



No. F-2018-138

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

TRAVIS J. HOGNER,

Appellant,

-vs-

THE STATE OF OKLAHOMA,

Appellee.

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

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SUPPLEMENTAL BRIEF OF APPELLEE AFTER REMAND

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OCTOBER 26, 2020

TABLE OF AUTHORITIES

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IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

TRAVIS HOGNER,)	
)	
Appellant,)	
)	
v.)	Case No. F-18-138
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

SUPPLEMENTAL BRIEF OF APPELLEE AFTER REMAND

Travis Hogner, hereinafter the defendant, was convicted of Possession of a Firearm After Former Felony Conviction, in violation of 21 O.S.Supp.2014, § 1283, after former conviction of two or more felonies, in Craig County District Court Case No. CF-2015-263, and was sentenced to fifty years imprisonment. In Proposition I of his brief on appeal, the defendant claimed the District Court of Craig County did not have jurisdiction to try him, arguing he was a citizen of the Miami Tribe of Oklahoma and that his crime occurred within the boundaries of the alleged Cherokee Nation Reservation (Appellant's Brief at 9-12; Appellant's Application to Supplement Appeal Record or in the Alternative Remand for Evidentiary Hearing on Sixth Amendment Claims at 2). This Court had previously abated the defendant's direct appeal proceedings based on his jurisdictional claim.

On July 9, 2020, the United States Supreme Court held in *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2460-82 (2020), that the Creek Nation's Reservation had not been disestablished. On the same day, and for the reasons stated in

McGirt, the Court also affirmed the Tenth Circuit's decision in *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017). *Sharp v. Murphy*, 140 S. Ct. 2412 (2020).

On August 14, 2020, this Court remanded this case for an evidentiary hearing ("Order"), directing the district court to hold a hearing to determine (1) "the Appellant's status as an Indian"; and (2) "whether the crime occurred in Indian Country" (Order at 3-4). This Court instructed that the parties could "enter into a written stipulation setting forth those facts upon which they agree and which answer the questions presented and provide the stipulation to the District Court" (Order at 5).

On September 21, 2020, counsel for the defendant and the State appeared before the Honorable Shawn S. Taylor, District Judge of Craig County (O.R. 155-60; Tr. 3).¹ The Cherokee Nation appeared as Amicus through Attorney General Sara Hill (O.R. 155; Tr. 3). At the hearing, the parties presented the court with an Agreed Stipulation (Tr. 5; O.R. 152-53). On September 30, 2020, the district court issued its Order on Remand (O.R. 155).

The parties stipulated to "[the defendant's] Indian status" based on documentation reflecting that the defendant has ¼ degree Indian blood and was a member of the Miami Tribe of Oklahoma on the date of the crime (O.R. 141, 152-53). The parties further stipulated "to the crime occurring within the historical boundaries of the Cherokee Nation" (O.R. 152-53).

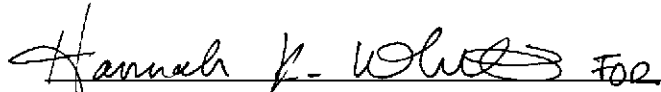
¹ "O.R." refers to the 162-page Original Record filed in this Court on October 5, 2020, and "Tr." refers to the transcript of the September 21, 2020, hearing held in the district court.

As to Indian status, the district court found based on the stipulations that the defendant “is Indian,” as he “has some Indian blood” and “is recognized as an Indian by a tribe or the federal government” (O.R. 156). As to the Indian Country issue, the district court applied *McGirt* and found “Congress did establish a Cherokee Reservation” (O.R. 158). The district court further found that “no evidence was presented . . . to establish Congress explicitly erased or disestablished the boundaries of the Cherokee Nation or that the State of Oklahoma had jurisdiction in this matter. As a result, the Court finds . . . that the crime occurred in Indian Country” (O.R. 159).

Should this Court find the defendant is entitled to relief based on the district court’s findings, the State respectfully requests this Court stay any order reversing the conviction in this case for thirty days so that the appropriate authorities can review his case and determine whether it is appropriate to file charges and take custody of the defendant. *Cf.* 22 O.S.2011, § 846 (providing that “[i]f the offense was committed within the exclusive jurisdiction of another county of this state, the court must direct the defendant to be committed for such time as it deems reasonable to await a warrant from the proper county for his arrest”).

Respectfully submitted,

**MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA**

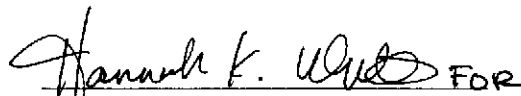

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ATTORNEYS FOR APPELLEE

CERTIFICATE OF MAILING

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