addition to the close proximity to Swain County Ms. Ammons in an effort of cooperation sought to assist her colleagues in the Jackson County probation office since during this period there did exist a reduced staff available to handle the workload.

20. That Ms. Ammons next met with Defendant on April 3, 2012, in an office visit at the Swain County Justice Center. Ms. Ammons reviewed all the requirements Defendant was subject to including the need for stable housing, employment, and mental health and substance abuse treatment. Additionally, it was stressed to Defendant the necessity of maintaining contact with his supervising officer and updating any changes in living arrangements and employment in a timely fashion.
21. That Defendant secured employment at Home Style Chicken restaurant located at 510 Paint Town Road, Cherokee, North Carolina. Defendant received payment for his work at Home Style Chicken and ancillary to his salary was issued a W-2 form.
22. That the next scheduled office visit for Defendant was May 1, 2012. The Defendant did not attend the meeting, call to cancel or reschedule the meeting or otherwise explain his absence to Ms. Ammons.
23. That Ms. Ammons next visited the residence of Defendant on May 2, 2012. Defendant was not home and Ms. Ammons left a notice hung on the door for Defendant to contact her immediately.
24. That Defendant attended a scheduled office visit on May 7, 2012.
25. That the request for substance abuse screening dated May 7, 2012, is likewise instructive. When the request for screening form DCC26 was completed, the information clearly listed the background of Defendant and identified Defendant as white/Caucasian. Notwithstanding this description Defendant signed the request on May 7, 2012. [See Attached "C" (page 51 of Probation Records)]. It was at this meeting that Attachment "C" was generated.
26. That Ms. Ammons conducted a successful home visit on May 8, 2012.
27. That Ms. Ammons spoke by phone to Tonya Crowe regarding the Defendant. Ms. Crowe expressed growing concerns about Defendant which were slowly developing with the continued presence of Defendant in her home.
28. That on May 17, 2012, Defendant called Ms. Ammons and advised he had left the residence of his Aunt, Tonya Crowe at 404 Furman Smith Drive and moved to Fort Wilderness Campground, 284 Fort Wilderness Road, Whittier, North

Carolina. This transition was not unexpected by Ms. Ammons based upon the prior discussions with Ms. Crowe.

29. That due to this change in residence Ms. Ammons began the internal process for transferring supervision from Swain County to Jackson County on May 21, 2012. Whilst boundaries and points of demarcation were less ascertainable between Jackson and Swain counties near 404 Furman Smith Drive, Fort Wilderness Campground is indisputably situated in Jackson County.
30. That the transfer request was denied by Jackson County. The basis for denial was due solely to the inability of Jackson County to confirm an actual address and residence for Defendant.
31. That on June 20, 2012, Defendant moved to the residence of Ruth and Ricky Griggs, 460 Griggs Lane, Bryson City, North Carolina. This residence is located in Swain County.
32. That upon investigation by Ms. Ammons it was determined Defendant was spending approximately half his time at the Griggs' residence and half his time with his girlfriend at a residence unknown and unapproved by his probation officer.
33. That an office visit occurred June 25, 2012. At this visit Defendant advised he had moved to 460 Griggs Lane and further advised he had quit his job at Home Style Chicken eatery. Defendant further informed Ms. Ammons his time in the mountains had regrettably not gone as hoped and he was seriously considering returning to Gaston County and the residence of his mother.
34. That the next office visit was scheduled for July 11, 2012. Defendant attended the meeting and explained he was moving to Keener Avenue but provided no address.
35. That on July 12, 2012, the Defendant in yet another reversal of course advised he was returning to Gaston County. Ms. Ammons instructed Defendant to report to Chief Murray in Gaston County no later than July 16, 2012. Ms. Ammons completed all required internal documentation to close out the supervision of Defendant in Swain County which concluded her obligations and responsibilities in this matter. Supervision of the Defendant returned to Gaston County on July 12, 2012.
36. That during the whole period Ms. Ammons supervised Defendant he never at any time indicated he was an enrolled member of the Eastern Band of Cherokee Indians or that he was eligible for any services provided to Native Americans of any federally recognized Indian Tribe. Defendant never asked for referral to any programs or services offered by the Eastern Band of Cherokee Indians to its enrolled members or First Descendants.

37. That in the documentation in the custody of Ms. Ammons the final four numbers of the Defendant's social security number are #2669 which is consistent with the social security number given by Defendant on his Cherokee Police Rights Interrogation Form which was admitted as State's exhibit #2. [See Attachment "D"] The Court would note the social security number given in Attachment "D" is inconsistent with the social security number on the Florida presentence report in Attachment "A" and the "Affidavit of Indigency" form Defendant completed on November 30, 2012. [See Attachment "E"].
38. That the Court received testimony from Sean Birchfield. Sean Birchfield is employed as a Sergeant/Detective with the Cherokee Indian Police Department (hereinafter "CIPD").
39. That Detective Birchfield obtained his BLET certificate in 1997. A year prior, in 1996, he received his certification as a Detention Officer. Detective Birchfield began working as an officer with the CIPD in January 2005. Detective Birchfield was employed prior to 2005 in law enforcement with the Swain County Sheriff's Department.
40. That Detective Birchfield is a certified Law Enforcement Officer by the State of North Carolina.
41. That Detective Birchfield is a First Descendant of the Eastern Band of Cherokee Indians.
42. That the CIPD is certified as a Law Enforcement Agency by the State of North Carolina.
43. That Detective Birchfield attended numerous professional and educational training courses since his employment began with the CIPD. These courses covered general law enforcement issues as well as updates in case law, statutes, issues of jurisdiction and matters unique to Indian law.
44. That in addition to general seminars and updates in law enforcement matters, Detective Birchfield and the entire CIPD received specialized trainings in Indian law issues in 2006 and 2010. The attendees received tuition from Don Gast, Assistant United States Attorney for the Western District of North Carolina and also from agents in the employ of the FBI. Further training is scheduled for the fall of 2013.
45. That Detective Birchfield responded to the scene of the homicide at the Fairfield Inn located on the Qualla Boundary on September 30, 2012.
46. That on the evening of November 29-30, 2012, the Defendant was arrested at 1621 Olivet Church Road, Cherokee, North Carolina. This residence is located on trust land within the external borders of the Qualla Boundary.

47. That the Defendant following his arrest was transported to the CIPD station located on the Qualla Boundary.
48. That Detective Birchfield first met the Defendant at the CIPD station in the early morning hours of November 30, 2012, following his arrest by law enforcement at 1621 Olivet Church Road.
49. That Detective Birchfield spoke briefly to Defendant but did not conduct a formal interview.
50. That the Defendant was interviewed by other law enforcement officers at the CIPD and this interview was recorded. A rights form was provided to Defendant and he signed the waiver on November 30, 2012, at 3:35AM which was admitted as State's exhibit #2 and Attachment "D".
51. That Detective Birchfield both ran an NCIC criminal history on the Defendant whereupon he learned there were no alerts or outstanding State or federal process pending and reviewed the tribal enrollment book which is maintained at the CIPD to ascertain whether Defendant was an enrolled member of the Eastern Band of Cherokee.
52. That at the time of the arrest NCAWARE was not available to law enforcement at the CIPD.
53. That as part of the investigation and arrest process Detective Birchfield discussed with other actors in the law enforcement community where jurisdiction existed for the Defendant in light of the specific criminal offenses being charged.
54. That more specifically, Detective Birchfield discussed what offenses would be charged and which Court had proper jurisdiction for these offenses with Benjamin Reed, Chief of Police for the CIPD, Lieutenant Gene Owle, CIPD, Jason Smith, Eastern Band of Cherokee Indian Tribal Court Prosecutor and Special Assistant United States Attorney, and James Moore, Assistant District Attorney for the 30<sup>th</sup> Judicial District of North Carolina.
55. That upon completing the background investigation of George Lee Nobles and discussing the matter with the officials described herein, Detective Birchfield charged the Defendant with the murder of Barbra Preidt at the CIPD.
56. That all agencies after discussion and consultation determined jurisdiction over Defendant was in the North Carolina State Court in general, and venue for these offenses in Jackson County in particular. After the decision to arrest and determination of jurisdiction was made, Detective Birchfield transported Defendant to the Jackson County detention facility for an immediate appearance before a Jackson County Magistrate. The Defendant arrived at the Jackson County Magistrate's office at approximately 7:00AM on November 30, 2012.

57. That at the time of arrest Detective Birchfield neither asked Defendant whether he was an enrolled member of the Eastern Band of Cherokee Indians nor whether his parents were enrolled members. However, as previously noted Detective Birchfield had reviewed the enrollment records kept at the CIPD and the name of the Defendant was not to be found.
58. That the United States Attorney for the Western District of North Carolina has for many decades enforced criminal laws against members of the Eastern Band of Cherokee Indians pursuant to the Major Crimes Act 18 U.S.C. §1153. It has long been the policy of the United States Attorney for the Western District that as part of the charging process for criminal offenses occurring on the Qualla Boundary law enforcement officers making an arrest are required to provide documentation to the United States Attorney certifying the defendant being charged is an enrolled member of a federally recognized tribe.
59. That Detective Birchfield did not certify the Defendant was an enrolled member of the Eastern Band of Cherokee or any other federally recognized Tribe at the time of arrest since there was no evidence to warrant this determination or in any manner suggest a reasonable and prudent officer should make such a determination.
60. That Detective Birchfield testified he is aware of Rule 6 of the Cherokee Tribal Court Rules of Criminal Procedure.
61. That Detective Birchfield upon further investigation after Defendant was arrested and taken to the Jackson County magistrate, found no record of any prior adult criminal charges against the Defendant in the Cherokee Tribal Court. However, this search did not include a review of juvenile records in the Cherokee Tribal Court.
62. That arising out of the homicide on September 30, 2012, two other individuals were charged with various related criminal offenses. Dwayne Edward Swayney was charged and arrested on the Qualla Boundary. Dwayne Swayney is an enrolled member of the Eastern Band of Cherokee Indians. Law enforcement determined this fact by reviewing and finding the name of Dwayne Swayney in the enrollment records kept for reference by law enforcement at the CIPD. The other co-defendant was Ashlyn Carothers. She was arrested at the CIPD. Ashlyn Carothers was determined to not be an enrolled member of the Eastern Band of Cherokee Indians. However, Ms. Carothers was found to be an enrolled member of the Cherokee Nation of Oklahoma. Both Mr. Swayney and Ms. Carothers were taken before a Tribal magistrate at the Cherokee Tribal Court. The Arrest Report from CIPD for Mr. Swayney was admitted as Defendant's exhibit #2. The Arrest Report from CIPD for Ms. Carothers was admitted as Defendant's exhibit #3. The Affidavit of Jurisdiction for Ms. Carothers was completed by CIPD on November 30, 2012 which was admitted as Defendant's exhibit #8 [See Attachment "F"]. The Affidavit of Jurisdiction completed by CIPD for Mr. Swayney was admitted



as Defendant's exhibit # 9 [See Attachment "G"]. The CIPD Warrants issued against Ms. Carothers for the charges of Homicide in the First Degree; Robbery with a Dangerous Weapon; Aid and Abet Homicide in the First Degree and Aid and Abet Robbery with a Dangerous Weapon were admitted as Defendant's exhibit # 10, 11, 12 and 13 respectively.

63. That both enrolled members of the Eastern Band of Cherokee Indians and enrolled members of other federally recognized Indian tribes are subject to the criminal jurisdiction of the Cherokee Tribal Court. U.S. v. Wheeler, 435 U.S. 313 (1978); Cherokee Code Chapter 14-1.1(a); 25 U.S.C. §1301(2)(2013); U.S. v. Lara, 541 U.S. 193, 210 (2004).
64. That the Court received testimony from Kathie McCoy. Ms. McCoy is an employee of the Eastern Band of Cherokee Indians working in the office of tribal enrollment. She has worked in this office for the past 16 years.
65. That as part of her job duties Ms. McCoy works with the Tribal enrollment committee which is a committee comprised of the Tribe's elected governmental leaders handling matters related to enrollment issues.
66. That Ms. McCoy is aware of and knowledgeable regarding enrollment eligibility in the Eastern Band of Cherokee Indians. The three factors required by the Eastern Band of Cherokee for an individual to be eligible for enrollment are:
  - a. being between the ages of 0-18;
  - b. being at least a 1/16 blood quantum; and
  - c. being a direct lineal descendant to an ancestor included in the 1924 Baker Roll.

Cherokee Code §49-2 (The Cherokee Code shall be cited as "C.C." or "Cherokee Code" hereinafter.)
67. That the required documentation sought by the tribal enrollment office consists of a certified birth certificate and photo ID. Applicants may submit additional documentation in addition to the required documents listed above but are not required to do so.
68. That the State admitted into evidence State's exhibit #4 [See Attachment "H"] which is an official document from the Eastern Band of Cherokee enrollment office stating that Defendant is not an enrolled member of the Eastern Band of Cherokee Indians.
69. That the State admitted into evidence State's exhibit #5 stating Donna Lorraine Mann the mother of Defendant is an enrolled member of the Eastern Band of Cherokee Indians.

70. That the Eastern Band of Cherokee Indians does recognize First Lineal Descendants (hereinafter referred to as "First Descendent") which are defined by Eastern Band of Cherokee Indian in Section 16 of the Charter and Governing Document of the Eastern Band of Cherokee Indians, as enacted and adopted May 8, 1986, and amended by Tribal referendum October 8, 1986 and September 5, 1995. [See Attachment "I" for Section 16 of the Charter in its entirety] Section 16 states in relevant part:
- The first generation of an enrolled member of the Eastern Band of Cherokee Indians shall enjoy all property, both real and personal, that is held in said enrolled member's possession at their death. First generation shall include all children born to or adopted by an enrolled member.
71. That for individuals who are designated as First Descendants the tribal enrollment office issues documentation known as a "Letter of Descent." The document is issued by personnel in the enrollment office and is used to establish eligibility for services in areas including, but not limited to, health care, education and employment and for identification purposes.
72. That the Eastern Band enrollment office maintains all official enrollment records. This repository of records is the official database of all enrollment documentation for the Eastern Band of Cherokee. All documents in their possession have been scanned into this single database.
73. That a search was requested of the Eastern Band of Cherokee enrollment office for any records of the Defendant. Ms. McCoy conducted a search of the official enrollment database for any records pertaining to Defendant. No documents regarding the Defendant were found.
74. That there exists neither a certificate of enrollment nor a "Letter of Descent" for the Defendant issued by the Eastern Band of Cherokee Indians enrollment office.
75. That while Defendant is neither enrolled nor currently classified as a First Descendant, it is the opinion of Ms. McCoy based upon the information available to her and relying primarily on the fact that Defendant's biological mother is an enrolled member, Defendant is eligible to be designated as a First Descendant by the enrollment office of the Eastern Band.
76. That the Court received testimony from Annette Tarnawsky. Ms. Tarnawsky is employed by the Eastern Band of Cherokee Indians as their Attorney General. She has been employed in the legal division of the Tribe for 13 years serving as associate counsel subsequently being promoted to the position of Attorney General in 2009.
77. That the legal division of the Tribe provides legal representation to the government of the Eastern Band of Cherokee and all of its ancillary programs. As

Attorney General she is the primary legal advisor to the Tribe. Included amongst her many and varied tasks and responsibilities are the supervision of the legal division including its attorneys, paralegals and support staff, working with and advising the executive and legislative branch of the Tribe, representing the Tribe and its programs in judicial and administrative hearing and supervising the tribal prosecutor assigned to manage the criminal prosecutions in Tribal Court.

78. That the tribal prosecution team currently consists of two positions with a lead prosecutor and an assistant prosecutor. The lead tribal prosecutor is Jason Smith, Esq. The assistant tribal prosecutor is Justin Eason, Esq.
79. That the Eastern Band of Cherokee Tribal government is founded upon the Charter and Governing Document of the Eastern Band of Cherokee Indians, as enacted and adopted May 8, 1986, and amended by Tribal referendum October 8, 1986 and September 5, 1995.[See Attachment "I"]
80. That while Ms. Tarnawsky testified there are three distinct branches which comprise the government of the Eastern Band of Cherokee Indians, the structure of the Eastern Cherokee government must be analyzed closer. Section 1 of the Charter provides for an Executive Branch and a Legislative Branch of government. The Charter does not provide for a Judicial Branch. However, the Eastern Cherokee exercising the sovereign authority of the Tribe did establish the Cherokee Tribal Court in C.C. §7-1 *et. seq.* Accordingly, while the Cherokee tribal government is not in the Charter established as a distinctly divided three branched system of government as is commonly seen in the Federal and State structures, the Eastern Cherokee government functions as a de facto three branch system of government.
81. That each federally recognized Indian tribe decides who comprises their membership. This membership determination is left solely to the Tribes based upon their inherent sovereignty and neither the State nor Federal government may infringe on this most basic foundational criteria. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 n. 36 (1978).
82. That the C.C. §49-2 defines qualifications for membership in the Eastern Band of Cherokee. Defendant is ineligible to become an enrolled member of the Eastern Cherokee.
83. That as previously stated the blood quantum for membership in the Eastern Band of Cherokee is 1/16. There did exist a period of time where this blood quantum was expanded to 1/32. This expanded eligibility appears to have occurred during the 1950's. However, since August 14, 1963, the minimum blood quantum is 1/16. Moreover, since the date of birth of the Defendant, at all times during the life of the Defendant and on the date of the alleged offense, the required blood quantum has been 1/16 without variation or modification.

84. That Ms. Tarnawsky testified that in her opinion Defendant is eligible to be designated as a First Descendant under the Cherokee Code.
85. That enrolled members are recognized as Native American by the Federal and Cherokee governments, treated differently and enjoy benefits from this tribal affiliation in the form of various services and opportunities not afforded to First Descendants. These benefits include disparate treatment in the areas of real estate, employment, education, inheritance, hunting & fishing and voting.
86. That in the field of health care the Eastern Band of Cherokee operate both health programs under its governmental services matrix and the Cherokee Indian Hospital (hereinafter referred to as "CIH") also provides health care as a separate Enterprise of the tribe under C.C. §130B.
87. The tribal government coordinates public health services for enrolled members through the Health and Medical Division consisting of among other services community health, diabetes program, home health, Tasli Care nursing home, WIC program, wound care and the women's wellness clinic.
88. That CIH operates a hospital on the Qualla Boundary located at 1 Hospital Road, Cherokee, NC and provides services to enrolled members. A limited menu of services in the health field are afforded to First Descendants at both the CIH and the Health and Medical Division. The CIH will only expend federal funds on First Descendants. No Eastern Band of Cherokee Indian tribal monies are used to provide health care for First Descendants. The CIH provides contract health services to First Descendants only in life threatening situations and not to treat chronic conditions. Conversely, CIH expends funds for enrolled members in both life threatening and chronic situations. First Descendants living in the five counties of Jackson, Swain, Graham, Haywood and Cherokee Counties receive direct care and outside referrals. However, First Descendants living outside these five counties receive only direct care at the CIH and are not eligible for referrals.
89. That the distinctions, differences and variations in the provision for and receipt of health care between enrolled members and First Descendants is substantial, definable and articulable. There likewise exists many additional limitations on health care services provided to First Descendants as established by the CIH in its manuals, policies and procedures under requirements of the Indian Health Service. 25 U.S.C. §1661.
90. That the area of real estate in the context of Indian jurisprudence is complex and requires some background analysis which follows in this order. At this juncture, however, it is sufficient to note that the Cherokee Indian Reservation is somewhat mis-named in that the land is not a reservation as understood in the context of Indian law. Regardless, these lands are held in trust for the use and benefit of the Eastern Band of Cherokee Indians and its members. The Eastern Band of Cherokee Indians issues "Possessory Holdings" to its members. Possessory

Holdings are specifically contemplated in section §16 of the Tribal Charter and are codified Cherokee Code §47-3 and §47-4.

