



No. F-2017-1186

ORIGINAL

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

SHANNON JAMES KEPLER,

Appellant,

-vs-

THE STATE OF OKLAHOMA,

Appellee.

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IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

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SUPPLEMENTAL BRIEF OF APPELLEE AFTER REMAND

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DECEMBER 7, 2020

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In October 2017, Shannon James Kepler, hereinafter referred to as the defendant, was convicted by a jury of Manslaughter in the First Degree, in violation of 21 O.S.2011, § 711, in the District Court of Tulsa County, Case No. CF-2014-3952 (O.R. 1679).¹ The defendant was subsequently sentenced to imprisonment for fifteen (15) years and ordered to pay a fine of \$10,000.00 (O.R. 1712-15, 1726-29). In Proposition I of his brief on direct appeal to this Court—wherein he mainly relied on the United States Court of Appeals for the Tenth Circuit’s decision in *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017)—the defendant claimed that the District Court of Tulsa County did not have jurisdiction to try him for the killing involved in this case (Appellant’s Brief at 8-16). The defendant argued that he is a citizen of the Muscogee (Creek) Nation of Oklahoma and that his crime occurred in Tulsa within the boundaries of the Muscogee (Creek) Nation’s Reservation (Appellant’s Brief at 8-16). The defendant first raised this argument to the district court shortly after the Tenth Circuit’s decision in *Murphy v. Royal* (O.R. 1443-67).

¹ Citations to the original record in this case will be referred to as (O.R. ____).

On July 30, 2019, this Court 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 Muscogee (Creek) Nation's Reservation had not been disestablished by Congress. On the same day, and for the reasons stated in *McGirt*, the Supreme Court also affirmed the Tenth Circuit's decision in *Murphy v. Royal. Sharp v. Murphy*, 140 S. Ct. 2412 (2020). Also on July 9, 2020, the State notified this Court of the Supreme Court's decisions in *McGirt* and *Murphy*.

On August 19, 2020, this Court remanded this case to the District Court of Tulsa County for the purpose of an evidentiary hearing ("Order"), and this Court directed the district court to hold a hearing to determine (1) "[the defendant]'s status as an Indian"; and (2) "whether the crime occurred within the boundaries of the [Muscogee] Creek Reservation" (Order at 3). 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 4).

Thus, on September 25, 2020, in lieu of an evidentiary hearing, counsel for the defendant and counsel for the State appeared and filed agreed-upon stipulations to the Honorable Tracy L. Priddy, District Judge of Tulsa County. Subsequently, on November 6, 2020, the district court issued Findings of Fact and Conclusions of Law, and on November 12, 2020, the district court issued

Amended Findings of Fact and Conclusions of Law (“Amended Findings”).²

In the agreed-upon stipulations filed September 25, 2020, the parties stipulated that the defendant “has 1/128 Creek blood,” “was a member of the Muscogee Creek Nation . . . at the time of the crime,” and that the “Muscogee Creek Tribe is an Indian Tribal Entity recognized by the federal government” (Amended Findings, Ex. 1 at 2). The parties further stipulated that the crime occurred at “202 N. Maybelle Ave., Tulsa, OK, 74127,” and that this address is “within the boundaries of the Muscogee Creek Nation—boundaries established through a series of treaties between the Muscogee Creek Nation and the United States Government” (Amended Findings, Ex. 1 at 1). Additionally, the parties stipulated that “[t]hese boundaries have been explicitly recognized as establishing a reservation, as defined by 18 U.S.C. § 1151(a), and reaffirmed by the United States Supreme Court in *McGirt*” (Amended Findings, Ex. 1 at 2).

As to the Indian status issue, the district court, based on the stipulations of the parties, made the factual determination that the defendant has “1/128 Creek blood and was a member of the Muscogee Creek Nation . . . at the time of the crime,” that the defendant has been “enrolled as a citizen of the Muscogee (Creek) Nation since January 1, 1981,” and that “the Muscogee Creek Nation is an Indian Tribal Entity recognized by the federal government” (Amended

² On November 16, 2020, the district court filed Findings of Fact and Conclusions of Law, as well as Amended Findings of Fact and Conclusions of Law, to this Court. For purposes of clarity, the State will refer to the Amended Findings of Fact and Conclusions of Law within this brief. In contrast to the Findings of Fact and Conclusions of Law, the *Amended Findings of Fact and Conclusions of Law* contains this Court’s Order from August 19, 2020, and also redacts the defendant’s private information (on the Muscogee (Creek) Nation Enrollment Verification) that was not previously redacted.

Findings at 2). As to the reservation issue, the district court, based on the stipulations, made the factual determination that the crime occurred at “202 N. Maybelle Ave., Tulsa, OK 74127,” and that this address is “within the boundaries of the Muscogee (Creek) Nation” (Amended Findings at 4).

As to the legal questions stemming from the district court’s factual findings regarding the defendant’s Indian status, the district court concluded that the defendant, pursuant to this Court’s mandate, “has some Indian blood” (Amended Findings at 3 (citing *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012); *United States v. LaBuff*, 658 F.3d 873, 874-75 (9th Cir. 2011); *Goforth v. State*, 1982 OK CR 48, ¶ 6, 644 P.2d 114, 116; *Vialpando v. State*, 640 P.2d 77, 79-80 (Wyo. 1982))). Further, the district court concluded that the defendant, based on his enrollment as a citizen of the Muscogee (Creek) Nation since 1981, is “recognized as an Indian by a tribe or the federal government” (Amended Findings at 3). Thus, the district court concluded, the defendant “i[s] an Indian” (Amended Findings at 3). As to the legal question stemming from the district court’s factual findings regarding the reservation/Indian Country question, the district court concluded that the crime in this case occurred “within the boundaries of the Creek Reservation,” and based “upon the Supreme Court’s ruling in *McGirt*, . . . the crime occurred on the Creek Reservation which is Indian Country” (Amended Findings at 4-5).

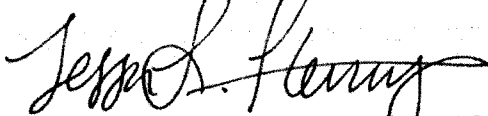
Ultimately, the district court concluded its Amended Findings of Fact and Conclusions of Law by determining that “Shannon James Kepler is an Indian and that the crime for which he was convicted occurred in Indian Country for

purposes of the General Crimes Act, 18 U.S.C. § 1152 and the Major Crimes Act, 18 U.S.C. § 1153" (Amended Findings at 5).

Based on the above, the State respectfully requests that this Court make a final determination as to the merits of the defendant's jurisdictional claim by considering the district court's Amended Findings of Fact and Conclusions of Law and the stipulations of the parties.

Respectfully submitted,

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³ An electronic signature is being used due to the current COVID-19 restrictions. A signed original can be provided to the Court upon request once restrictions are lifted.

CERTIFICATE OF MAILING

On this 7th day of December 2020, a true and correct copy of the foregoing was mailed to:

Katrina Conrad-Legler
Oklahoma Indigent Defense System
P.O. Box 926
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TESSA L. HENRY