

ORIGINAL



No. F-2018-1140

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DEVIN WARREN SIZEMORE,

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

MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA

JULIE PITTMAN, OBA # 32266
ASSISTANT ATTORNEY GENERAL

313 NE 21st Street
Oklahoma City, Oklahoma 73105
(405) 521-3921
(405) 522-4534 (FAX)

ATTORNEYS FOR APPELLEE

NOVEMBER 23, 2020

TABLE OF AUTHORITIES

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SUPPLEMENTAL BRIEF OF APPELLEE AFTER REMAND

Devin Warren Sizemore, hereinafter the Appellant, was convicted of First Degree Murder (Count 1), and Battery/Assault and Battery on a Police Officer (Count 2), in Pittsburg County District Court Case No. CF-2016-593. In accordance with the jury's recommendations, the Honorable Tim Mills, Associate District Judge, sentenced the Appellant to life imprisonment without the possibility of parole on Count 1 and to five years imprisonment on Count 2. The sentences were ordered to run concurrent. In Proposition I of his brief on appeal, the Appellant claimed the District Court of Pittsburg County did not have jurisdiction to try him, arguing he was a citizen of the Choctaw Nation, his victim was allegedly a member of the Choctaw Nation, and his crimes occurred within the boundaries of the alleged Choctaw Nation Reservation (Appellant's Brief at 5-17).

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 19, 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 4). This Court advised 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 October 14, 2020, counsel for the Appellant and the Appellee appeared before the Honorable Tim Mills, Associate District Judge of Pittsburg County (O.R. 91; Tr. 2).¹ The Choctaw Nation appeared as Amicus through Jacob Keyes (O.R. 91; Tr. 2). At the hearing, the parties presented the court with an Agreed Stipulation (O.R. 82-89; Tr. 6-7). On October 28, 2020, the district court issued its findings of fact and conclusions of law pursuant to this Court's Order (O.R. 91-100).

The parties stipulated that Appellant had "1/128 Choctaw blood and was an enrolled member of the federally recognized Choctaw Nation at the time of the crime" (O.R. 83, 87). The parties further stipulated that the legal description

¹ "O.R." refers to the 100-page Original Record filed in this Court on November 2, 2020, and "Tr." refers to the transcript of the October 14, 2020, hearing held in the district court.


where the crimes occurred “was within the historical geographic area of the Choctaw Nation” as set forth in various historical treaties (O.R. 83, 87).

As to Indian status, the district court found based on the stipulations that the Appellant “has some Indian blood,” and “was recognized as Indian by a tribe or the federal government” (O.R. 93). As to the Indian Country issue, the district court applied *McGirt* and found “a reservation was established for the Choctaw Nation by the treaties described above” (O.R. 96-97). The district court further found that “[n]o evidence was presented to show that Congress erased or disestablished the boundaries of the Choctaw Nation Reservation or that the State of Oklahoma has jurisdiction in this matter.” (O.R. 98). As a result, the district court concluded “the crimes occurred in Indian Country” (O.R. 99).

Should this Court find the Appellant is entitled to relief based on the district court’s findings, the Appellant respectfully requests this Court stay any order reversing the conviction in this case for thirty days to allow the United States Attorney’s Office for the Eastern District of Oklahoma to secure 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

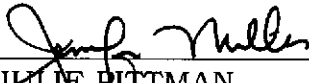

for **JULIE PITTMAN, OBA #32266**
ASSISTANT ATTORNEY GENERAL
313 N.E. 21st Street
Oklahoma City, OK 73105
(405) 521-3921/ (405) 522-4534 - FAX

ATTORNEYS FOR APPELLEE

CERTIFICATE OF MAILING

On this 23rd day of November 2020, a true and correct copy of the foregoing was mailed to:

Katie Bourassa
Capital Post-Conviction Division
Oklahoma Indigent Defense System
P.O. Box 926
Norman, Oklahoma 73070


for **JULIE PITTMAN**