91. That in the field of real estate the rights of enrolled members and First Descendants vary markedly. Cherokee Code §47 delineates the different rights afforded to enrolled members and First Descendants regarding the control and use of real property. The rights of enrolled members include the right to live, rent, lease or sell the possessory interest subject to various other rights against alienation as established in C.C. §47-4. However, the limits of the use of a possessory interest for a First Descendant are established by tribal law at C.C. §28-2(b), (c) and (d). First Descendants cannot use timber, minerals or otherwise deplete the improvements of a possessory interest. C.C. §28-2(c). These very same limitations are not placed upon enrolled members in the use and enjoyment of their Possessory Holdings. Accordingly, the rights afforded to First Descendants are noticeably limited in comparison to enrolled members.
92. That the sale of a Possessory Holdings interest may only be made to another enrolled member or the Eastern Band of Cherokee Indians. Because only an enrolled member may purchase a Possessory Holdings yet another limitation on First Descendants is found in Cherokee law. C.C. §28-2(d).
93. That the basis upon which an enrolled member may buy, use, divest and otherwise enjoy a Possessory Holdings flows to them as an enrolled member of the Eastern Band of Cherokee and the rights afforded to them flows from their unique status as an enrolled member. However, the sole basis upon which a First Descendent may use, lease, or sale a Possessory Holdings comes only from an interest previous enjoyed by the biological parent and not from the status of being a First Descendent.
94. That in the sphere of inheritance the rights of enrolled members and First Descendants is also substantively different. First Descendants may only take a Possessory Holdings by valid will. C.C. §28-2. A First Descendant may never take a Possessory Holdings by intestate succession. C.C. §28-1(b). Unlike a First Descendant, an enrolled member may take a Possessory Holding by either a valid will or by intestate succession. C.C. §28-1.
95. That regarding employment the Cherokee Code provides employment preference for employment with the Eastern Band of Cherokee Indians, its Enterprises and all other Tribal governmental employing agencies. C.C. §96-4.00 *et. seq.* The employment preference of the Eastern Band is:
  - a. Enrolled members;
  - b. Spouses and parents of Enrolled Members;
  - c. Members of other federally recognized Indian Tribes; and
  - d. First Generation Descendant.

96. That in the field of education distinctions are also found between enrolled members and First Descendants. All children are welcome to attend the Cherokee schools. C.C. §115-2. In regards to higher education, while enrolled members receive education assistance no tribal monies may be expended on First Descendant until after all awards have been made to enrolled members. Pursuant to Cherokee Code §115-8, First Descendants are a second priority and will only receive financial assistance when all awards to enrolled members have been made and there exists additional funds which have been unspent.
97. That enrolled members enjoy unfettered rights to hunt and fish on tribal lands which is not afforded to First Descendants. C.C. §113-4(b)(1) and (2).
98. That in the area of voting and elections differences between First Descendant and enrolled members is most stark. In tribal elections enrolled members may hold elected office and may vote as established in Section 9 of the Charter. However, a First Descendant may never hold elected office and may never vote in any tribal election. C.C. §161-3 (a)(1) and (b)(1).
99. That regarding the decision to transport Defendant to a Jackson County Magistrate after arrest, Ms. Tarnawsky believes that once a person is arrested they must be taken before a judicial official without unreasonable delay. This is a sound and wise precaution. Moreover, North Carolina likewise agrees and this practice is codified in North Carolina law and located at N.C. Gen. Stat. §15A-511.
100. That Rule 6 of the Cherokee Tribal Court Rules of Criminal Procedure seeks to afford these same protections for individuals arrested on the Qualla Boundary which are afforded to individuals arrested outside of "Indian country".
101. That in deciding where to take the Defendant, Ms. Tarnawsky is of the opinion that tribal prosecutor Jason Smith correctly exercised his discretion and that the correct jurisdiction for the offense of murder with which Defendant is charged lies in the North Carolina State Court.
102. That prior to November 29, 2012, Ms. Tarnawsky did not know Defendant or his mother and does not recall any previous interactions with them regarding any matter during the preceding 13 years.
103. That in addition to being the Attorney General and handling all legal issues brought before the Tribe, there also exist in "Indian country" the overlap of Indian language and Indian culture. Beyond mere statutes and decisions from our appellate courts throughout the United States, legal counsel to Indian tribes must also consider factors of culture, history, language and customs rarely considered in other legal fields.<sup>3</sup> For guidance on these issues Ms. Tarnawsky as director of

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<sup>3</sup> One example is found in the Indian Child Welfare Act regarding social and cultural standards of an Indian community. 25 U.S.C. §1915(d).

the legal division required all counsel to utilize the talents of Ms. Myrtle Driver Johnson.

104. That the Court received testimony from Myrtle Driver Johnson.
105. That Ms. Johnson is an enrolled member of the Eastern Band of Cherokee Indians and has a blood quantum of 4/4.
106. That Ms. Johnson has resided on the Qualla Boundary her entire life and during these 69 years only left the area for extended periods related to educational studies.
107. That Ms. Johnson is a tribal elder and has been bestowed the title of "Beloved Woman" by the Eastern Band of Cherokee. This title is considered a great honor amongst the Cherokee. Her award is recognition of a life devoted to her people, her Tribe, and all the Chiefs, Vice-Chiefs and council members who have served in Tribal government for these past decades.
108. That Ms. Johnson was elected and did serve one term as a councilmember from her community.
109. That Ms. Johnson is fluent in the Cherokee language. For over 20 years Ms. Johnson has worked as the English Clerk and the Indian Clerk translating English-Cherokee and Cherokee-English in Tribal Council. This role is especially important in that Cherokee Council sessions are broadcast over the local cable television channel and re-broadcast in an effort to inform the community of governmental actions. Moreover, these translations assist older members of the Tribe who either may be unable to attend sessions or to aid those older members who primarily speak Cherokee to better understand the issues being debated.
110. That in addition to her work in tribal government Ms. Johnson teaches the Cherokee language. Ms. Johnson is a founding member and instructor at the Kituwah Language Immersion Academy. This program seeks to teach the Cherokee language to young children at an early age in an effort to keep the Cherokee language alive.
111. That Ms. Johnson is richly versed in the history of the Eastern Cherokee.
112. That at the time of this hearing in August 2013, the Eastern Band of Cherokee Indians is comprised of approximately 14,000 members. Many but not all enrolled members reside on the Qualla Boundary.
113. That presently there are approximately 300 enrolled members that are fluent in the Cherokee language.

114. That Ms. Johnson is deeply involved in and a leader of the Cherokee community regarding the language, culture and tradition of the Eastern Band of Cherokee. In Cherokee life language, culture and tradition are all inextricably intertwined.
115. That from a historical perspective the Cherokee, also known as the Kituwah people, comprised their social structure in the form of a matriarchal clan system. There exists seven clans of the Cherokee: Potato, Deer, Paint, Bird, Long Hair, Blue and Wolf. This matriarchal clan system remains in existence today. In the matriarchal clan system kinship was traced through the mother where all children joined the clan of their mother.
116. That as part of the culture and tradition of the Eastern Band of Cherokee there is every fall in October the Cherokee Indian Fair. This has been a tradition attended by enrolled members for over 100 years. Also, there is the Kituwah Celebration in June of each year located at the Ferguson Fields property now owned by the Eastern Band of Cherokee. Both of these events celebrate the arts, crafts, language, traditions and uniqueness of the Cherokee culture.
117. That there are medicine ceremonies still held today which deal with native beliefs and local remedies which remain an important and vibrant feature in contemporary Cherokee life. These ceremonies are private and participation is only afforded to enrolled members.
118. That in the Cherokee language *a-ni-yo-ne-ga* is the word for people of white or light complexion. This word is a separate and distinct word from that used to identify a member of the Cherokee Tribe.
119. That Ms. Johnson opined there is a cultural belief held by the Cherokee people that white/Caucasian persons are non-Native American. Conversely, all Indians are Native American.
120. That Ms. Johnson expressed there exists a cultural and widely held community belief that to recognize non-Native Americans as Indians is inconsistent with the unique government to government relation between the Indian Tribes and the United States, contravening the historical promises made by the United States to the Native American populations.
121. That the State admitted into evidence State's exhibit #6. This exhibit is a photograph of tattoos on the Defendant consisting in total of two tattoos. The first was of an eagle. Based upon the experience and knowledge of Ms. Johnson the eagle and its symbolism is in her opinion a generic symbol in Native American culture. It is found and relevant to nearly all Indian Tribes in the United States and represents nothing unique to the Eastern Band of Cherokee. The second tattoo depicts an Indian with a headdress. This tattoo is of unique significance to Ms. Johnson. Headdresses were never worn, used or employed for ceremonial purposes by the Eastern Band of Cherokee. The headdress of the type found



tattooed on Defendant is of a Western Plains Indian. In the opinion of Ms. Johnson the headdress tattoo is devoid of any relationship to the language, culture, history or traditions of the Eastern Band of Cherokee Indians.

122. That the Court received testimony from John Preidt, Jr. Mr. Preidt is 76 years old and resides in Shelbyville, Indiana. He was born in Austria and immigrated to the United States in 1952.
123. That Mr. Preidt was married as a younger man to Dorothy.
124. That following his marriage to Dorothy Mr. Preidt remarried Barbra Wells. Mr. Preidt and Barbra Wells married in 1962 or 1963.
125. That having been married to Barbra Wells Preidt since 1963, Mr. Preidt testified and the Court would find that Barbra Wells Preidt was white/Caucasian.
126. That during their marriage Mr. and Mrs. Preidt were self-employed running a small business which focused primarily on the ownership and management of apartments.
127. That in the last days of September 2012 Mr. and Mrs. Preidt were traveling south from Indiana to Jacksonville, Florida on a pleasure trip to see the sister of Barbra who resides in the Jacksonville area.
128. That as their travels led them towards Florida they stopped for the evening in Cherokee, North Carolina and rented a room at the Fairfield Inn. The Fairfield Inn is located at 568 Paint Town Road, Cherokee, North Carolina. This hotel is located on the Jackson County portion of the Qualla Boundary.
129. That in the waning hours between 9 and 10PM on the evening of September 30, 2012, the Preidt's pulled their vehicle into the parking lot of the Fairfield Inn. It was dark outside. After driving around for a brief moment looking for a parking place Mr. Preidt the operator of the family vehicle chose and then parked in a parking space near the sidewalk in front of the Fairfield Inn. The parking lot and sidewalk were built for and used by guests of the Fairfield Inn.
130. That after parking Mr. and Mrs. Preidt exited their vehicle. Mr. Preidt existed the driver's side door since he was driving and Mrs. Preidt exited from the front passenger side door.
131. That as Barbra Preidt exited the car she lit a cigarette. Almost instantaneously as they alighted from the vehicle Mr. Preidt both heard and, then as he turned to look, saw Barbra Preidt being dragged by an unknown person. This person came out of the darkness and was not seen by Mr. Preidt as he drove through the parking lot, when he parked his car or when he exited on his side of the vehicle.

132. That upon hearing and seeing these events Mr. Preidt immediately sprang into action running around his vehicle as quickly as he could to render aid and assistance to Barbra. As he traversed to the other side of the vehicle and approached Barbra, Mr. Preidt confronted a man wearing a mask. Because of the mask Mr. Preidt was unable to see the facial details of the individual. Mr. Preidt did notice the masked person was similar in height to his own 5' 6" frame and similar in weight to the approximately 228 pounds Mr. Preidt then weighed on that night.
133. That Mr. Preidt notwithstanding his age of 76 jumped on the masked person. However, Mr. Preidt despite his gallant efforts was almost instantly thrown to the ground by the masked man. Throughout these moments yelling was constant. Mr. Preidt heard Barbra say in a loud declaratory voice "leave me alone!!" and "get out of here!!"
134. That Mr. Preidt testified he heard the masked person respond to Barbra by saying "shut up!"
135. At the time Barbra was accosted by the masked person she had somewhere between \$4,000 and \$5,000 in cash in her purse. While an unusually large amount of money to carry on one's person, Mr. Preidt explained they were on vacation and planned to be away from Indiana for an extended period of time while visiting Barbra's sister in Northern Florida.
136. That suddenly during the physical struggle between Barbra and the masked person Mr. Preidt heard a noise he described as a "popping sound." Mr. Preidt also described the sound he heard as a "shot" or "bang." Regarding the number of shots Mr. Preidt believes he heard the sound only one (1) time.
137. That after hearing the noise the masked man ran away and took with him the purse belonging to Barbra. As the masked individual ran into the woods Mr. Preidt lost sight of him in the darkness.
138. That contemporaneously with the masked person fleeing the scene Mr. Preidt heard Barbra say "I think I have been shot."
139. That Barbra Preidt had been shot.
140. That in an effort to render aid Mr. Preidt ran into the hotel lobby of the Fairfield Inn and asked the front desk clerk to immediately call 911. When Mr. Preidt left Barbra to seek assistance from 911 there were two female bystanders who remained with and comforted Barbra.
141. That after calling 911 as Mr. Preidt began to return to Barbra both ladies who had remained with Barbra informed Mr. Preidt that Barbra was mortally wounded and had succumbed to her wounds.

142. That Barbra Preidt died on the sidewalk in front of the Fairfield Inn in Cherokee, North Carolina on the evening of September 30, 2012.
143. That the Court received testimony from Vickie Jenkins. Ms. Jenkins is employed with the Cherokee Indian Hospital and has worked at the CIH for the past 33 years. She is employed in the medical records department.
144. That Ms. Jenkins as custodian of the medical records at the CIH brought a copy of all medical records of Defendant to court pursuant to a lawfully issued subpoena. Ms. Jenkins was familiar with the medical records of Defendant and also during the hearing reviewed the records thereby affording her the opportunity to refresh her memory of these records.
145. That to receive medical services at the CIH a patient must be an enrolled member of the Eastern Band of Cherokee or prove they are a First Descendant and contemporaneously supply the required certification paperwork from the Cherokee tribal enrollment office.
146. That patients of the CIH do not receive a bill and do not pay for medical services.
147. That Ms. Jenkins testified based upon the information provided and after review of the medical records of the Defendant, in her opinion the Defendant would not have to pay for medical treatment at the CIH for services available to First Descendants.
148. That the medical records for the Defendant at the CIH indicated he was born on January 17, 1976. The last four digits of his social security number are #2669.
149. That like all other medical providers there are various codes used by the CIH. Coding is a normal and generally accepted practice in the health care industry.
150. That the code assigned to the Eastern Band of Cherokee Indians by the Indian Health Service is "023".
151. That the coding assigned to the degree of Indian blood is "001" for a full blood quantum, "002" for less than a full but up to a half blood quantum, "003" for less than a half but up to a three-quarters blood quantum, and "004" for a blood quantum less than one-quarter. These codes were developed by the Indian Health Services and they are used by all Indian Health Services facilities throughout the United States including the CIH.
152. That the medical records of Defendant were admitted as Defendant's exhibit # 7. The CIH assigned the chart #01-23-92 to the Defendant.
153. That the first visit to the CIH by Defendant was on October 31, 1985. The last visit of Defendant was on February 28, 1990.

154. That the Defendant visited the CIH in total five (5) times. These visits occurred on:
- a. October 31, 1985
  - b. October 1, 1987
  - c. March 12, 1989
  - d. March 16, 1989
  - e. February 28, 1990
155. That the last time Defendant used the medical services at the CIH he was 14 years of age which was over 23 years ago. Likewise, there are no other records of accessing any other clinics or medical facilities overseen or related to the CIH for over 23 years.
156. That the Court received testimony from Sam Reed. Mr. Reed is an enrolled member of the Eastern Band of Cherokee Indians. Mr. Reed has worked as a Magistrate in the Cherokee Tribal Court for the past three years. Prior to becoming a magistrate Mr. Reed worked for 13 years as a law enforcement officer with the CIPD.
157. That Mr. Reed has received extensive training as a magistrate which includes attending the School of Government course for North Carolina Magistrates in August of 2010. Also, he has attended numerous federal Indian law training courses offered by educational providers in the Indian law field.
158. That magistrates in the Tribal Court only handle criminal matters with their duties not extending into the civil field. The single exception to this practice is found where tribal magistrates review and when appropriate issue civil domestic violence protection orders.
159. That the Cherokee Tribal Court staffs two separate magistrate offices. One office is located at the CIPD. The other magistrate office is located at the Cherokee Tribal Court. At both offices there does exist computer access to the tribal enrollment database for the Eastern Band of Cherokee. This database is only available to court officials including magistrates and is the same enrollment database officially maintained by the Tribal enrollment office supervised by Kathie McCoy and Nancy Maney.
160. That the tribal enrollment database does not include First Descendants.
161. That Mr. Reed discussed the procedures for issuing criminal process in the Tribal Court. On average approximately 15-20 criminal warrants are issued by magistrates in a 24 hour period. The process begins when a law enforcement officer completes an affidavit of jurisdiction and criminal complaint form. The Affidavit of Jurisdiction is identical to the one admitted by Defendant as Defendant's exhibit#4 [See Attachment "J"]. After completion of the jurisdictional form, the defendants along with the complaint form are then taken

to a tribal magistrate. The magistrate then issues a warrant or summons based upon the severity of the offense and other relevant factors considered by the tribal magistrate.

162. That Cherokee magistrates issue warrants and summons for violations of the Cherokee Code. These same tribal magistrates never issue process for violations of federal or North Carolina law.
163. That the affidavit of jurisdiction form is used by all tribal magistrates. That all tribal magistrates are familiar with the Rules of Criminal Procedure and the Criminal Code of the Eastern Band of Cherokee. This jurisdictional form is drafted so as to accommodate the provisions of Rule 6 of the Criminal Rules of Procedure as promulgated by the Cherokee Code.
164. That C.C. §15-8 Criminal Procedure authorizes the creation of the Cherokee Rules of Criminal Procedure. Rule 6 of the Cherokee Rules of Criminal Procedure states in relevant part:

(a) *In General.*

(1) *Appearance Upon Arrest.* A person making an arrest within the Qualla Boundary must take the defendant without unnecessary delay before a Magistrate or Judge, unless the person taken into custody is arrested on Federal or State process, in which case they shall be taken before the appropriate person as provided for in N.C. Gen. Stat. §15A or the Federal Rules of Criminal Procedure. It is not necessary for persons arrested for violating conditions of release to be brought before the Magistrate.

(2) *Appearance Upon a Summons.* A person served with a criminal summons must appear before the Magistrate on duty during the first business day following service with the summons. Upon failure of any defendant to report as Ordered, the Magistrate on duty during the day shall issue a Warrant for the defendant's arrest and charge him or her with Failure to Obey a Lawful Order of the Court.

(b) *Procedures.*

(1) *Determining Jurisdiction.* The Magistrate shall conduct the "St. Cloud" test to confirm that the defendant is an Indian. This test is conducted as follows:

- (A) Inquire if the defendant is an enrolled member of any Federally recognized Indian Tribe;
- (B) Inquire if the defendant is a First Descendent of the EBCI;

- (C) Inquire if the defendant is a citizen of another country;
- (D) Inquire if the defendant is a member of any State recognized Indian Tribe; and
- (E) Inquire if the defendant participates in any Indian cultural events, lives on a Reservation, receives any benefits reserved exclusively for Indians, or otherwise holds herself out as an Indian.

If the answers to questions (A)—(C), or any one of them, is "yes," the inquiry ends there and the Court has jurisdiction over the defendant. If the answers to questions (A)—(C) is "no," but the answer to question (D) or (E) is "yes," further inquiry may be in order to satisfy the Magistrate that the defendant is an Indian for the purposes of the exercise of jurisdiction. If the Magistrate determines that the defendant is a non-Indian, then the Magistrate should notify the CIPD of same, dismiss the charges and turn the defendant over to the CIPD for transport to the appropriate State or local judicial officer or to the Federal authorities. In lieu of inquiring of the defendant as outlined above, an Affidavit such as the one attached in Appendix 1 to these Rules may be utilized. If the defendant exercises his or her right to remain silent, the Magistrate shall determine that the defendant is an Indian for the purposes of jurisdiction, without prejudice to the defendant's right to challenge jurisdiction at a later date. If the defendant is too intoxicated or impaired for the Magistrate to conduct this inquiry, the Magistrate shall order that the defendant appear before the Magistrate on duty on the following business day for the conclusion of this proceeding.

(2) *Waiver of Personal Jurisdiction.* A non-Indian may waive the issue of personal jurisdiction and consent to proceeding in the Cherokee Court.<sup>4</sup>

C.C. §15-8 Rules of Criminal Procedure, Cherokee Criminal Rules, Rule 6 (2013) [See Attachment "K" for Rule 6 in its entirety].

- 165. That Rule 6 closely tracks the St. Cloud v. United States factors discussed in more detail hereinafter.
- 166. That Defendant places great emphasis on the fact that Defendant was not taken before a tribal magistrate for his St. Cloud inquiry but rather was instead taken to

<sup>4</sup> In light of the ruling in Olipphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978) where the Supreme Court clearly stated Indian tribes may not prosecute non-Indians without the express consent of Congress it must necessarily be asked how such an inquiry could ever be grounded in personal as opposed to subject matter jurisdiction and following this hurdle how an individual could "consent" to jurisdiction not conferred by Congress and expressly denied by the United States Supreme Court. Yet, an answer to this question is beyond the scope of this order.

the Jackson County State Court Magistrate. This protestation is misplaced. By focusing on where the St. Cloud inquiry occurred Defendant loses sight of the fundamental basis upon which St. Cloud rests. The essential inquiry is not where the St. Cloud inquiry occurs. Rather, the paramount consideration is whether the St. Cloud inquiry occurs. To attach such importance to the location of the inquiry is to erroneously place form over substance. Moreover, Defendant was in actual fact afforded a hearing where the St. Cloud analysis was conducted. But in the case of this Defendant, the hearing was only conducted after Defendant was provided most competent and capable counsel, adequate notice, an opportunity to be heard and present evidence and an ancillary opportunity to supplement the hearing with any written briefs and case law deemed germane.

167. That the Court received testimony from Kelly Oaks who is a special agent with the North Carolina State Bureau of Investigations (hereinafter referred to as "SBI"). Agent Oaks has been employed with the SBI as a special agent for the preceding 15 years. That Agent Oaks' supervisor is SBI Agent Tom Ammons.
168. That the Court admitted into evidence Defendant's exhibits #14, #15 and #16 which are emails from the address of Agent Oaks regarding the investigation of the homicide.
169. That Agent Oaks testified the Cherokee Indian Police Department was the lead investigation agency in the criminal investigation surrounding the shooting of Barbra Preidt on September 30, 2012.
170. That Shannon Ashe, also a special agent for the SBI, was the original agent assigned to assist in this investigation. However, due to other duties he became unavailable and Agent Oaks was then called upon for her assistance.
171. That Furman Smith Crowe testified at this hearing. Mr. Crowe is an enrolled member of the Eastern Band of Cherokee Indians and is the maternal Uncle of Defendant. Mr. Crowe has known the Defendant since he was two weeks old. Mr. Furman Smith Crowe is the brother to Donna Lorraine Smith Crowe Mann. Donna Lorraine Smith Crowe Mann is the mother of Defendant.
172. That when the Defendant was an infant his biological father George Robert Nobles abandoned the Defendant with Mr. Crowe.
173. That Mr. Crowe identified the plat set forth in Defendant's exhibit #17.
174. That Donna Lorraine Smith Crowe Mann testified. Ms. Mann was born May 9, 1955.
175. That Ms. Mann is the biological mother of the Defendant George Lee Nobles who was born January 17, 1976.

176. That Ms. Mann is an enrolled member of the Eastern Band of Cherokee Indians. Her enrollment number is #R03976 and she possesses an 11/128 blood quantum.
177. That the birth certificate of Ms. Mann was identified by her and admitted as Defendant's exhibit #18.
178. That the biological father of the Defendant was George Robert Nobles. Ms. Mann testified, and the Court would find, that the biological father George Robert Nobles was not Native American having no membership in any federally recognized Indian tribe in the United States. George Robert Nobles was white/Caucasian.
179. That George Robert Nobles is now deceased.
180. That Ms. Mann has lived in both Florida and North Carolina over the past 30 years.
181. That Ms. Mann moved back to Cherokee, North Carolina from her residence in Florida in the early 1980's with Defendant.
182. That upon returning to the Cherokee area she enrolled her son in both the Cherokee Tribal school system and the Swain County school system. These school records are set forth in Defendant's exhibits #20 and #21.
183. That upon a more detailed examination of these school records as the admitting parent Ms. Mann represented to school admissions officials that her son was not Indian. Specifically, page 13 in Defendant's exhibit #20 provides that Defendant-student was admitted as non-Indian.
184. That Defendant also provided medical records as evidence in this hearing. Defendant's exhibit #7 from the Cherokee Hospital and Defendant's exhibit #19 from Swain County Hospital were admitted into evidence.
185. That these medical records detail two separate events in 1983 and 1985 both being auto accidents involving Defendant which required medical treatment.
186. That in the 1983 automobile accident Ms. Mann was not in the vehicle with Defendant. In an accident near Jenkins Grocery in the Birdtown community of the Qualla Boundary the Defendant was injured. The Defendant spent two weeks in the hospital and Ms. Mann testified the Defendant sustained head injuries.
187. That in 1985 Defendant was again involved in an automobile accident. This accident occurred when Ms. Mann was present and in the same vehicle where again Defendant needed treatment for injuries sustained as a result of this accident.



188. That the Defendant sought and was allowed to recall Detective Sean Birchfield to testify at the hearing.

### C. Stipulations

189. That the State and Defendant, by and through his attorney of record stipulated to the following prior to the commencement of the hearing on Defendant's Motion to Dismiss:
- a. That on or about September 30, 2012 officers of the Cherokee Indian Police Department responded to a reported armed robbery and homicide occurring on the sidewalk in front of the Fairfield Inn located at 568 Paint Town Road, in Cherokee, Jackson County, N.C.
  - b. That the property located at 568 Paint Town Road is land held by the United States of America in trust for the Eastern Band of Cherokee Indians and is also known as the "Qualla Boundary" or as the "Eastern Band of Cherokee Indians Reservation".
  - c. That on or about November 30, 2012 at approximately 6:00 a.m., Cherokee Indian Police Department Officer Sean Birchfield arrested the Defendant at the Cherokee Indian Police Department in connection with the incident referenced above;
  - d. That the Cherokee Indian Police Department is located within the Qualla Boundary and is situated on Cherokee trust land.
  - e. That pursuant to the arrest, Defendant was brought before Jackson County Magistrate A. O. Reagan.
  - f. That Jackson County Magistrate A. O. Reagan found probable cause for the arrest of Defendant on the charge of First Degree Murder and issued a Magistrate's Order dated November 30, 2012 and filed with the Jackson County Clerk of Superior Court.
  - g. That the November 30, 2012 Magistrate's Order was issued upon information furnished by arresting officer Sean Birchfield of the Cherokee Indian Police Department.
  - h. That George Lee Nobles was born on January 17, 1976 to Donna Lorraine Smith Crowe (dob May 5, 1955) in Polk County, Florida; the parties stipulate and agree to the admission of their respective birth certificates into evidence.
  - i. That Donna Lorraine Smith Crowe, now known as Donna Lorraine Mann, is an enrolled member of the Eastern Band of Cherokee Indians

(EBCI), a federally recognized tribe, the EBCI having issued her the number "R03978" to reference her enrollment.

- j. That George Lee Nobles is not an enrolled member of the EBCI however he would be a First Descendant of an enrolled member of the EBCI.
- k. The parties stipulate to the W-2 form issued to the Defendant for the 2012 tax year by HOMESTYLE FRIED CHICKEN to the Defendant for wages and income paid to the Defendant as an employee of the HOMESTYLE FRIED CHICKEN restaurant located at 510 Paint Town Road, Cherokee NC 28719 situated within the Qualla Boundary on Cherokee trust lands and agree that the W-2 form is admissible into evidence.
- l. The parties stipulate the document titled "Florida Department of Corrections Presentence Investigation" included in the State's discovery is a business record document kept in the regular course of business of the Florida DOC and agree to admit it into evidence beginning on page 8 at the heading marked "Identification" and continuing through the heading "Other Statements" on page 10; the parties also stipulate to page 12 at the paragraph beginning with "[i]t is felt" and continuing to the end of page 12; all other pages and content of this document have been redacted by agreement of the parties; the Defendant does not stipulate to the truth or accuracy of the information set out within any portion of this document.
- m. The parties stipulate that the Cherokee Central School records are records kept in the ordinary course of business and are admissible into evidence.
- n. The parties stipulate that the Swain County School records are records kept in the ordinary course of business and are admissible into evidence.
- o. That George Lee Nobles was released from the Florida Department of Corrections on November 4, 2011 and post release supervision was transferred from Florida to Kings Mountain, North Carolina.

#### **D. Law and Exhibits**

- 190. That the Eastern Band of Cherokee Indians has adopted and subsequently codified its law. This code is accessible at Municode Corporation via this link <http://library.municode.com/index.aspx?clientId=13359>.

191. That the undersigned takes Judicial Notice of the Cherokee Code pursuant to N.C. Gen. Stat. §201.
192. That the undersigned affords full faith and credit to the Cherokee Code and the prior decisions of the Tribal Court pursuant to N.C. Gen. Stat. §1E-1.
193. That the undersigned takes Judicial Notice of Jackson County file numbers 12 CRS 1362, 12 CRS 1363, 12 CRS 51719 and 12 CRS 51720.
194. That the Court admitted into evidence State's exhibits #1 through #8.
195. That the Court admitted into evidence Defendant's exhibits #1 through #21.

**E. Harbison Inquiry of Defendant**

196. That in support of the motion to dismiss, Defendant presented evidence at the hearing and entered into stipulations with the State.
197. That in so doing Defendant requested of his attorneys that specific facts regarding his age, background and ancestry be made part of the record.
198. That counsel has to date represented the interests of Defendant to the highest standards of professional competency any person charged with crime could hope to be afforded. To this end, counsel sought of the undersigned to inquire of Defendant that he fully and completely understand the nature of the proceeding he initiated and that the facts found at the conclusion of the hearing would be established as part of the record in the cases now pending against Defendant. Moreover, these same facts could be used against him in any subsequent hearings including a trial by jury determining guilt and innocence.
199. That while there were no admissions of guilt on behalf of Defendant by counsel, the Court did conduct an inquiry pursuant to State v. Harbison, 315 N.C. 175 (1985). This inquiry was done in open court, outside the presence of any jury and with counsel for Defendant present.
200. That Defendant understood in the course of the hearing evidence was presented and stipulations were made. Defendant understood he requested his counsel to present this evidence and sought there assistance in a judicial determination that Defendant was an "Indian" as defined by 25 U.S.C. §1153. Furthermore, Defendant understood that such a determination would then subject him to the jurisdiction of the federal courts.
201. That Defendant clearly, articulately and without reservation informed the undersigned he consented to the hearing, stipulations and the efforts of his able counsel in seeking a determination he was an "Indian" as that term is employed in

federal law. This decision by Defendant was made freely, voluntarily and knowingly.

## II.

### A. Eastern Band of Cherokee Indian Legal History

202. That the history of the Cherokees in North Carolina is a complex, unique and compelling story woven with the many and varied threads of history, culture, land, language, politics, law, and the foundation of the United States of America.
203. That it is beyond the scope of this order to delve deeply into the legal background of the Eastern Band of Cherokee. However, for the purposes of this order as it relates to issues of jurisdiction a limited survey of the applicable laws and cases is needed.<sup>5</sup>
204. That the peoples now known as the Eastern Cherokees are descendants of their ancestors who refused to move to the Indian Territory during the removal of 1838 which is now more commonly referred to as the Trail of Tears. The Trail of Tears was the result of the Treaty of New Echota dated December 29, 1835 where in exchange for the ceding to the United States of all remaining Cherokee land east of the Mississippi river the Cherokee received \$5,000,000 and a common interest in land already occupied by the Western Cherokee west of the Mississippi river. Treaty of new Echota, 7 Stat. 478 (1835).<sup>6</sup>
205. That the existence of native peoples predated the formation of the United States. The same existence of these indigenous peoples who governed themselves for centuries before the founding of the United States forms the jurisprudential basis upon which the framework of tribal sovereignty rests.
206. That in the United States Indian tribes have jurisdiction to exercise their authority which derives from their inherent sovereignty over tribal members and tribal property. Oklahoma Tax Commission v. Citizen Band of Potawatomi Indian Tribe, 498 U.S. 505 (1991) *citing* Cherokee Nation v. Georgia, 30 U.S. 1 (1831). See also U.S. v. Wheeler, 435 U.S. 313, 323 (1978) and Merrion v. Jicarilla Apache Tribe, 455 U.S. 103 (1982).
207. That inherent tribal sovereignty was discussed by the United States Supreme Court in the pivotal case of Worcester v. Georgia, 31 U.S. 515 (1832), where Chief Justice John Marshall determined that the new states of the United States

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<sup>5</sup> That for a more detailed and insightful, albeit dated, discussion of the legal history of the Eastern Cherokee the undersigned would refer the reader to "An Historical Analysis of the Legal Status of the North Carolina Cherokees" 58 N.C. L. Rev. 1075 (1979) by Ben Oshel Bridgers, Esq.

<sup>6</sup> That as an historical aside one is remiss by failing to note that the Treaty of New Echota was never signed by any official or officer of the Cherokee government.

did not have jurisdiction over Indians or Indian governments. Mr. Chief Justice Marshall explained

The Cherokee nation, then, is a distinct community occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of congress. The whole intercourse between the United States and this nation, is, by our constitution and laws, vested in the government of the United States.

Worcester, 31 U.S. at 561.

208. That another important facet in the unique status Native Americans hold in our jurisprudence is that the distinction Indians and tribes enjoy is not based upon race. Rather, as set forth in the Morton v. Mancari 417 U.S. 535 (1974) decision the United States Supreme Court unanimously established that the Constitution of the United States gives Congress the power to provide “special treatment” to Indians based on membership in a quasi-sovereign Indian tribe. Morton, 417 U.S. at 553-55. Therefore, it is the political relationship between the United States and Indian tribes expressly established in the United States Constitution which authorizes unique financial, medical, educational, residential and employment benefits not otherwise afforded to non-Indians.
209. That after the final group of Cherokee who were forced to leave for the Indian Territory in December 1838 embarked, General Winfield Scott decided that capture of the roughly 1000 Cherokee who refused to leave Western North Carolina would be difficult. He agreed to allow governmental officials to handle each individual instead of the United States Army.
210. Therefore, the “modern” story of the Eastern Band of Cherokee begins in 1838.
211. That during these times the Cherokee where benefited by the efforts of William Holland Thomas, a non-Indian who had been adopted by the Cherokee Chief Drowning Bear. Bridgers, at 1089-90.
212. That William Thomas during this period used money from various sources to purchase land in his own name for the use of the Cherokee. That these purchases made by William Thomas during this period formed the corpus of land that subsequently became the Qualla Boundary. Bridgers, at 1090.
213. That in one of the first legislative acts by North Carolina in 1866, the General Assembly determined that the State had no objection to the Cherokees residing in North Carolina. Act of Feb. 9, 1866, ch. 54, Section 1, 1866 N.C. Pub. Laws, Special Sess., 120.

214. That the North Carolina Supreme Court decided in 1869 that the Cherokee Indians could own land since there existed nothing in the North Carolina Constitution or statutes prohibiting ownership. Colvard v. Monroe, 63 N.C. 288 (1869).
215. That in 1870 the North Carolina Supreme Court then established that the criminal laws of North Carolina applied to Cherokee Indians when they decided State v. Ta-cha-na-tah, 64 N.C. 614 (1870).
216. That in 1924 Indians became citizens of the United States. 68 P.L. 175; 43 Stat. 253 (1924). [See Attachment "L"]
217. That following the granting of United States citizenship to Indians, Congress acted specifically in response to the issues then confronted by the Cherokee Indians located in North Carolina by Congressional legislation subsequently signed into law by President Coolidge. 68 P.L. 191; 43 Stat. 376 (1924). [See Attachment "M"]
218. That federal Indian policy was fundamentally altered by the administration of Franklin Roosevelt when in response to the sobering failures of the "allotment" policy begun in 1887, Congress passed the Indian Reorganization Act of 1934. The purpose of the Indian Reorganization Act was to assist Tribes to develop Constitutions and organize their individual governments which would then in turn promote economic, educational and culture preservation and development. Act of June 18, 1934, Pub. L. No. 73-383, ch. 576, 48 Stat. 984 (1934).
219. That the policy direction of the Federal Government again altered course following World War II when it was decided that Tribes and their unique governments should be finally terminated. Congress determined that by terminating tribes and thereby ushering individual Indians into society the then perceived 'barriers' to prosperity believed to exist in the lives of Native Americans would be finally removed. This "Termination" policy was begun in 1958 with the passage of the Federal Indian Law of 1958. This "Termination" policy has come to commonly be referred to as Public Law 280. Act of August 15, 1953, Pub. L. No. 83-280, ch. 505, 67 Stat. 588 (1958).
220. That Public Law 280 sought among other matters to address the emerging issues of jurisdiction which were slowly giving rise in an increasing number of cases where the interplay between Tribes and States were conflicting. Five states were given jurisdiction over Indians on Indian lands: California, Minnesota, Nebraska, Oregon and Wisconsin. 67 Stat. 588 (1958).
221. That since 1958 additional states have assumed criminal jurisdiction pursuant to the parameters of Public Law 280. However, North Carolina has neither sought nor obtained criminal jurisdiction over Indians on the Qualla Boundary pursuant to Public Law 280.

222. That from most all actors involved in Indian Affairs it was conceded in the mid 1960's that the "Termination" policy was an abysmal failure in nearly every single respect.
223. That in 1968 the Johnson Administration sought to replace the "Termination" policy with one of "self-determination." 114 Cong. Rec. 5394 (1968).
224. That at nearly the same time Congress began to re-establish its support for Tribes and Tribal governments when it passed the Indian Civil Rights Act. This Act sponsored by Senator Sam J. Ervin, Jr., of North Carolina ushered in the modern era of self-determination which is the policy in effect today in "Indian country". Act of April 11, 1968, Pub. L. No. 90-284, 82 Stat. 78 (1968).

## B. Criminal Jurisdiction

### 1. Criminal Jurisdiction in "Indian country"

225. That as is necessary for purposes of this Order "Indian country" was first defined in the Indian Intercourse Act of June 30, 1834, 4 Stat. 729 (1834) which was subsequently repealed. Over the changing decades the definition of what constituted Indian land was in a state of flux. The definition of "Indian country" once again appeared in 1948 when it was included in the United States Code at 18 U.S.C. §1151. As discussed hereinabove, the lands purchased by William Thomas and now held in trust by the United States for the Eastern Band of Cherokee Indians form the corpus of the Qualla Boundary.
226. That the Fairfield Inn parking lot and sidewalk where the homicide occurred is "Indian country" as defined by 18 U.S.C. §1151. That the parties as their stipulation number two agree to this fact.
227. That the federal courts have criminal jurisdiction in "Indian country" through the Major Crimes Act as enacted by Congress. 18 U.S.C. §1153 (2013)<sup>7</sup>.
228. That the Major Crimes Act was passed by Congress in reaction to the Supreme Court decision in Ex parte Crow Dog, 109 U.S. 556 (1883). Following the

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<sup>7</sup> 18 USCS § 1153 (2013)

§ 1153. Offenses committed within "Indian country"

(a) 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 [18 USCS §§ 2241 et seq], incest, a felony assault under section 113 [18 USCS § 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 [18 USCS § 661] 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.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

murder of Spotted Tail by Crow Dog the Supreme Court decided the federal courts lacked jurisdiction to punish crimes between Indians on reservations. In response Congress enumerated certain crimes which now comprise the Major Crimes Act. Federal courts now have jurisdiction over Indian on Indian crime when one of the crimes delineated in the Major Crimes Act is alleged.

229. That the validity of the Major Crimes Act was upheld in US v. Kagama, 118 U.S. 375 (1886) where the Supreme Court determined the passage of this legislation was a valid exercise of congressional plenary power over Indian tribes and Indians.
230. That the Assimilative Crimes Act through the General Crimes Act confers federal court jurisdiction over crimes where the defendant and victim are ‘interracial.’ Where the defendant is a non-Indian and the victim an Indian federal court jurisdiction exists. Donnelly v. US, 228 U.S. 243, 272 (1913). Likewise, where the defendant is an Indian and the victim a non-Indian federal court jurisdiction exists. US v. John, 587 F.2d 683, 687 (5th Cir. 1979).
231. That a state continues to enjoy jurisdiction over an Indian when he is outside of “Indian country.” Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973).
232. That when the defendant and victim are both non-Indian jurisdiction resides in the court system of the state wherein the “Indian country” is located. US v. McBratney, 104 U.S. 621 (1881).
233. That through over two hundred years of prior judicial precedent and Congressional legislation there can be no disagreement that “[o]nce the area is determined to be “Indian country”, whether the federal courts have jurisdiction under [the Major Crimes Act or the Assimilative Crimes Act] hinges on the race and/or tribal membership of the victim and defendant. Sentelle at 346.

## **2. Criminal Jurisdiction of North Carolina on the Qualla Boundary<sup>8</sup>**

234. That the first exercise of criminal jurisdiction over Cherokee Indians by the State of North Carolina occurred in 1870 in State v. Ta-cha-na-tah, 64 N.C. 614 (1870). North Carolina persisted in asserting criminal jurisdiction in a long line of cases continuing with State v. Wolf, 145 N.C. 440 (1907).
235. That in 1931 in United States v. Wright, 53 F.2d 300, 307 (4<sup>th</sup> Cir. 1931) the court opined in dicta that “no act of Congress in [the Cherokees] behalf would be valid which interfered with the exercise of the police power of the state.” The Wright decision seems to ignore the 1924 Congressional enactment on behalf of the Eastern Band of Cherokee. Moreover the Fourth Circuit relied on this dicta from

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<sup>8</sup> That for a more detailed and insightful, albeit dated, discussion of criminal Jurisdiction on the Qualla Boundary the undersigned would refer the reader to “Criminal Jurisdiction on the North Carolina Cherokee Indian Reservation—A Tangle of Race and History” 24 Wake Forest L. Rev. 335 (1989) by The Honorable David B. Sentelle and Melanie T. Morris.



the Wright decision in deciding United States v. Hornbuckle, 422 F.2d 391 (4<sup>th</sup> Cir. 1970). Using this questionable pronouncement from Wright and ignoring the Congressional Act of 1924, 18 U.S.C. §1153, and the long line of cases from Ex parte Crow Dog to the present, the Hornbuckle court decided that North Carolina exercised *concurrent* criminal jurisdiction over the Cherokees on the Cherokee reservation. 422 F. 2d 391 (4<sup>th</sup> Cir. 1970).

236. That notwithstanding these Fourth Circuit decisions, the dicta expressed in Wright was correctly muted in the Supreme Court decision of United States v. John, 437 U.S. 634 (1978). The holding in John established that the creation of the Choctaw reservation, which was nearly identical to the creation of the Cherokee reservation, conferred federal jurisdiction over the Mississippi Choctaw. Subsequently the Fourth Circuit applied the John decision and drawing on the similar history shared by the Eastern Cherokee and the Mississippi Band of Choctaws determined the Qualla Boundary located in North Carolina was “Indian country.” The landmark decision of U.S. v. Welch, 822 F.2d 460 (4th Cir. 1987) established the Qualla Boundary as “Indian country” thereby erasing any lingering uncertainty on this question.
237. That based upon the John and Welch cases it is clear now that North Carolina has no jurisdiction over Indian on Indian crimes covered by the Major Crimes Act. Sentelle at 634. Therefore, based upon the Welch decision prior North Carolina precedents asserting criminal jurisdiction by the state over Indians on the Qualla Boundary must be examined closely.<sup>9</sup>
238. That under the holding in United States v. McBratney, 104 U.S. 621 (1881) jurisdiction for crimes by one non-Indian against another non-Indian rests with the states. The decision in McBratney is commonly referred to as the McBratney rule.
239. That the McBratney rule was affirmed subsequently by the Supreme Court when it held states had jurisdiction over offenses committed on the reservation between non-Indians. Williams v. United States, 327 U.S. 711, 714 (1946).
240. That in a schematic form jurisdictional analysis is best encapsulated by Attachment “N”.

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<sup>9</sup> Prior to the Welch decision, North Carolina asserted jurisdiction over Indians charged with crimes on the Qualla Boundary. Cases such as State v. Ta-cha-na-tah, 64 N.C. 614 (1870), State v. Wolf, 145 N.C. 440 (1907), State v. McAlhaney, 220 N.C. 387 (1941), and State v. Dugan, 52 N.C. App. 136 (1981), all hold that North Carolina has jurisdiction over Indians for offenses committed within the boundary of the Cherokee reservation. In light of the Fourth Circuit decision in Welch, more recent decisions by the North Carolina appellate courts in Carden v. Owle Construction, 720 S.E.2d 825 (2012) citing Jackson County v. Swayney, 319 N.C. 52 (1987), sovereignty analysis, infringement on Cherokee self-governance, and the existence today of the Cherokee Tribal Court which did not exist in 1981, it seem likely these decisions now rest upon unstable footing.

### III.

#### A. Analysis of Current Criminal Jurisdictional Law

241. That deciding who is an “Indian” has proven to be a difficult question. In fact upon closer examination when one looks to legal precedent the question quickly devolves into a multifaceted inquiry requiring examination into factual areas not normally considered in our courts.
242. That this ambiguity is forefront when on its face the Major Crimes Act does not define who is an Indian. 18 USC §1153. Likewise, the Indian Civil Rights Act does not define who is an Indian. 25 USC §1301(4).
243. That one of the earliest cases to address this question was US v. Rogers, 45 U.S. 567 (1846). From Rogers arose the generally accepted analysis applied today when making an inquiry into whether an individual is defined under the law as an “Indian.” Beginning in 1846 through the present, the test as proscribed in Rogers asks whether the defendant (1) has some Indian blood, and (2) is recognized as an Indian by a tribe or the federal government or both. Rogers, at 572-573.
244. That the Fourth Circuit Court of Appeals whilst not applying the Rogers test in full did address this similar issue in U.S. v. Lossiah, 537 F.2d 1250 (1976). During trial in Bryson City, North Carolina the government introduced into evidence a certificate of enrollment from the enrollment office of the Eastern Band of Cherokee Indians. The Court held that the certificate of enrollment containing the enrollment number and the blood quantum of Mr. Lossiah was adequate proof he was an Indian as required under the Major Crimes Act. Lossiah at 1251. (See also U.S. v. Antelope, 430 U.S. 641, 646-47 (1977), wherein the Court determined that proof a defendant is an enrolled member of a federally recognized Indian tribe is sufficient to confer federal jurisdiction under 18 U.S.C. §1153.)
245. That while not specifically mobilized by the Fourth Circuit, the Rogers test has repeatedly been used and applied in four different federal court circuits. U.S. v. Torres, 733 F.2d 449, 456 (7<sup>th</sup> Cir. 1984); U.S. v. Lawrence, 51 F.3d 150, 152 (8<sup>th</sup> Cir.1995); U.S. v. Stymiest, 581 F.3d 759, 762 (8<sup>th</sup> Cir. 2009); U.S. v. Keys, 103 f.3d 758, 761 (9<sup>th</sup> Cir. 1996); and U.S. v. Prentiss, 273 F.3d 1277, 1280 (10<sup>th</sup> Cir. 2001).
246. That before a person is determined to be an Indian it is necessary that both prongs of the Rogers test are sufficiently answered in the affirmative.
247. That an application of this test is found in the jury instruction used by the trial court in U.S. v. Torres, 733 F.2d 449, 456 (7<sup>th</sup> Cir. 1984). In this case the judge instructed the jury:

To be considered an Indian, a person must have some degree of Indian blood, and must be recognized as an Indian. In considering whether a person is recognized as an Indian, you may consider such factors, whether a person is recognized as an Indian by an Indian tribe, or society of Indians. Whether a person is recognized as an Indian by the federal government, whether a person resides on an Indian reservation, and whether a person holds himself out as an Indian. It is not necessary that all of these factors be present, rather you as jurors must consider the totality of circumstances in determining as a factual matter whether each defendant is an Indian.

Torres, 733 F.2d at 456.

248. That the first prong of the Rogers test discusses blood quantum. But blood quantum alone is not the sole determinative factor in this inquiry. As discussed hereinabove, blood quantum while it may appear facially to be a race determinative factor is rather one based on ancestry and as discussed in U.S. v. Antelope, 430 U.S. 641, 646 (1977), a determination derived not from a racial classification but rather a recognition of the special status afforded to a formerly sovereign people by the government of the United States.
249. That the second prong of the Rogers analysis departs from a narrow examination of an individual's relations to his family ancestry and in turn examines various factors in deciding whether the person at issue is recognized as an Indian by the tribe or the federal government. This inquiry was best delineated by Judge Porter in his opinion in St. Cloud v. U.S., 702 F.Supp. 1456 (1988).
250. That in St. Cloud four separate and distinct factors were proscribed in an insightful effort to better elucidate the second prong of the Rogers test in determining what constitutes sufficient non-racial recognition as an Indian. St. Cloud, 702 F.Supp. at 1461.
251. That the four St. Cloud factors are: 1) enrollment in a tribe; 2) government recognition through receipt of assistance reserved only to Indians; 3) enjoying benefits of tribal affiliation; and 4) social recognition as an Indian. *Id.* at 1461-62.
252. That since the St. Cloud decision in 1988, courts throughout the United States have continued to use and further refine these four factors. In 2009 the Ninth Circuit Court of Appeals in U.S. v. Cruz, citing its prior decision in U.S. v. Bruce wrote

In Bruce we outlined four factors that govern the second prong; those four factors are, "in declining order of importance, evidence of the following: '1) tribal enrollment; 2) government recognition formally and informally through receipt of assistance reserved only to Indians; 3) enjoyment of the benefits of tribal affiliation; and 4) social recognition as an Indian through

residence on a reservation and participation in Indian social life.” U.S. v. Bruce, 394 F.3d 1215, 1224 (9<sup>th</sup> Cir. 2005)(quoting United States v. Lawrence, 51 F.3d 150, 152 (8<sup>th</sup> Cir. 1995)); *accord.* United States v. Ramirez, 537 F.3d 1075, 1082 (9<sup>th</sup> Cir. 2008).

U.S. v. Cruz, 554 F.3d 840, 846 (9<sup>th</sup> Cir. 2009)

253. That following the mandate established in Bruce the four factors under the St. Cloud analysis are to be considered in declining order of importance.

**B. Application of Current Jurisprudence to the Case at Bar**

254. That to determine whether the Defendant is Indian as defined by the Major Crimes Act, the undersigned must apply the Rogers test using the four factors under the second prong of Rogers as established in the St. Cloud decision in declining order of importance.
255. That Defendant claims he is an Indian as defined by the Major Crimes Act and accordingly criminal jurisdiction over the Defendant lies in federal court.
256. That the Eastern Band of Cherokee Indians is a federally recognized Indian Tribe.
257. That looking at the first prong under the Rogers test, Defendant is not an enrolled member of the Eastern Band of Cherokee Indians. The Defendant is also not an enrolled member of any other federally recognized Indian tribe and claims no Indian blood from any other tribe other than the Eastern Cherokee.
258. That Defendant has one parent with a blood quantum of 11/128 and tribal enrollment in a federally recognized tribe. Accordingly, Defendant would under the first prong of the Rogers be 11/256 Eastern Cherokee.
259. That the Defendant has, barely, satisfied the first prong under the Rogers test in that he has some Indian blood. The modest degree of Indian blood for the Defendant is 11/256 or 4.29%.
260. That the analysis of the Court must next turn to the second prong of the Rogers test. In so doing the undersigned engages in this analysis using the four St. Cloud non-racial factors in declining order of importance.
261. That Court finds and the Defendant stipulates under the first and most important St. Cloud factor he is not an enrolled member of the Eastern Band of Cherokee or of any other federally recognized Indian tribe. Moreover, it is undisputed Defendant is neither now nor will he ever be eligible for enrollment in the Eastern Band of Cherokee having an Eastern Cherokee blood quantum of 11/256.

262. That turning next to the second factor under the St. Cloud analysis, the primary assertion upon which Defendant argues he is Indian rests on the fact he is a First Descendent of the Eastern Band of Cherokee Indians. This position advanced by Defendant is not frivolous for the facts of each individual with ties to any given Indian tribe vary markedly from person to person. Upon a thorough examination of the evidence and circumstances specific to Defendant the facts clearly establish:
- a. The Defendant was not born on the Cherokee Reservation.
  - b. The Defendant was not born near the Cherokee Reservation.
  - c. The Defendant never enjoyed the benefits of a possessory interest by renting or leasing an interest in tribal lands.
  - d. The Defendant never inherited a possessory interest in tribal lands.
  - e. The Defendant never voted in tribal elections. In fact, because he is not an enrolled member of the Eastern Band the Defendant is ineligible to vote in all tribal elections.
  - f. That Defendant has never held an elected tribal office. Likewise, because Defendant is not an enrolled member of the Eastern Band of Cherokee the Defendant is ineligible to hold elected tribal office.
  - g. The Defendant never served on a tribal jury in the Cherokee Tribal Court (or its predecessor the CFR Court).
  - h. The Defendant was never a party in either a civil or criminal matter in the Cherokee Tribal Court.
  - i. The Defendant never received any payments for settlements owed by the federal government to enrolled members of the Eastern Band of Cherokee.
  - j. The Defendant is not eligible to receive the biannual distribution of gaming proceeds shared by all enrolled members of the Eastern Band of Cherokee.
  - k. The Defendant never sought or received health care from the many public health programs administered by the Eastern Band of Cherokee and enjoyed by tribal members, with the exception of acute care at the CIH.
  - l. The Defendant was never employed by the Eastern Cherokee government or any of its enterprises.

- m. The Defendant does enjoy First Descendant status but never took steps to formalize his rights. Moreover, Defendant never applied for or received the corresponding certification from the tribal enrollment office establishing his First Descendant status.
- n. The Defendant has no tribal identification card.
- o. The Defendant attended Cherokee Schools but this same school system is open to non-Indian students.
- p. The Defendant never applied for or received financial assistance available to First Descendants from the Eastern Band of Cherokee for attendance at any post-secondary educational institutions.
- q. The Defendant never hunted or fished on the Qualla Boundary.
- r. The Defendant never participated in Indian religious ceremonies, cultural festivals or dance competitions. No evidence was presented that Defendant attended the annual fall festival which is the single most important social event in the life of the Cherokee community.
- s. The Defendant neither presented evidence of nor demonstrated an aptitude for arts and crafts unique to the Cherokee such as wood carving or basket weaving.
- t. The Defendant is not fluent in the Cherokee language.
- u. The Defendant presented no evidence of participation in any Indian medicine ceremonies.
- v. The Defendant when arrested for these offenses neither informed any CIPD officer nor any Jackson County magistrate or other official that he was Indian. Likewise, at the time of arrest Defendant never presented any documentation identifying Defendant as Indian.

263. As late as August 11, 2011 and May 7, 2012, Defendant identified himself as white/Caucasian in North Carolina probation documents. Any attempt to attribute his actions of self-identification as an error made by his mother is unpersuasive since on these aforementioned dates the Defendant was over thirty years of age. Moreover, it must also be noted in addition to claiming at certain times to be white/Caucasian and then at other times to be Indian there is the recent and pronounced variation in his social security number. As found hereinabove, at one point in time on November 30, 2012, Defendant asserted his social security number was 261-14-2669 while at a later time that day presented that his social security number was 261-30-4623. Thus, Defendant used two completely different social security numbers on the same day. Such extraordinary variations

in the identity one presents of himself is exceedingly unusual which therefore necessarily calls into question the veracity of Defendant.

264. That under the second St. Cloud factor the only evidence of government recognition of the Defendant as an Indian is the receipt of medical services at the CIH. The Federal government through the Indian Health Service provide benefits reserved only to Indians arising from the unique trust relationship with the tribes. Also, the government of the Eastern Band of Cherokee provides additional health benefits to the enrolled members. The only evidence Defendant presents of the receipt of health services available only to Indians is medical care at the CIH more than two decades ago as documented in his medical chart. While it is true that he did receive care from the CIH it is likewise true he sought acute care, this care was when he was a minor and he was taken for treatment by his mother. Since becoming an adult he has never sought further medical care from the providers in Cherokee. Moreover, the last time he sought care from the CIH was over 23 years ago.
265. That regarding education Defendant urges the undersigned to afford special recognition to his brief attendance in the Cherokee tribal school system. Yet, since the Cherokee tribal school system is open to children whether Indian or non-Indian to consider this as satisfying the second factor under the St. Cloud test would be erroneous. C.C. §115-2.
266. That except for the five visits to the CIH, there is no other evidence Defendant received any services or assistance reserved only to individuals recognized as Indian under the second St. Cloud factor.
267. That under the third St. Cloud factor the Court must examine how Defendant has benefited from his affiliation with the Eastern Band of Cherokee. The Defendant suggests he has satisfied the third factor under the St. Cloud test in that Cherokee law affords special benefits to First Descendants. To be sure the Cherokee Code as developed over time since the ratification of the 1986 Charter and Governing Document does afford special benefits and opportunities to First Descendants. Whilst it is accurate the Cherokee Code is replete with special provisions for First Descendants in areas of real property, education, health care, inheritance, employment and access to the Tribal Court, save however for use of medical services a quarter of a century ago Defendant has not demonstrated use of any of his rights as a First Descendant of the Eastern Band of Cherokee.
268. That as previously stated the third St. Cloud factor is 'enjoyment' of the benefits of tribal affiliation. Enjoyment connotes active and affirmative use. Such is not the case with Defendant. Defendant directs the undersigned to no positive, active and confirmatory use of the special benefits afforded to First Descendants. Defendant has never 'enjoyed' these opportunities which were made available for individuals similarly situated who enjoy close family ties to the Cherokee tribe. Rather, Defendant merely presents the Cherokee Code and asks the undersigned

to substitute opportunity for action. To ascribe enjoyment of benefits where none occurred would be tantamount to finding facts where none exist.

269. That under the fourth St. Cloud factor the Court must determine if Defendant is recognized socially as an Indian. When an individual holds themselves out as an Indian, participates in the Native American community and has some Indian blood, courts have under particular facts and circumstances declared such individuals who are otherwise not enrolled members of a federally recognized tribe to be “Indian” as defined by law. U.S. v. Stymiest, 581 F.3d 759 (8<sup>th</sup> Cir. 2009). Conversely, where there exists little affiliation with a tribe and use of tribal benefits, courts have declined to identify these individuals as “Indians.” U.S. v. Cruz, 554 F.3d 840 (9<sup>th</sup> Cir. 2009) and U.S. v. Maggi, 598 F.3d 1073 (9<sup>th</sup> Cir. 2010).
270. That while there are no opinions from the Fourth Circuit Court of Appeals, the opinions of the other Federal Circuits coupled with decisions from the Cherokee Tribal Court assist the undersigned in drawing important and salient distinctions which are instructive in the case under consideration. In Eastern Band v. Lambert, 2 Cher. Rep. 62 (2003), the Tribal Court was called upon to address whether the Tribal Court has jurisdiction over First Descendants. The facts of Lambert are clearly distinguishable from the situation regarding the Defendant. In Lambert, Ms. Lambert was a First Descendant just as is Mr. Nobles. Ms. Lambert presented testimony she was involved in the Cherokee community, availed herself of the opportunities open to First Descendants, and had in a civil matter “availed herself of the [Cherokee Tribal] Court’s civil jurisdiction in that she is the plaintiff in the case of Sarella C. Lambert v. Calvin James, CV-99-566...” Lambert at 63. The civil case commenced in 1999 some four years prior to the criminal action.
271. That contrary to the actions of a First Descendant described in Lambert, where Ms. Lambert lived in the Cherokee community with ties at least beginning in 1999 and sought redress of her wrongs in the Cherokee Tribal Court, the Defendant simply has no ties to the Qualla Boundary. That under the fourth St. Cloud factor Defendant points to no substantive involvement in the fabric of the Cherokee Indian community at any time. The Defendant did reside and work on or near the Cherokee reservation for about 14 months when his probation was transferred from Florida to North Carolina. Yet in these 14 months near Cherokee the record is devoid of any social involvement in the Cherokee community by the Defendant.
272. That Defendant has simply presented no evidence of social recognition as an Indian and participation in the Indian social life of the Qualla Boundary.
273. That of the four St. Cloud factors, Defendant has failed to establish any evidence in support of tribal enrollment, enjoyment of any tribal benefits or any recognition as an Indian by the Indian community. While there is evidence of use of benefits



available only to Indians with treatment at the CIH the evidence must be viewed through the prism of receiving acute medical treatment as child where as a child he took no active involvement in the decision for treatment and with his last visit being more than 23 years ago.

274. That in stark contrast to the case of Lambert, when the unique, specific and particular facts regarding George Lee Nobles are closely scrutinized his claim of being Indian must fail. To conclude Defendant is an Indian because of his modest blood quantum, the fact he was treated at the CIH on five occasions 23 years ago and then upon his release in 2011 from prison in Florida resided and worked on or near the Qualla Boundary for 14 months as urged by the Defendant would simply be contrary to the law applicable in such cases, thereby affording to Defendant an unreasonably broad application of the Rogers and St. Cloud tests. Accordingly, the undersigned declines to adopt this expansive interpretation of the law as urged by Defendant.
275. That accordingly after balancing all the evidence presented to the undersigned using the Rogers test and applying the St. Cloud factors in declining order of importance, that while Defendant does have, barely, a small degree of Indian blood he is not an enrolled member of the Eastern Cherokee, never benefited from his special status as a First Descendant and is not recognized as an Indian by the Eastern Band of Cherokee Indians, any other federally recognized Indian tribe or the federal government. Therefore, the Defendant for purposes of this motion to dismiss is not an Indian.
276. That the undersigned has considered the totality of the circumstances in determining whether the Defendant is an Indian and has considered all the evidence in light most favorable to the Defendant.
277. That because Defendant brings a motion to dismiss challenging the subject matter of the State, the burden of proof is on the State to prove beyond a reasonable doubt that the crime with which Defendant is charged occurred in North Carolina. State v. Batdorf, 293 N.C. 486, 494 (1977).
278. That having considered all of the evidence and stipulations, and after careful, thorough and exhaustive review of Federal, North Carolina and Cherokee statutes and prior court decisions, the Court determines that the State has proven beyond a reasonable doubt that the crime occurred in North Carolina, Defendant is not an Indian as contemplated under the 18 U.S.C. §1153, and under the McBratney rule jurisdiction is in the North Carolina General Courts of Justice.

**BASED UPON THE FOREGOING FINDINGS OF FACT THE COURT  
MAKES THE FOLLOWING CONCLUSIONS OF LAW:**

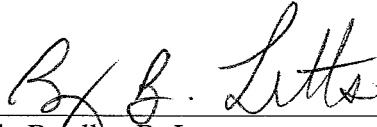
1. That the Court has jurisdiction over the subject matter and persons.
2. That the homicide committed on September 30, 2012, occurred on the Cherokee Indian reservation, also referred to as the Qualla Boundary, which is "Indian country" as defined by law.
3. That the victim, Barbra Wells Preidt, was white or Caucasian.
4. That the Defendant, George Lee Nobles, is white or Caucasian.
5. That pursuant to the rule established in US v. McBratney, 104 U.S. 621 (1881) jurisdiction for a crime committed by a white defendant upon a white victim occurring in "Indian country" is in the court of the state wherein the crime occurred.
6. That jurisdiction over the Defendant, George Lee Nobles, for the trial of the offenses of murder, robbery with a dangerous weapon and possession of a firearm by a previously convicted felon which are alleged by the state of North Carolina to have occurred on September 30, 2012, is in the Superior Court Division of the North Carolina General Courts of Justice and venue is in Jackson County.

**BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS  
OF LAW THE COURT HEREBY ORDERS, ADJUDGES AND DECREES:**

1. That the Motion to Dismiss for lack of jurisdiction filed by Defendant, George Lee Nobles, shall be, and hereby is, **DENIED**.
2. That venue for the trial of these offense shall be in the Jackson County Superior Court.

Entered this the 26<sup>th</sup> day of November, 2013.

Signed this the 26<sup>th</sup> day of November, 2013.

  
\_\_\_\_\_  
Honorable Bradley B. Letts  
Senior Resident Superior Court Judge  
Judicial District 30B

FILED

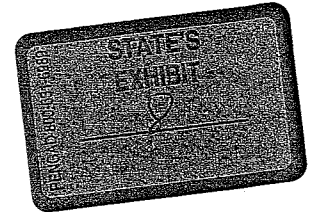
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JACKSON CO. S.C.

BY

# Attachment

“A”



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**IDENTIFICATION:**

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True Name: GEORGE LEE NOBLES, JR.  
Alias/Nickname: "PUNKIN"  
Date of Birth: 1/17/76  
Race/Sex: W/M  
DLE#:  
SS#: 261-30-4632

Height: 5'5"  
Weight: 178  
Eyes: BROWN  
Hair: BROWN  
ID Marks: BURN MARK ON TOP OF R. HAND.  
TOP OF R. EAR MISSING.  
3 TO 4 INCH SCAR ON MIDDLE OF BACK.

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**PRESENT ADDRESS**

POLK COUNTY JAIL  
PREVIOUS: 326 IDAHO AVE.,  
LAKELAND, FL

Citizenship: US

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**NEXT OF KIN**

Name: OLGIA NOBLES  
Relationship: GRANDMOTHER  
Phone #: (813) 665-5287  
Address: 326 IDAHO AVE.  
LAKELAND, FL 33801

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**FAMILY HISTORY:**

(V X UnV     )

Birthplace: LAKELAND, FL

Number of Siblings: 0

Father: GEORGE R. NOBLES

Address: Defendant's father is incarcerated in the Florida State Prison System.

Mother: DONNA SPRADLEY

Address: ALABAMA

Family Relationships:

Stable: Yes      No X Abused: Yes      No X Neglected: Yes      No X

Reared By: The defendant had been reared by his grandparents.

Comments: The defendant stated that he has had a very unstable family life. He has not spoken to his mother in approximately three years, and states that she lives somewhere in Alabama. The defendant's father is currently incarcerated in the Florida State Prison System, and he has last seen him approximately nine months ago. The defendant has been raised by his grandparents the majority of his life, in Lakeland, FL.

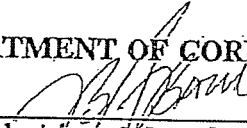
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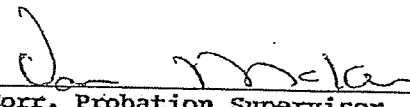
It is felt the defendant assisted in his PSI investigation to the best of his ability. He has minimal intentions of improving his educational status and employment prospects. Although he is 17 years of age, he committed numerous adult crimes, and it is felt that he should be punished as an adult. Currently, it is felt that the level of supervision required for the defendant can best be found within the confines of a correctional facility. Therefore, it is the respectful recommendation of this Officer, that the Court accept the negotiated plea agreement. The defendant should be sentenced to 20 years Florida State Prison, followed by 15 years probation. Special conditions of probation should include: 1) \$288 court cost, and any reasonable attorney's fees, 2) full restitution paid to all victims-amounts undetermined should be set by the Court, 3) all alcohol/drug clauses including any in-patient treatment deemed necessary, 4) submission to a mental health evaluation and complement of any treatment deemed necessary, 5) enrollment in a full-time educational or job training program.

Alternative Disposition: (if any) None

I hereby certify that the above is true and correct to the best of my knowledge and belief and verified where reasonably possible.

DEPARTMENT OF CORRECTIONS

By:   
Probation & Parole Officer  
BRIAN J. BROWNE, CPO I

Approved by:   
Corr. Probation Supervisor  
VAN MCKENZIE, CPS II

7-28-93  
Date

The Presentence Investigation distribution and use as governed by Florida Rules of Criminal Procedure 3.712 and FS 921.231.

DISPOSITION:

FILED

7017 NOV 26 PM 12:54

JACKSON CO. S.C.

BY

# Attachment “B”



**Interstate Commission for  
Adult Offender Supervision**

**OFFENDER'S  
APPLICATION FOR  
INTERSTATE COMPACT  
TRANSFER**

To: BUREAU OF  
INTERSTATE COMPACT

Type of supervision:

Parole

Probation

Is this case:

Registered Sex  
Offender

Victim sensitive

From: TALITHA LOWERY,  
SR. CLASSIFICATION  
OFFICER

Phone #:  
850-697-1254

Fax #:  
850-697-1266

**OFFENDER INFORMATION**

Offender's full name (last, first, MI):  
NOBLES, GEORGE L.

Offender number: 372224

Sending state#:

Receiving state#:

AKA: PUNKIN

SS#: (if available)  
594-14-2669

FBI#: (if available)  
952924XB0

Sex:  
MALE

Race:  
WHITE

DOB:  
01/17/1976

I, NOBLES, GEORGE DC#372224, am applying for transfer of my parole/probation/other supervision from FLORIDA (sending state) to NORTH CAROLINA (receiving state). I understand that this transfer of supervision will be subject to the rules of the Interstate Commission for Adult Offender Supervision.

I understand that my supervision in another state may be different than the supervision I would be subject to in this state. I agree to accept any differences that may exist because I believe that transferring my supervision to NORTH CAROLINA (receiving state) will improve my chances for making a good adjustment in the community. I ask that the authorities to whom this application is made recognize this fact and grant my request for transfer of supervision.

In support of my application for transfer, I make the following statements:

1. If I am allowed to transfer my supervision to NORTH CAROLINA (receiving state), I plan to live with DONNA MANN, at (full address/telephone #) 5009 TARY COURT KINGS MOUNTAIN, NC 28086 704-288-7158 until I am allowed by the supervising authorities to change my residence.
2. I will comply with the terms and conditions of my supervision that have been placed on me, or that will be placed on me by FLORIDA (sending state) and NORTH CAROLINA (receiving state).
3. I understand that if I do not comply with all the terms and conditions that the sending state or the receiving state, or both, placed on me, that it will be considered a violation and I may be returned to the sending state.
4. I agree to the release of any drug or alcohol treatment information from FLORIDA (sending state) to any authorized person in NORTH CAROLINA (receiving state) for the purpose of transferring my supervision. This consent remains in effect from this date 8/10/2011 (today's date) until I revoke this consent.
5. I agree to return to FLORIDA (sending state) at any time I am directed to by the sending state or the receiving state. I know that I may have a constitutional right to insist that the sending state extradite me from the receiving state or any other state where I may be found. This is commonly called the right to extradition. But I also understand and acknowledge that I have agreed to return to the sending state when ordered to do so either by the sending or receiving state. Therefore, I agree that I will not resist or fight any effort by any state to return me to the sending state and I AGREE TO WAIVE ANY RIGHT I MAY HAVE TO EXTRADITION. I WAIVE THIS RIGHT FREELY, VOLUNTARILY AND INTELLIGENTLY.

Offender's signature: *George L. Nobles*

Date: 8-11-11

Printed name: Nobles, George L.

Witness: *Talitha Lowery*

Date: 8-11-11

Printed name: Talitha Lowery

00001

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JACKSON CO. S.C.

BY...

# Attachment “C”



PART I-OFFENDER IDENTIFICATION INFORMATION

FACILITY: 5300B DISTRICT 30 UNIT B STAFF NAME: AMMONS, OLIVIA B.  
OPUS #: 1281329 OFFENDER NAME: NOBLES, GEORGE LEE STAFF ID: BOR03  
RACE: WHITE GENDER: M DOB: 01/17/1976  
SCREEN ORDERED BY: DCC- COMMUNITY CORRECTIONS

TYPE OF OFFENDER:

PROBATION  
 DRC  TASC  DRUG TREATMENT COURT  DART-CHERRY

PURPOSE OF SCREEN:

ROUTINE TEST  CAUSE/SUSPICION  
 FIELD TEST RESCREEN  ASSESSMENT  TREATMENT  3RD PARTY CONFIRMATION

PART IIA:

I AM NEITHER UNDER THE INFLUENCE OF ANY ILLEGAL SUBSTANCE OR MEDICATION, NOR HAVE I TAKEN ANY ILLEGAL SUBSTANCE OR MEDICATION IN THE PAST THREE (3) WEEKS OTHER THAN THOSE LISTED BELOW.

OFFENDERS SIGNATURE: [Signature]  
MEDICATION WITHIN THE PAST THREE (3) WEEKS: \_\_\_\_\_

COLLECTION STATEMENT:

I CERTIFY THAT THE URINE/SALIVA SAMPLE IS MY OWN AND HAS NOT BEEN TAMPERED WITH BY MYSELF OR ANYONE ELSE. I HAVE SEALED THE CONTAINER:

OFFENDERS SIGNATURE: [Signature]  
STAFF ID: \_\_\_\_\_ TIME: 10:30  
COLLECTION OBSERVER: Tom Sutton SPECIMEN DATE: 5/7/12

PART II-B I ACKNOWLEDGE THAT I HAVE USED THE FOLLOWING ILLEGAL DRUGS WITHIN THE PAST THREE (3) WEEKS.

OFFENDERS SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

PART II-C ( ) OFFENDER REFUSED TO SUBMIT TO DRUG SCREEN.

OFFENDERS SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
OFFICERS SIGNATURE: \_\_\_\_\_

PART III CHAIN OF CUSTODY:

DATE	RELEASED BY	RECEIVED BY	PURPOSE OF CHANGE
	<u>[Signature]</u>		

PART IV: FIELD DRUG SCREEN (FIELD DRUG SCREEN USE ONLY)

LOT# DOA1070038 EXPIRATION DATE: 6/13 OFFICER INITIALS \_\_\_\_\_  
LOT# \_\_\_\_\_ EXPIRATION DATE: \_\_\_\_\_

DRUG:  AMPH  THC  COCN  OPIATES  BARB  PCP  ALCOHOL  BENZ  MTD  PROPX  MAMP  
\*ENTER RESULT BESIDE DRUG AS + POSITIVE OR - NEGATIVE OR ? INCONCLUSIVE  
DATE SENT FOR 3RD PARTY CONFIRMATION \_\_\_\_\_

00051

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JACKSON CO. S.S.C.

BY \_\_\_\_\_

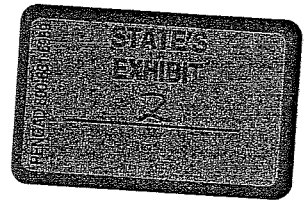
# Attachment “D”



CHEROKEE POLICE DEPARTMENT  
CRIMINAL INVESTIGATIONS DIVISION

RIGHTS INTERROGATION FORM

Place: CPD  
Date: 11/30/12  
Time: 3:35 AM



YOUR RIGHTS

Before we ask you any questions, you must understand your rights.

You have the right to remain silent. YN

Anything you say can be used against you in court of law. YN

You have the right to talk to an Attorney before we ask you any questions and to have an Attorney present during questioning. YN

If you cannot afford an Attorney, one will be appointed for you before any questioning. YN

If you decide to answer questions now without an Attorney present, you will still have the right to stop answering at any time and request an Attorney. YN

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want an Attorney at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed: [Signature]  
Witness: [Signature]

Height:	Weight:	Hair	Eyes	DOB:	Soc. Sec. #
<u>5'6</u>	<u>5'6</u>	<u>Brn</u>	<u>Brn</u>	<u>1-17-76</u>	<u>261-14-2669</u>
Address:					
<u>1621 Olive + Rd</u>		<u>828-593-2027</u>			

2012-02129  
771-6  
p41091  
SBI 0113

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JACKSON CO. S.S.C.

BY.....

# Attachment “E”

(TYPE OR PRINT IN BLACK INK,

In The General Court Of Justice  
 District  Superior Court Division

Case No.

STATE OF NORTH CAROLINA

Additional File Nos.

JACKSON County

Name Of Applicant

George Nobles

Full Street Address Of Applicant Including City, State And Zip Code

28719  
1021 Circuit Church Rd, Cherokee, NC

Full Permanent Mailing Address Of Applicant (if Different Than Above)

P.O. Box 392, Cherokee, NC 28719

Telephone Number Of Applicant

828-593-2027

Date Of Birth

1-17-76

Defendant  Parent/Guardian/Trustee

Full Social Security No.

2611-361-4623

Has No Social Security No.

AFFIDAVIT OF INDIGENCY

G.S. 7A-450 et seq.

Offense(s)

1st Degree murder Poss Firearm by Felon

Poss Firearm by Felon

Robbery w/ Dangerous Weapon

Applicant: Do you have other pending criminal charge(s) in which a lawyer has been appointed?  Yes  No

Name Of Lawyer

MONTHLY INCOME (money you make)

MONTHLY EXPENSES (money you pay out)

Employment - Applicant

\$ 0.00

Name And Address Of Applicant's Employer (if not employed, state reason; if self-employed, state trade)

Number Of Dependents

Shelter  Buying  Renting

\$

Food

\$

Utilities

(power, water, heating, phone, cable, etc.)

\$

Health Care

\$

Installment Payments

Vehicle  Other

\$

Car Expenses

(gas, insurance, etc.)

\$

Support Payments

\$

Other: (specify)

\$

Total Monthly Income

\$ 0.00

Total Monthly Expenses

\$ 0.00

DESCRIPTION OF ASSETS AND LIABILITIES

ASSETS (things you own)

LIABILITIES (amounts you owe)

Cash On Hand And In Bank Accounts (List Name Of Bank & Account No.)

\$ 0

\$

Money Owed To Or Held For Applicant

\$ 0

\$

Motor Vehicles (List Make, Model, Year)

(Fair Market Value)

(Balance Due)

Real Estate

(Fair Market Value)

\$ (Balance Due)

Personal Property

(Fair Market Value)

\$ (Balance Due)

Other Debts

\$

Last Income Tax Filed 20  Refund  Owe

\$

\$

Other

\$

\$

Total Assets And Liabilities

\$ 0.00

\$ 0.00

Bond Type

Amount

By Whom Posted

\$

NOTE: Read the notice on the reverse side before completing this form.

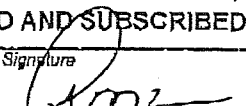
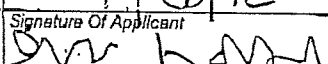
## NOTICE TO PERSONS REQUESTING A COURT-APPOINTED LAWYER

1. When answering the questions on the Affidavit Of Indigency (*reverse side of this form*), please do not discuss your case with the interviewer. The interviewer can be called as a witness to testify about any statements made in his/her presence. Please wait and speak with your lawyer. Do not ask the interviewer for any advice or opinion concerning your case.
  
2. **A court-appointed lawyer is not free.** If you are convicted or plead guilty or no contest, you may be required to repay the cost of your lawyer as a part of your sentence. The Court may also enter a civil judgment against you, which will accrue interest at the legal rate set out in G.S. 24-1 from the date of the entry of judgment. Your North Carolina Tax Refund may be taken to pay for the cost of your court-appointed lawyer. In addition, if you are convicted or plead guilty or no contest, the Court must charge you an attorney appointment fee and may enter this fee as a civil judgment against you pursuant to G.S. 7A-455.1.
  
3. The information you provide may be verified, and your signature below will serve as a release permitting the interviewer to contact your creditors, employers, family members, and others concerning your eligibility for a court-appointed lawyer. A false or dishonest answer concerning your financial status could lead to prosecution for perjury. See G.S. 7A-456(a) ("A false material statement made by a person under oath or affirmation in regard to the question of his indigency constitutes a Class I felony.").

Under penalty of perjury, I declare that the information provided on this form is true and correct to the best of my knowledge, and that I am financially unable to employ a lawyer to represent me. I now request the Court to assign a lawyer to represent me in this case. I authorize the Court to contact my creditors, employers, or family members, any governmental agencies or any other entities listed below concerning my eligibility for a court-appointed lawyer.

I further authorize my creditors, employers, or family members, any governmental agencies or any other entities listed below to release financial information concerning my eligibility for a court-appointed lawyer upon request of the Court.

*Governmental Agencies Or Other Entities Authorized To Be Contacted And/Or To Release Information*

<b>SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME</b>		Date 11/30/12
Date 11/30/12	Signature 	Signature Of Applicant 
<input type="checkbox"/> Deputy CSC <input checked="" type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Magistrate		Name Of Applicant (Type Or Print) Nobles, Grome
<input type="checkbox"/> Notary	Date My Commission Expires	<input type="checkbox"/> Defendant <input type="checkbox"/> Parent/Guardian/Trustee <input type="checkbox"/>
<b>SEAL</b>	County Where Notarized	

**NOTE:** If you are less than 18 years old, or if you are at least 18 years old but remain dependent on and live with a parent or guardian, state name and address of parent, guardian, or trustee below:

Name Of Parent/Guardian Or Trustee
Address
City, State, Zip

FILED

2013 NOV 26 PM 12:55

JACKSON CO., C.S.C.

BY \_\_\_\_\_

# Attachment “F”

EASTERN BAND OF CHEROKEE INDIANS

The Cherokee Court

CHEROKEE, N.C.



File No. (if any)

12CR 2139, 12CR 2140

For Victim

For Accused

IN RE

DATE: 11/30/12

TIME: 5:58 AM

AFFIDAVIT OF JURISDICTION

BY MAGISTRATE: [Signature]

Name and Address of Affiant

ASHLYN NICOLE CAROTHERS  
1621 OLIVET CIRCLE RD  
CHEROKEE NC 28719

FILED

Name and Address of Accused

1621 OLIVET CIRCLE RD  
CHEROKEE NC 28719

Date of the Offense

9-30-12

Victim

Potential Offenses

AD & ABET  
Robbery with a Dangerous Weapon  
AD & ABET  
Homicide of a First Degree

AFFIDAVIT OF JURISDICTION

1. Are you an enrolled member of any Federally Recognized Tribe?

Yes  No

Which Tribe

WESTERN BAND OF CHEROKEE

INSTRUCTIONS: if the answer to Question No. 1 is Yes then the Affiant is an Indian for the purposes of jurisdiction. If the answer is No, proceed to Question No. 2.

2. Are you a first linear descendant under the laws of the Eastern Band of Cherokee Indians?

Yes  No

INSTRUCTIONS: if the answer to Question No. 2 is Yes then the Affiant is under the jurisdiction of the Cherokee Court. If the answer is No, proceed to Question No. 3.

3. (for Accused Only) Are you a citizen of any country other than the United States of America?

Yes  No

INSTRUCTIONS: if the answer to Question No. 3 is Yes then the Affiant is under the jurisdiction of the Cherokee Court. If the answer is No, proceed to Question No. 5.

4. (If the accused answers No to the preceding questions) If it is determined that you are a non-Indian and therefore not subject to prosecution by the Cherokee Court, you may freely and knowingly waive any objection to jurisdiction of the Cherokee Court. Would you like to do that?

Yes  No

INSTRUCTIONS: if the answer to Question No. 4 is Yes then the Affiant is under the jurisdiction of the Cherokee Court. If the answer is No, proceed to Question No. 5.

5. Do you or your ancestors have any Indian Blood?

Yes  No

INSTRUCTIONS: if the answer to Question No. 5 is No then the Affiant is a Non-Indian for the purposes of jurisdiction. If the answer is Yes, proceed to Question No. 6-9.

6. Have you been provided formally or informally with any assistance that is reserved only for Indians?

Yes  No

Describe:

7. Do you enjoy the benefits of Tribal Affiliation (i.e., First Linear Descendant, or other special status bestowed by a tribe)?

Yes  No

Describe:

8. Do you live on an Indian Reservation?

Yes  No

Describe:

9. Do you participate in Indian Social Life (i.e., Attend Indian Dances, Community Meetings, Traditional Ceremonies, or Dance at Pow-Wows)?

Yes  No

Describe:

HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT AND COMPLETE COPY OF THE INSTRUMENT HERewith SET OUT AS IT APPEARS ON RECORD IN THE COURT CLERK'S OFFICE OF THE CHEROKEE TRIBAL COURT, CHEROKEE, NC  
WITNESS MY HAND AND SEAL THIS 7th DAY OF NOVEMBER 2012  
[Signature]  
COURT CLERK

INSTRUCTIONS: The Magistrate must consider all answers and information provided in response to questions No. 5-9, applying Cherokee Law and Traditions, Treaties, and Acts of the United States Congress and decision of the Courts of the United States to determine whether the Affiant is an Indian for the purposes of Jurisdiction.

DETERMINATION OF JURISDICTION

SWORN AND SUBSCRIBED BEFORE ME

Date

11/30/12

Date

Signature

[Signature]

Signature of Affiant

[Signature]

Deputy CSC  Assistant CSC  Clerk of Superior Court  
 Notary Public  Magistrate  Judge

Name of Affiant (Type or Print)

Ashlyn Carothers

DEFENDANT'S EXHIBIT  
8

INITIAL DETERMINATION

Indian  Non-Indian

Signature of Judicial Official

[Signature]

Judge  
 Magistrate

Date

11/30/12



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2013 NOV 26 PM 12:55

JACKSON CO. I.S.C.

BY \_\_\_\_\_

# Attachment “G”

EASTERN BAND OF CHEROKEE INDIANS

The Cherokee Court

CHEROKEE, N.C.



File No. (if any) 12CR2138

For Victim For Accused

IN RE DATE: 11/30/12 TIME: 6:54 AM

AFFIDAVIT OF JURISDICTION

Name and Address of Affiant DWAYNE EDWARD SWAYNE

BY MAGISTRATE: 4920

FILE

Name and Address of Accused DWAYNE E. SWAYNE

Date of the Offense 9-30-12

Potential Offenses TAMPERING WITH EVIDENCE

AFFIDAVIT OF JURISDICTION

1. Are you an enrolled member of any Federally Recognized Tribe? Yes No

Which Tribe EBCT

INSTRUCTIONS: if the answer to Question No. 1 is Yes then the Affiant is an Indian for the purposes of jurisdiction.

2. Are you a first linear descendant under the laws of the Eastern Band of Cherokee Indians? Yes No

INSTRUCTIONS: if the answer to Question No. 2 is Yes then the Affiant is under the jurisdiction of the Cherokee Court.

3. (for Accused Only) Are you a citizen of any country other than the United States of America? Yes No

INSTRUCTIONS: if the answer to Question No. 3 is Yes then the Affiant is under the jurisdiction of the Cherokee Court.

4. (If the accused answers No to the preceding questions) If it is determined that you are a non-Indian and therefore not subject to prosecution by the Cherokee Court, you may freely and knowingly waive any objection to jurisdiction of the Cherokee Court. Would you like to do that? Yes No

INSTRUCTIONS: if the answer to Question No. 4 is Yes then the Affiant is under the jurisdiction of the Cherokee Court.

5. Do you or your ancestors have any Indian Blood? Yes No

INSTRUCTIONS: if the answer to Question No5 is No then the Affiant is a Non-Indian for the purposes of jurisdiction.

6. Have you been provided formally or informally with any assistance that is reserved only for Indians? Yes No

Describe:

7. Do you enjoy the benefits of Tribal Affiliation (i.e., the status bestowed by a tribe)? Yes No

Describe:

8. Do you live on an Indian Reservation? Yes No

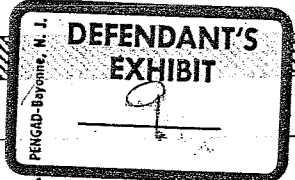
Describe:

9. Do you participate in Indian Social Life (i.e., Traditional Ceremonies, or Dance at Pow-Wows)? Yes No

Describe:

INSTRUCTIONS: The Magistrate must consider all answers and information provided in response to questions No. 5-9, applying Cherokee Law and Traditions, Treaties, and Acts of the United States Congress and decision of the Courts of the United States to determine whether the Affiant is an Indian for the purposes of Jurisdiction.

DETERMINATION OF JURIDICITION



SWORN AND SUBSCRIBED BEFORE ME

Date 11/30/12 Signature [Signature]

Date 11/30/2012 Signature of Affiant [Signature]

Deputy CSC Assistant CSC Clerk of Superior Court Notary Public Magistrate Judge

INITIAL DETERMINATION

Indian Non-Indian Signature of Judicial Official [Signature] Judge Magistrate Date 11/30/12

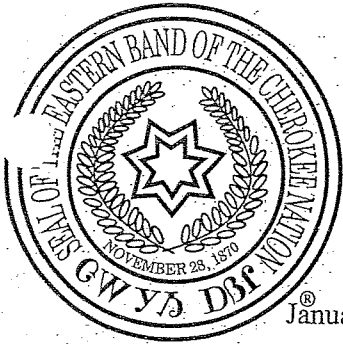
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JACKSON CO., O.S.C.

BY \_\_\_\_\_

# Attachment “H”



# The Eastern Band of Cherokee Indians

*The Honorable Mitchell Hicks, Principal Chief*  
*The Honorable Larry Blythe, Vice-Chief*

January 9, 2013

*Jim Owle*  
Chairman  
Birdtown Township

To Whom It May Concern:

*Bill Taylor*  
Vice-Chairman  
Wolftown Township

This statement is to certify that the Official Membership Records of the Eastern Band of Cherokee Indians, Cherokee, North Carolina, have been searched for the names listed.

Tribal Council Members

Last Name	First, Middle Name	Date of Birth	Status
Nobles	George Lee	01/17/1976	Not enrolled

*Perry Shell*  
Big Cove Township

Unfortunately, the aforementioned names do not appear on the membership records of the Eastern Band of Cherokee Indians.

*Bo Taylor*  
Big Cove Township

Please feel free to contact me if you have any questions. My email address and telephone number follow.

*Gene Crowe, Jr.*  
Birdtown Township

Respectfully,

*Jmye Saunooke*  
Painttown Township

*Kathie McCoy*  
Kathie McCoy  
Assistant Enrollment Officer  
(828) 554/6466

*Terri Henry*  
Painttown Township

*Mike Parker*  
Wolftown Township

State of North Carolina  
County of Swain

*Diamond Brown*  
Snowbird &  
Cherokee Co. Township

On this 9<sup>th</sup> day of January, 2013, before me  
Melanie Lambert, the undersigned Notary Public for Swain  
County, personally appeared:

Kathie McCoy

*Adam Wachacha*  
Snowbird &  
Cherokee Co. Township

Personally know to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same for the purposes therein stated.

*David Wolfe*  
Yellowhill Township

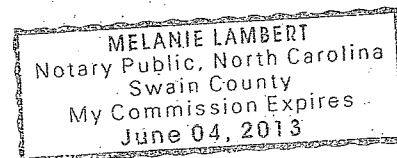
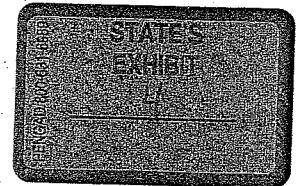
Witness my hand and official seal.

*Alan B. Ensley*  
Yellowhill Township

Notary Public  
Signature: Melanie Lambert

Print Name: Melanie Lambert

My commission expires: 6-4-13



FILED

2017 NOV 26 PM 12:55

JACKSON CO., O.S.C.

BY \_\_\_\_\_

# Attachment “I”

Cherokee Indians Eastern Band, North Carolina, Code of Ordinances >> PART I - CHARTER AND GOVERNING DOCUMENT OF THE EASTERN BAND OF CHEROKEE INDIANS >>

---

**PART I - CHARTER  
AND  
GOVERNING DOCUMENT  
OF THE  
EASTERN BAND OF CHEROKEE INDIANS**

---

Enacted and adopted May 8, 1986, by the Tribal Council of the Eastern Band of Cherokee Indians, Cherokee Council House, Cherokee, North Carolina, by Resolution No. 132 (1986), and amended by Tribal Referendum conducted October 8, 1986.

**Section 1.** The officers of the Tribe shall consist of a Principal Chief, Vice-Chief and twelve members of Council as follows: From Yellowhill Township two members; from Big Cove Township two members; from Birdtown Township two members; from Wolfetown Township two members; from Painttown Township two members; from Cherokee and Graham Counties, constituting one Township, two members.

**Section 2.** The Principal Chief or Vice-Chief and members of Council shall be elected to their respective offices by the enrolled members of the Eastern Band of Cherokee Indians, who have attained the age of eighteen (18) years. All officers elected by the Council shall hold office until the first annual council held after the next tribal election and all officers shall hold office until their successors are duly qualified.

**Section 3.** The election for Principal Chief and Vice Chief and Tribal Council shall be held on the first Thursday in September, 1987, and every two (2) years thereafter, under such rules and regulations as may be adopted by the council.

**Section 4.** There shall be an Executive Committee, which shall consist of the Principal Chief and Vice-Chief. The committee shall execute and carry out tribal laws and administer the daily operations of the Tribe.

**Section 5.** The representatives elected to the Tribal Council shall hold office for terms of two years. The Principal Chief and Vice Chief shall hold office for terms of four years.

**Section 6.** The Tribal Council shall establish a Board of Elections and enact election rules and regulations for the conduct of tribal elections. Election for Principal Chief and Vice-Chief must be by a majority of at-large votes cast by eligible voters.

**Section 7.** The Principal Chief shall receive as compensation for his services such sum as shall be appropriated by the Tribal Council, not to exceed one pay raise per annum. The Vice-Chief shall receive such sum as shall be fixed by the Tribal Council, not to exceed one pay raise per annum. Both the Principal Chief and Vice-Chief shall receive such traveling expenses as may be authorized by the Tribal Council. The members of the Tribal Council shall receive such compensation as shall be appropriated by the Tribal Council, with no pay raise to take effect until the next council is seated. All other officers and employees of the Tribe shall receive compensation for their services as shall be provided by the Tribal Council.

**Section 8.** The seat of government of the Eastern Band of Cherokee Indians shall be centrally located within the Qualla Boundary, North Carolina.

**Section 9.** In order to run for or serve as Principal Chief, Vice-Chief or Tribal Council member, a candidate must be an enrolled member of the Eastern Band. For the offices of Chief and Vice-Chief a candidate must also be at least thirty-five years of age by the date of the election and have resided on Cherokee trust lands continuously for at least two years immediately preceding the date of the election. For the Tribal Council a candidate must be at least eighteen years of age by the date of election and have resided in the township which he is to represent for at least ninety days immediately preceding the date of the election.

**Section 10.** There shall be an Annual Council held on the first Monday in October of every year, and in cases of emergency the Principal Chief may call a Special Council, but no business can be transacted in either Annual or Special Council unless a quorum of the members shall be present, with a quorum consisting of a majority of the members of Council elected at the last preceding election. The Principal Chief shall have the right to call a Grand Council of all enrolled members to attend and he shall preside over such meeting.

**Section 11.** At the convening of the Annual Council a new chairman, vice-chairman and clerk shall be elected by its members and hold office until the next Annual Council; provided, that all officers elected or appointed by the Council shall serve during the pleasure of the Council and for failure to perform their duties may be removed by said Council and others elected in their stead.

**Section 12.** All acts of Council shall be signed by the chairman and the clerks, and countersigned by the Principal Chief or Vice-Chief.

**Section 13.** The Principal Chief shall have the power to veto all acts of Council but his veto shall not prevail against a two-thirds vote of Council. All acts neither ratified nor vetoed by the Principal Chief within thirty (30) days shall be deemed valid legislation.

**Section 14.** In the case of death, resignation or disability of the Principal Chief, the Vice-Chief shall become the Principal Chief and shall serve the balance of the elected term of office until removal or disability or his successor is elected. In case of death, resignation or disability of the Vice-Chief, the Council may elect a successor who shall serve until removal or disability or his successor is elected. In the event the offices of both Principal Chief and Vice-Chief become vacant simultaneously, the Chairman of the Council shall become Principal Chief and shall serve the balance of the elected term of office and the Council shall elect a Vice-Chief who shall serve the balance of the elected term. If the Chairman does not meet the qualifications for the office of Principal Chief, the vacancy shall be filled by an election under rules established by the Council.

**Section 15.** In case of death, resignation or disability of any member of Council a new member shall be elected by the Township under such rules and regulations as may be prescribed by Council or election rules.

**Section 16.** The Council of the Eastern Band of Cherokee Indians shall direct the management and control of all property, either real or personal, belonging to the Tribe, but no person shall be entitled to the enjoyment of any lands belonging to the Eastern Band of Cherokee Indians as a tribe, or any profits accruing therefrom, or any monies which may belong to the Tribe, unless such person shall be an enrolled member of the Tribe, and in case any money, derived from any source whatsoever, belonging to the Eastern Band of Cherokees, shall be distributed among the members thereof, the same shall be distributed per capita among the members entitled thereto.

The first generation of an enrolled member of the Eastern Band of Cherokee Indians shall enjoy all property, both real and personal, that is held in said enrolled member's possession at their death. First generation shall include all children born to or adopted by an enrolled member.

**Section 17** No person shall ever be eligible for office or appointment of honor, profit, or trust who shall have aided, abetted, counselled, or encouraged any person or persons guilty of defrauding the Eastern Band of Cherokee Indians, or themselves have defrauded the Tribe, or who may hereafter aid or abet, counsel or encourage anyone in defrauding the Eastern Band of Cherokee Indians. Neither shall any person be eligible to such office, who has been convicted of a felony.

**Section 18.** The Principal Chief, Vice-Chief and members of Council before entering on the duties of office shall take the following oath before some officer authorized to administer oaths: "I do solemnly swear (or affirm) that I will faithfully execute the duties of the office of \_\_\_\_\_ of the Eastern Band of Cherokees and will to the best of my ability, preserve, protect and defend the charter and governing document and laws confirmed and ratified by the enrolled members of the Eastern Band of Cherokee Indians. I do solemnly swear (or affirm) that I have not obtained my election or appointment to Tribal office by bribery or any undue or unlawful means or fraud, and that in all measures which may come before me I will so conduct myself as in my judgment shall appear most conducive to the interest and prosperity of the Eastern Band of Cherokees."

**Section 19.** In order to provide equal representation to all members of the Eastern Band, the members of the Tribal Council shall, in their deliberations, cast votes on a weighted basis, with the weight of each vote determined by each Council member.

A tribal census, for the purposes of determining the weight of the votes to be cast by each Tribal Council member, shall be conducted prior to the 1981 tribal election and prior to the election each ten years thereafter to determine the number of enrolled tribal members residing in each township.

After the regular 1981 tribal election and each ten years thereafter, the Tribal Council, at its first regular meeting, shall determine the total number of votes to be cast in the Tribal Council and shall allot a voting authority to each Council member. The voting weight allotted to each Council member shall be determined by computing the mathematical ratio, fraction or proportion that exists between the number of enrolled tribal members residing in each township and the total number of enrolled tribal members. All Council members, including the Chairman, shall be entitled to vote on all issues.

**Section 20.** No money shall be paid out except upon warrant of the Principal Chief as authorized by an act of the Council.

**Section 21** The Executive Committee shall present a proposed budget to Tribal Council no later than July 1 of each year.

**Section 22.** Any officer of the Eastern Band of Cherokee Indians who violates his oath of office, or is guilty of any offense making him ineligible to hold said office may be impeached by a two-thirds vote of council.

**Section 23** The Tribal Council is hereby fully authorized and empowered to adopt laws and regulations for the general government of the Tribe, govern the management of real and personal property held by the Tribe, and direct and assign among its members thereof, homes in the Qualla



Boundary and other land held by them as a Tribe, and is hereby vested with full power to enforce obedience to such laws and regulations as may be enacted.

**Section 24** Whenever it may become necessary, in the opinion of the council to appropriate to public purposes for the benefit of the Tribe any of the lands owned by the Eastern Band of Cherokee Indians, and occupied by any individual Indian or Indians of the Tribe, the Council may condemn such land for the aforesaid purposes only by paying to the occupant of such land the value of such improvements and betterments as he may have placed or caused to be placed thereon, and the value of such improvements or betterments shall be assessed by a jury of not less than six competent persons, who are members of the Tribe, under such laws and regulations as may be prescribed by the Council. The Eastern Band of Cherokee Indians will not use eminent domain under this section or any other Tribal or Federal laws to take an individual Tribal member's possessory holding except for bridges, roads, power lines, schools, hospitals, or sewer and water lines. Each Tribal member shall receive proper notice, proper hearings, and proper compensation for their lands.

*(Amended by Res. No. 480, 6-8-95; approved by Referendum 9-5-1995)*

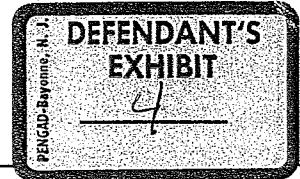
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JACKSON CO. C.B.C.

BY \_\_\_\_\_

# Attachment “J”



# EASTERN BAND OF CHEROKEE INDIANS

## The Cherokee Court



File No. (if any)

For Victim  For Accused

IN RE

### AFFIDAVIT OF JURISDICTION

Name and Address of Affiant

Name and Address of Accused

Date of the Offense

Victim

Potential Offense

### AFFIDAVIT OF JURISDICTION

1. Are you an enrolled member of any Federally Recognized Tribe?  Yes  No

Which Tribe

INSTRUCTIONS: If the answer to Question No. 1 is Yes then the Affiant is an Indian for the purposes of jurisdiction. If the answer is No, proceed to Question No. 2.

2. Are you a first linear descendant under the laws of the Eastern Band of Cherokee Indians?  Yes  No

INSTRUCTIONS: If the answer to Question No. 2 is Yes then the Affiant is under the jurisdiction of the Cherokee Court. If the answer is No, proceed to Question No. 3.

3. (for Accused Only) Are you a citizen of any country other than the United States of America?  Yes  No

INSTRUCTIONS: If the answer to Question No. 3 is Yes then the Affiant is under the jurisdiction of the Cherokee Court. If the answer is No, proceed to Question No. 5.

4. (If the accused answers No to the preceding questions) If it is determined that you are a non-Indian and therefore not subject to prosecution by the Cherokee Court, you may freely and knowingly waive any objection to jurisdiction of the Cherokee Court. Would you like to do that?  Yes  No

INSTRUCTIONS: If the answer to Question No. 4 is Yes then the Affiant is under the jurisdiction of the Cherokee Court. If the answer is No, proceed to Question No. 5.

5. Do you or your ancestors have any Indian Blood?  Yes  No

INSTRUCTIONS: If the answer to Question No. 5 is No then the Affiant is a Non-Indian for the purposes of jurisdiction. If the answer is Yes, proceed to Question No. 6-9.

6. Have you been provided formally or informally with any assistance that is reserved only for Indians?  Yes  No

Describe:

7. Do you enjoy the benefits of Tribal Affiliation (i.e., First Lineal Descendant, or other special status bestowed by a tribe)?  Yes  No

Describe:

8. Do you live on an Indian Reservation?  Yes  No

Describe:

9. Do you participate in Indian Social Life (i.e., Attend Indian Dinners, Community Meetings, Traditional Ceremonies, or Dance at Pow-Wows)?  Yes  No

Describe:

INSTRUCTIONS: The Magistrate must consider all answers and information provided in response to questions No. 6-9, applying Cherokee Law and Traditions, Treaties, and Acts of the United States Congress and decision of the Courts of the United States to determine whether the Affiant is an Indian for the purposes of Jurisdiction.

### DETERMINATION OF JURISDICTION

#### SWORN AND SUBSCRIBED BEFORE ME

Date

Signature of Affiant

Name of Affiant (Type or Print)

Deputy CSC  Assistant CSC  Clerk of Superior Court  
 Notary Public  Magistrate  Judge

#### INITIAL DETERMINATION

Indian  Non-Indian

Signature of Judicial Official

Judge  
 Magistrate

Date

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JACKSON CO., C.S.C.

BY \_\_\_\_\_

# Attachment “K”

**Rule 6. - Initial Appearance.**(a) *In General.*

- (1) *Appearance Upon Arrest.* A person making an arrest within the Qualla Boundary must take the defendant without unnecessary delay before a Magistrate or Judge, unless the person taken into custody is arrested on Federal or State process, in which case they shall be taken before the appropriate person as provided for in N.C. Gen. Stat. § 15A or the Federal Rules of Criminal Procedure. It is not necessary for persons arrested for violating conditions of release to be brought before the Magistrate.
- (2) *Appearance Upon a Summons.* A person served with a criminal summons must appear before the Magistrate on duty during the first business day following service with the summons. Upon failure of any defendant to report as Ordered, the Magistrate on duty during the day shall issue a Warrant for the defendant's arrest and charge him or her with Failure to Obey a Lawful Order of the Court.

(b) *Procedures.*

- (1) *Determining Jurisdiction.* The Magistrate shall conduct the "St. Cloud" test to confirm that the defendant is an Indian. This test is conducted as follows:
  - (A) Inquire if the defendant is an enrolled member of any Federally recognized Indian Tribe;
  - (B) Inquire if the defendant is a First Descendent of the EBCI;
  - (C) Inquire if the defendant is a citizen of another country;
  - (D) Inquire if the defendant is a member of any State recognized Indian Tribe; and
  - (E) Inquire if the defendant participates in any Indian cultural events, lives on a Reservation, receives any benefits reserved exclusively for Indians, or otherwise holds herself out as an Indian.

If the answers to questions (A)—(C), or any one of them, is "yes," the inquiry ends there and the Court has jurisdiction over the defendant. If the answers to questions (A)—(C) is "no," but the answer to question (D) or (E) is "yes," further inquiry may be in order to satisfy the Magistrate that the defendant is an Indian for the purposes of the exercise of jurisdiction. If the Magistrate determines that the defendant is a non-Indian, then the Magistrate should notify the CIPD of same, dismiss the charges and turn the defendant over to the CIPD for transport to the appropriate State or local judicial officer or to the Federal authorities. In lieu of inquiring of the defendant as outlined above, an Affidavit such as the one attached in Appendix 1 to these Rules may be utilized. If the defendant exercises his or her right to remain silent, the Magistrate shall determine that the defendant is an Indian for the purposes of jurisdiction, without prejudice to the defendant's right to challenge jurisdiction at a later date. If the defendant is too intoxicated or impaired for the Magistrate to conduct this inquiry, the Magistrate shall order that the defendant appear before the Magistrate on duty on the following business day for the conclusion of this proceeding.

- (2) *Waiver of Personal Jurisdiction.* A non-Indian may waive the issue of personal jurisdiction and consent to proceeding in the Cherokee Court.
- (3) *Notice of Charges.* Following the determination of jurisdiction, the Magistrate shall inquire as to whether the defendant has received a copy of the Warrant, Criminal Complaint, and/or Criminal Summons. If the defendant has not, he or she will be

provided a copy at this time. The Magistrate will read the charges to the defendant if he or she does not understand what the charges are.

- (4) *Advising of Rights.* The Magistrate shall advise the defendant and make findings that the defendant understands:
- (A) That he or she has the right to remain silent;
  - (B) That he or she cannot be compelled to testify in this case;
  - (C) That he or she has the right to a speedy trial;
  - (D) That he or she has the right to a public trial;
  - (E) That he or she has the right to confront the witnesses against him or her;
  - (F) That he or she has the right to call witnesses on his or her own behalf;
  - (G) That, if he or she wishes, witnesses for his or her behalf may be compelled to attend by subpoena served by the CIPD or other law enforcement agency;
  - (H) That he or she has the right to be represented by counsel;
  - (I) That counsel will be appointed for him or her, upon request, if he or she cannot afford counsel and is likely to face an active term of incarceration if convicted;
  - (J) That he or she has the right to trial by Jury; and
  - (K) That he or she, if found guilty, has the right to appeal the Judgment to the Cherokee Supreme Court.
- (5) *Inquiries.* Upon advising the defendant of his or her rights, the Magistrate will inquire whether the defendant wants to be represented by counsel, and, if so, whether the defendant requests to apply for Court appointed counsel. Additionally, the Magistrate will inquire of the defendant whether he or she elects trial by Jury. The defendant may defer this decision until consulting with counsel, or until coming before a Judge.
- (6) *Conditions of Release.* After the Magistrate has made the appropriate inquiries of the defendant, the Magistrate shall establish conditions for the defendant's release. If the Magistrate finds that the defendant is a danger to the community or a risk of flight, and that no conditions will reasonably secure the defendant's attendance or provide for the safety of the community, the Magistrate may Order that the defendant be held without bond until a Release Hearing may be held before the Cherokee Court. Permitted conditions of release, including combinations, are:
- (A) Cash bond;
  - (B) Secured bond
    - (1) Surety bond;
    - (2) Property bond;
    - (3) Bond shall not be secured by per capita garnishment;
  - (C) Third Party Custody;
  - (D) Pre-trial Supervision by the Probation Office; and
  - (E) Unsecured bond (written promise to appear).
- Additionally, the Magistrate may impose restrictions on the defendant in his or her discretion, including, but not limited to:
- (A) Prohibiting the defendant from possessing a firearm, ammunition or other weapon;
  - (B) Prohibiting the defendant from contacting the alleged victim(s);
  - (C) Prohibiting the defendant from possessing or consuming alcohol;
  - (D)

Restricting the defendant to the jurisdiction of the Cherokee Court at all times, or other geographical restrictions; and

- (E) Prohibiting the defendant from violating the laws of this or any other jurisdiction.

In the event the defendant's release is not authorized, or the defendant is unable to satisfy the conditions of release, the defendant shall be taken by the CIPD to an approved jail facility. If a surety who has posted a bond produces a defendant and requests to be released from the bond, a Judge may discharge the surety from his or her obligations under the bond upon such conditions as the Court thinks appropriate.

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BY \_\_\_\_\_

# Attachment “L”



patents in fee, or any other disposition authorized by existing law relating to Indian allotments.

Approved, June 2, 1924.

CHAP. 232.—An Act To provide for the addition of the names of Chester Calf and Crooked Nose Woman to the final roll of the Cheyenne and Arapaho Indians, Seger jurisdiction, Oklahoma.

June 2, 1924.  
[H. R. 6357.]  
[Public No. 174.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he hereby is, authorized to add to the final roll of the Cheyenne and Arapaho Indians of the Seger jurisdiction, Oklahoma, approved May 18, 1921, the names of Chester Calf and Crooked Nose Woman, which names were inadvertently omitted from the said roll, and to pay to each of these persons a sum equal to that heretofore paid per capita to those whose names appear on the approved roll, such payment to be made from any tribal funds to the credit of the Cheyenne and Arapaho Indians.*

Cheyenne and Arapaho Indians, Okla. Names added to final roll of.

Per capita payment.

Approved, June 2, 1924.

CHAP. 233.—An Act To authorize the Secretary of the Interior to issue certificates of citizenship to Indians.

June 2, 1924.  
[H. R. 6355.]  
[Public No. 175.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: Provided, That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.*

Indians. Born in United States declared citizens. Proviso. Tribal rights not affected.

Approved, June 2, 1924.

CHAP. 234.—An Act To reduce and equalize taxation, to provide revenue, and for other purposes.

June 2, 1924.  
[H. R. 6715.]  
[Public No. 176.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Revenue Act of 1924.

TITLE I.—GENERAL DEFINITIONS.

General definitions.

SECTION 1. This Act may be cited as the "Revenue Act of 1924."

Title of Act.

SEC. 2. (a) When used in this Act—

Terms construed.

(1) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

"Person."

(2) The term "corporation" includes associations, joint-stock companies, and insurance companies.

"Corporation."

(3) The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

"Domestic."

(4) The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

"Foreign."

(5) The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

"United States."

(6) The term "Secretary" means the Secretary of the Treasury.

"Secretary."

(7) The term "Commissioner" means the Commissioner of Internal Revenue.

"Commissioner."



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PUBLIC LAW  
CITIZENSHIP TO INDIANS  
JUNE 2, 1924

68 P.L. 175; 43 Stat. 253; 68 Cong. Ch. 233

AN ACT

To authorize the Secretary of the Interior to issue certificates of citizenship to Indians.

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JACKSON CO. S.S.C.

BY \_\_\_\_\_

# Attachment

## “M”

June 4, 1924.

[S. 3304.]

[Public, No. 190.]

CHAP. 252.—An Act Granting the consent of Congress to the commissioners of Fayette and Greene Counties, Pennsylvania, to construct a bridge across the Monongahela River near Masontown, Fayette County, Pennsylvania.

Monongahela River.  
Fayette and Greene  
Counties may bridge,  
Masontown, Pa.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the consent of Congress is hereby granted to the commissioners of the counties of Fayette and Greene, in the State of Pennsylvania, and their successors and assigns, to construct, maintain, and operate a bridge and approaches thereto across the Monongahela River, at a point suitable to the interests of navigation, at or near Masontown, in the county of Fayette, in the State of Pennsylvania, in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March 23, 1906.

Construction.  
Vol. 34, p. 34.

Amendment.

SEC. 2. That the right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved, June 4, 1924.

June 4, 1924.

[H. R. 2832.]

[Public, No. 191.]

CHAP. 253.—An Act Providing for the final disposition of the affairs of the Eastern Band of Cherokee Indians of North Carolina.

Eastern Band of Cherokee  
Indians, N. C.  
All lands, etc., of  
may be conveyed to  
United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Eastern Band of Cherokee Indians of North Carolina is hereby authorized, pursuant to the resolution of its council adopted the 6th day of November, 1919, to convey to the United States of America, in trust, all land, money, and other property of said band for final disposition thereof as hereinafter provided; and the United States will accept such conveyance when approved by the Secretary of the Interior.

Roll of members to  
be prepared.

SEC. 2. That upon approval of such conveyance the Secretary of the Interior shall cause to be prepared a roll of the members of said band, to contain the names of all living on the date of this Act, and no person born after that date shall be entitled to enrollment.

Contents.

The roll shall show the name, age, sex, and degree of Cherokee Indian blood, and separately of that derived from any other Indian ancestor, of each member. The day of the month indicating the birthday of each member shall also be shown upon said roll: *Provided,* That if such date is unknown and can not be ascertained, the date of the entry of the name on the schedule shall be taken for the purposes of this Act to be the birth date of the member to whom the entry applies.

Proviso.  
Assumed birth date.

Finality, etc., of completed roll.

Said roll when approved by the Secretary of the Interior shall be final and conclusive as to the membership of said band, and as to the ages and degree of Indian blood of the members, but clerical changes relating to the names of such members or to sex designations may be made at any time thereafter.

Consideration of former rolls, lists, etc.

SEC. 3. That in the preparation of said roll due consideration shall be given to all rolls and lists heretofore made of the membership of said band, together with any evidence elicited in the course of any investigations, and to all documents and records on file in the Interior Department or any of its bureaus or offices.

Appearance on, or absence from, not conclusive.

The fact that the name of any person appears on any such roll or list shall not be accepted to establish, conclusively, his right or that of his descendants to enrollment. Nor shall the absence of his name from such former rolls conclusively bar any person or his descendants from enrollment.

Act of North Carolina disregarded.

That in the preparation of said roll the act of the State of North Carolina of March 8, 1895, chapter 166, entitled "An Act to amend chapter 211, laws of 1889, relating to the charter of the Eastern Band of Cherokee Indians" shall be disregarded.

Applications for enrollment may be presented in such manner and within such time as may be prescribed by regulations made by the Secretary of the Interior, but lack of application shall not prevent consideration of the right to enrollment of any person whose name appears on any former roll and his descendants or of any name brought in any manner to the attention of those in charge of the enrollment work, including the names of those persons of Cherokee Indian blood living July 27, 1868, in any of the counties of North Carolina, in which the common lands of said band are located, or in any of the contiguous counties of that State or of the States of Georgia and Tennessee, and of their descendants.

Consideration of applications for enrollment.

SEC. 4. That the lands so conveyed shall be surveyed, where found necessary, and divided into appropriate tracts or parcels and appraised at their true value as of the date of such appraisement, without consideration being given to the location thereof or to any mineral deposits therein or to improvements thereon, but such appraisement shall include all merchantable timber on all allottable lands.

Survey of lands and division thereof.

SEC. 5. That reservations from allotment may be made, in the discretion of the Secretary of the Interior, of lands for cemeteries, schools, water-power sites, rights of way, and for other public purposes, with proper safeguards, however, for compensation to individuals who may suffer losses by reason of such reservations.

Lands for public purposes reserved from allotment.

There may also be reserved any tract chiefly valuable because of the timber or of stone, marble, or other quarries thereon, or which by reason of location or topographical features may be unsuitable for allotment purposes.

Timber and quarry reservations.

Any land or other property reserved from allotment as above provided and lands not needed for allotments may be sold at such time, in such manner, and upon such terms as the Secretary may direct, and the proceeds of such sale shall be added to the funds of the band: *Provided*, That in the sale of timberlands the timber and the land may be sold separately.

Sale of unallotted lands, etc.

Proviso, Timberlands.

Conveyances.

Conveyances under such sales shall be made as provided in the case of conveyances to allottees.

Oil, etc., mineral deposits reserved to the band.

SEC. 6. That all oil, gas, coal, and other mineral deposits on said lands are hereby reserved to said band for a period of twenty-five years from the date of this Act, and during such period said deposits may be leased for prospecting and mining purposes by the Secretary of the Interior, for such periods (not exceeding the period for which such minerals are reserved) and upon such terms and conditions as he may prescribe: *Provided*, That at the end of such twenty-five year period all such deposits shall become the property of the individual owner of the surface of such land, unless Congress shall otherwise provide.

Leases.

Proviso, Deposits after twenty-five years the property of owner.

SEC. 7. That all improvements on the lands of said band of a permanent and substantial character shall be appraised separately from the lands upon which the same may be, and shall be listed in the names of the members of the band prima facie entitled thereto, but the designation of ownership shall be tentative only until the true ownership thereof is ascertained and declared, after due notice and hearing. The right to have such improvements appraised, and to make disposition thereof, shall extend to all members, except tenants, owning such improvements at the date of this Act.

Appraisal and listing of improvements.

Disposition, etc., restricted.

Any person held to be the owner of improvements may remove the same, where found to be practicable, within ninety days from the date they are declared to belong to him, or may, within that period, dispose of the same at not more than the appraised value to any member of the band entitled to receive an allotment, under regulations to be prescribed: *Provided*, That the vendor shall have

Disposition by owner.

Proviso.

- Lien to vendor until price fully paid.** a lien upon the rents and profits accruing from the tract on which such improvements may be located until the purchase price thereof is fully paid.
- Equal allotment of lands and money.** **SEC. 8.** That the lands and money of said band shall be allotted and divided among the members thereof so as to give each an equal share of the whole in value, as nearly as may be, and to accomplish that the value of the standard allotment share shall be determined by dividing the total appraised value of all allotted and allottable lands by the total number of enrolled members.
- Adjustment of differences.** If any member shall fail to receive his full share of the tribal lands, he shall be entitled to the payment of money so as to adjust the difference as nearly as possible. If any member shall receive an allotment exceeding in value his full share of the tribal lands, the difference shall be adjusted by deduction from his distributive share of the tribal funds.
- Application for allotments.** **SEC. 9.** That when the tracts available for allotments are ascertained, each member of the said band may apply for a tract or tracts of land to the extent of thirty acres, as nearly as practicable, to include his home and improvements, if he so desires, and the selection so made shall be final as to the right to occupy and use the land so applied for as against all other members if no contest is filed against such selection within ninety days from and after formal application is made therefor: *Provided*, That any person claiming the right to select any given tract of land by reason of the purchase of improvements thereon shall have ninety days to make application therefor from and after the date of approval of any sale conveying to him said improvements, and such application shall become final as in other cases, subject to the right of any other member to contest such selection, ninety days from and after the same is duly made. All contests shall be instituted and heard pursuant to the rules and regulations of the Interior Department applicable thereto. Any allotment selection may be modified or limited, in the discretion of those in charge of the work, so as to give the selector of adjacent or contiguous lands access to firewood and drinking water.
- Effect of selection.**
- Proviso. Selection by purchaser of improvements.** **SEC. 10.** That adults may select their own allotments, where mentally capable of so doing, but allotments for minors may be selected by their father or mother, in the order named, or by the officers in charge of the allotment work. The said officers may also select allotments for prisoners, convicts, aged, infirm, and insane or otherwise mentally incompetent members and for the estates of deceased members and, if necessary to complete any allotments or to bring the allotment work to a close, may make arbitrary selections for and on behalf of any member of said band.
- Contests.**
- Access to firewood and drinking water by selector.** **SEC. 11.** That allotments may be selected for the members of any family, wherever practicable, from contiguous lands or other lands held by the head of the family, including both adult and minor children and such other relatives as are members of the household: *Provided*, That if any adult child shall claim the benefit of this section, he shall not be entitled as a matter of right to have his selection made from the lands desired by his father or mother or from lands needed by any minor member of the family for allotment purposes, but this shall not prevent selection of lands outside the family holdings if desired.
- Selections by adults.**
- For incompetents and estates.** **SEC. 12.** That where annuity or other payments to individuals have heretofore been suspended because their enrollment status has been questioned, the amounts involved in such suspended payments shall be paid to individuals found entitled to enrollment or to their heirs, and all funds of said band, after making such payments and after payments needed for equalizing allotments as hereinbefore provided and all other payments herein directed to be made, shall
- Contiguous lands for families allowed.**
- Proviso. Limitation on selection by adult child.**
- Distribution per capita to enrolled members, after suspended annuities and other payments have been made.**

be distributed per capita among the enrolled members of said band and the heirs of those who shall die before distribution is completed, and shall be paid to the distributees or conserved and used for their benefit, according to whether they belong to the restricted or unrestricted class, at such time and in such manner as shall be deemed advisable.

SEC. 13. That any member of said band whose degree of Indian blood is less than one-sixteenth may, in the discretion of the Secretary of the Interior, be paid a cash equivalent in lieu of an allotment of land. Any person desiring to avail himself of this provision may make application to the officers in charge of the allotment work at any time within ninety days after the date of the approval of the final roll, and preference shall be given in the order of application. The said officers shall have the power to add to the register of such names the names of any other members of the same class, including minors for whom no application is made, for such time as may be allowed for the purpose by the regulations. Applications should be made in person by adults and for minors by their fathers or mothers, in the order named.

SEC. 14. That if any member shall claim that he is the owner of a so-called private land claim, for the reason that money was advanced by him or his ancestor to pay in whole or in part for any land the title to which is now in the band, such claim may be submitted to and equitably adjusted by the Secretary of the Interior, whose decision thereon shall be final and not subject to review by the courts. In such adjustment due consideration shall be given to matters presented by the band in the way of offsets or counterclaims.

SEC. 15. That a certificate of allotment shall be issued to each allottee upon the expiration of the contest period, if no contest is then pending, or, if a contest is then pending, upon final disposition thereof, but shall be dated as of the date of selection. Each certificate shall contain the name and roll number of the allottee, and the legal effect thereof shall be to give the allottee the right to occupy and use the surface of the land described therein, as against each and every other member of the band, but not as against the band itself, or against the United States: *Provided*, That the Secretary of the Interior may cancel any certificate of allotment at any time before title to the land described therein is conveyed to the allottee, if in his judgment said land should be reserved for allotment for any purpose herein authorized or for any other good and sufficient reason, but before such action is taken the allottee shall have due notice and opportunity to be heard. If any such certificate shall be revoked, the allottee may select other lands as if no certificate had been issued to him.

SEC. 16. That as soon as practicable after a certificate of allotment is issued there shall be issued to the allottee a deed conveying all right, title, and interest of the United States, as trustee, and of the band, and of every other member thereof, in and to the land described in said certificate. Each deed shall recite the roll number and degree of Indian blood of the grantee and shall be executed by or in the name of the Secretary of the Interior, who is hereby authorized to designate any clerk or employee of the department to sign his name for him to all such deeds.

Each deed, when so issued, shall be recorded in the office of the recorder of deeds for the county in which the land conveyed thereby is located. When so recorded title to the land shall vest in the allottee subject to the conditions, limitations, and restrictions herein imposed. Upon the recording of any deed it shall be the duty of the officers representing the Government of the United States to deliver it to the allottee named therein.

Payments.

Cash in lieu of land for members having small degree of Indian blood.

Applications to be made.

Addition to register without application.

Action on claims of owners of private land claims.

Certificates of allotments to be issued.

Contents and legal effect.

Proviso. Cancellation if land should be reserved for authorized purpose, etc.

Other selection permitted on revocation.

Title deed given on issue of certificate.

Contents and execution.

To be recorded in county.

Title to vest.

Delivery to allottee.

Distribution in case of members dying before receiving share, etc.

Proviso.  
Determination of, by Secretary of the Interior.

No distinction between restricted or trust lands, etc.

Leases allowed.

Proviso.  
On behalf of minors and incompetents.

Of unpartitioned estates.

Payment of rents and royalties.

Parents to use allotments to minor children.

Proviso.  
Privilege revocable.

Allotments inalienable for twenty-five years.

Proviso.  
Citizenship accorded on recording of deeds.

Earlier removal of restriction in discretion of Secretary.

Allotments not liable to any claim prior to removal of restriction. Any attempted alienation, etc., null and void.

SEC. 17. That if any member enrolled as provided in this Act shall die before receiving his distributive share of the band or tribal property, the land and moneys to which he would be entitled, if living, shall descend to his heirs according to the laws of the State of North Carolina and be distributed to them accordingly, but in all such cases the allotment and deed therefor shall be made in the name of the deceased ancestor and shall be given the same force and effect as if made during his lifetime: *Provided*, That the provisions of the Act of Congress approved June 25, 1910 (Thirty-sixth Statutes, page 855), as amended by the Act of Congress of February 14, 1913 (Thirty-seventh Statutes, page 678), relating to the determination of heirs and approval of wills by the Secretary of the Interior, and to other matters, are hereby made applicable to the persons and estates of the members of the said band, and in the construction of said Acts no distinction shall be made between restricted lands and moneys and those conveyed or held in trust.

SEC. 18. That leases of lands allotted under this Act may be made during the restricted period for any purpose and for any term of years, under rules and regulations to be prescribed by the Secretary of the Interior: *Provided*, That such leases shall be executed on behalf of minors and other incompetents, including any Indian deemed to be incapable, mentally or physically, of managing his business affairs properly and with benefit to himself and in their names, by a duly authorized representative of the Indian Service designated by said Secretary for the purpose: *Provided further*, That all leases of unpartitioned estates shall be so made and approved unless all of the Indian heirs or owners are of the unrestricted class, and shall be subject to supervision during the restricted period the same as leases made on other restricted lands, but all rents and royalties accruing therefrom to unrestricted owners shall be paid, by the proper officers of the Indian Service, to such owners at the earliest date practicable after the collection thereof.

Parents may use the lands allotted to their children and receive the rents and profits arising therefrom during the minority of such children: *Provided*, That this privilege may be revoked by the Commissioner of Indian Affairs at any time while said lands are restricted for such cause as may by him be deemed good and sufficient.

SEC. 19. That lands allotted under this Act shall not be alienable, either by voluntary or enforced sale by the allottee or his heirs or otherwise, for a period of twenty-five years from and after the date when the deed conveying such land to the allottee is recorded as directed herein: *Provided*, That upon the completion of the allotments and the recording of the deeds as herein directed each allottee shall become a citizen of the United States and a citizen of the particular State wherein he (or she) may reside, with all the rights, privileges, and immunities of such citizens: *Provided further*, That the Secretary of the Interior may, in his discretion, at any time after a deed is recorded remove the restrictions on the lands described therein, either with or without application by the owner or owners, under such rules and regulations or special orders governing the terms of sale and the disposition of the proceeds as he shall prescribe.

SEC. 20. That lands allotted under this Act shall not be subjected or held liable to any form of personal claim, or demand, against the allottee, arising or existing prior to the removal of restrictions; and any attempted alienation or incumbrance of restricted land by deed, mortgage, contract to sell, power of attorney, or other method of incumbering real estate, except leases specifically authorized by law, made before or after the approval of this Act and prior to removal of restrictions therefrom, shall be absolutely null and void.



Sec. 21. That all lands, and other property, of the band, or the members thereof, except funds held in trust by the United States, may be taxed by the State of North Carolina, to and including the tax year following the date of this Act. Such taxes shall be paid from the common funds of said band for such period, except upon such tracts as shall have been lawfully sold prior to the date when tax assessments can be made thereon under the State law. All tax assessments made pursuant to this Act on restricted allotments or undivided tribal property held in trust by the United States shall be subject to revision by the Commissioner of Indian Affairs for a period of one year following the date when such assessments are spread on the local tax rolls, but if he shall take no action thereon during said year, such assessments shall be final, but this shall not be construed to deprive any allottee of any remedy to which he would be entitled under the State law: *Provided*, That such restricted and undivided property shall be exempt from sale for unpaid taxes for two years from the date when such taxes become due and payable, and no penalty for delinquency in the payment of such taxes shall be charged or collected for or during said period, so that Congress may have an opportunity to make provision for the payment of such taxes if the band, or tribal, funds are found insufficient for the purpose.

After the expiration of the tax year following that in which this Act is approved all lands allotted to members of said band, from which restrictions shall have been removed, shall be subject to taxation the same as other lands. But from and after the expiration of said tax year all restricted allotments and undivided property shall be exempt from taxation until the restrictions on the alienation of such allotments are removed or the title of the band to such undivided property is extinguished.

Sec. 22. That the removal of restrictions upon allotted lands shall not deprive the United States of the duty or authority to institute and prosecute such action in its own name, in the courts of the United States, as may be necessary to protect the rights of the allottees, or of their heirs, until the said band shall be dissolved by congressional action, unless the order removing such restrictions is based upon an express finding that the Indian to whom it relates is fully competent and capable of managing his own affairs.

Sec. 23. That the authority of the Eastern Band of Cherokee Indians of North Carolina to execute conveyances of lands owned by said band, or any interest therein, is recognized, and any such conveyance heretofore made, whether to the United States or to others, shall not be questioned in any case where the title conveyed or the instrument of conveyance has been or shall be accepted or approved by the Secretary of the Interior.

Sec. 24. That the reinvestment of the proceeds arising from the sale of surplus and unallotted lands of said band in other lands in the vicinity of the Indian school at Cherokee, North Carolina, is hereby authorized, in the discretion of the Secretary of the Interior, and lands so purchased may be allotted as provided for herein respecting the allotment of lands now owned by said band.

Sec. 25. That all things provided for herein shall be done under the direction of the Secretary of the Interior, who is authorized to prescribe needed rules and regulations.

All questions as to enrollment and as to all other matters involving the disposition of the lands or moneys of said band, or of the members thereof, shall be decided by the Secretary of the Interior, and such decision as to any matter of fact or law shall be final.

Sec. 26. That in addition to any sum or sums heretofore or hereafter regularly appropriated for salaries and expenses, there is

Property, except trust funds, may be taxed by North Carolina.  
Payment.

Assessments on restricted allotments subject to revision by Commissioner of Indian Affairs for one year.

Allottee not deprived of remedy.

Proviso. Restricted, etc., property exempt from sale for unpaid taxes, for two years.

Unrestricted allotments subject to tax after one year.

Restricted allotments, etc., exempt until restriction removed, etc.

Removal of restrictions not to deprive United States of authority to bring action in Federal courts to protect rights of allottees.

Exception.

Conveyances by Eastern Band of Cherokees of its lands, recognized, etc.

Lands in vicinity of Cherokee School may be purchased, and allotted.  
Post, p. 1157.

Authority vested in Secretary of the Interior.

Decision final as to enrollment, etc.

Additional sum authorized for expenses of administering Act.

Post, p. 1149.

hereby authorized to be appropriated, from the funds of the United States in the Treasury not otherwise appropriated, the sum of \$10,000, or so much thereof as may be necessary, for the payment of such expenses as shall be necessarily incurred, including the salaries of additional employees in the administration of this Act.

Approved, June 4, 1924.

June 4, 1924.  
[H. R. 4573.]  
[Public, No. 192.]

CHAP. 254.—An Act Granting certain public lands to the city of Shreveport, Louisiana, for reservoir purposes.

Public lands  
Granted Shreveport,  
La., for water supply  
reservoir.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Interior be, and he hereby is, authorized and directed to issue patent or patents to the city of Shreveport, Louisiana, for use in the establishment of a reservoir for the water supply of said city, for all those tracts of land within what is known as the Cross Lake area, in townships 17 and 18 north, range 15 west, Louisiana meridian, which may be found by the Secretary of the Interior to have been islands in said Cross Lake at the date the State of Louisiana was admitted to the Union, and to which tracts no legal claims have been initiated and duly maintained under the provisions of the public land laws, and shall be timely asserted as provided herein: *Provided*, That the said city of Shreveport shall pay for said lands at the rate of \$1.25 per acre, and shall tender its application for patent, accompanied by the purchase price of the land, within six months after the approval of this Act, or within a similar period after the acceptance of the official plat or plats or survey if accepted after the date of this Act: *Provided further*, That there shall be reserved to the United States all gas, oil, coal, or other mineral deposits found at any time in the said lands and the right to prospect for, mine, and remove the same.

Proviso.  
Payment required.

Mineral deposits re-  
served.

Notice of application  
to be published.

Action on adverse  
claims.

No patent to city un-  
less claim rejected.

Reversion on non-  
user.

Declaration of for-  
feiture.

Upon filing its application by the city, notice thereof shall be published at least once each week for thirty days in some newspaper in general circulation in the parish in which the land is situated.

SEC. 2. That no claim alleged to have been initiated and maintained under the public land laws adverse to the disposition of said lands as provided for by this Act shall be recognized, notice being given as hereinbefore provided, unless regularly presented to the Secretary of the Interior within a period allowed the city of Shreveport to file its application for patent, and no tract to which an adverse claim is asserted shall be patented to the city unless and until such claim is finally rejected by the Secretary of the Interior.

SEC. 3. That the lands hereby granted shall be used by the city of Shreveport, Louisiana, only for the purpose expressed in the grant, and if said land, or any part thereof, shall be abandoned for such use it shall revert to the United States; and the Secretary of the Interior is hereby authorized and empowered to determine the facts and declare such forfeiture and restore said land to the public domain, and such order of the Secretary shall be final and conclusive.

Approved, June 4, 1924.

June 4, 1924.  
[H. R. 9124.]  
[Public, No. 193.]

CHAP. 255.—An Act Authorizing the sale of real property no longer required for military purposes.

Lands for military  
purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary



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UNITED STATES STATUTES AT LARGE  
68TH CONGRESS - 1ST SESSION  
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PUBLIC LAW  
EASTERN BAND OF CHEROKEE INDIANS, NORTH CAROLINA  
JUNE 4, 1924

68 P.L. 191; 43 Stat. 376; 68 Cong. Ch. 253

AN ACT

Providing for the final disposition of the affairs of the Eastern Band of Cherokee Indians of North Carolina.

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BY \_\_\_\_\_

# Attachment

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# JURISDICTIONAL CHART

When the Crime Committed is a "Major" Crime

<u>Persons Involved</u>	<u>Jurisdiction</u>
Indian accused, Indian victim	Federal government (Major Crimes Act) and tribal government (inherent sovereignty)
Indian accused, non-Indian victim	Federal government (Major Crimes Act) and tribal government (inherent sovereignty)
Non-Indian accused, Indian victim	Federal government only (Major Crimes Act)
Non-Indian accused, non-Indian victim	State government only

The Rights of Indians and Tribes, by Stephen L. Pevar, 3<sup>rd</sup> Edition (2002), pages 145-146.

# JURISDICTIONAL CHART

When the Crime Committed is a Not "Major" Crime

<u>Persons Involved</u>	<u>Jurisdiction</u>
Indian accused, Indian victim	Tribal government only (inherent sovereignty)
Indian accused, non-Indian victim	Federal government (Indian Country Crimes Act) and tribal government (inherent sovereignty)
Non-Indian accused, Indian victim	Federal government only (Indian Country Crimes Act)
Non-Indian accused, non-Indian victim	State government only

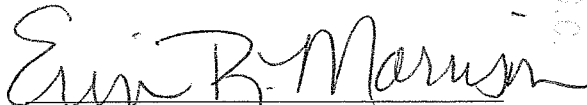
The Rights of Indians and Tribes, by Stephen L. Pevar, 3<sup>rd</sup> Edition (2002), pages 145-146.

**CERTIFICATE OF SERVICE**

The undersigned certifies that the attached Order was served upon the party(s) to this action by depositing a copy of the same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record or pro se party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this the 26 day of November, 2013.

Todd Williams  
Assistant Capital Defender  
17 N. Market Street, Ste. 102  
Asheville, NC 28801

Jim Moore  
Assistant District Attorney  
(hand-delivered)

  
Erin B. Marston  
Judicial Assistant

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