



Oklahoma Court of Criminal Appeals Case No. S-2020-858
Ottawa County District Court Case No. CF-2020-189

IN THE COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Appellant,

vs.

JEREMY LAWHORN,

Appellee.

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

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APPELLANT'S BRIEF

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STATE'S
EXHIBIT

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Statement of the Case

August 27, 2020, the State of Oklahoma filed a felony information (O.R. 3-4) against Jeremy Lawhorn alleging one count of Lewd or Indecent Acts to Child Under 16, 21 O.S. § 1123(A)(2). The information alleges that on August 19, 2020, Appellee knowingly and intentionally touched and rubbed the breasts and vagina of a minor under the age of twelve. Appellee filed a Motion to Dismiss for Lack of Jurisdiction on October 14, 2020, alleging that he is a member of the Cherokee Nation and that the crime occurred on Quapaw Nation reservation land. (O.R. 18-22). The State filed a response November 3, 2020 (O.R. 27-40).

November 18, 2020, Special Judge Becky Baird conducted an evidentiary hearing. At the conclusion of the hearing, Judge Baird ruled that Congress had created a reservation for the Quapaw Nation in Oklahoma that has not been disestablished. Judge Baird, applying *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), found the State lacked subject matter jurisdiction to prosecute Appellee, sustained Appellee's motion and dismissed the case. From this decision, the State of Oklahoma initiated this appeal.

Statement of Facts

The Quapaw Nation was first granted a reservation in Oklahoma by the Treaty with the Quapaw, 1833. Act of May 13, 1833, 7 Stat. 424. This reservation was diminished by the Treaty with the Seneca, Mixed Seneca and Shawnee, Quapaw, etc., 1867. Act of February 23, 1867, 15 Stat. 513. Through the Act of February 23, 1867, the Quapaw Nation ceded to the United States twelve sections of land in the State of Kansas. The Quapaw Nation also ceded to the United States the western part of their Oklahoma reservation that was then given to other tribes to settle on. *Id.* at Article 4.

By the 1890's, proposals to convert Indian Territory into a state looked to become a reality through the merger of the Indian Territory and the Oklahoma Territory. To prepare, Congress thought it wise to dissolve the reservations and tribal lands created by treaty. An 1890 census report described how this was done:

Indian reservations existing by virtue of treaty stipulations are usually abolished or reduced in the manner following: an agreement is entered into between the Indians and agents or commissioners appointed by the Secretary of the Interior, with or without authority of Congress, for that purpose; such agreement is submitted to Congress for acceptance and ratification, and provides for the relinquishment, for valuable considerations, of a part or the whole of the lands claimed by the Indians either under treaty stipulations or otherwise. 1890 Census Report at 90.

The vast majority of the land in the Indian Territory was owned in fee simple by the Five Tribes. In 1893, Congress appointed a commission, led by Senator Henry Dawes, to “enter into negotiations with the [Five Tribes] for the purpose of the extinguishment of the national or tribal title to any lands within that Territory now held by any and all of such nations or tribes,” whether by cession, allotment, or some other method, “to enable the ultimate creation of a State or States of the Union which shall embrace the lands within said India[n] Territory.” Act of March 3, 1893, § 16, 27 Stat. 645; *see also*, *Jefferson v. Fink*, 247 U.S. 288, 291 (1918); *Woodward v. de Graffenried*, 238 U.S. 284, 295 (1915); *Stephens v. Cherokee Nation*, 174 U.S. 445, 446 (1899). The Five Tribes were initially resistant to allotment. A series of acts, including the Curtis Act, Act of June 28, 1898, 20 Stat. 495, which abolished all tribal courts in the Indian Territory and provided that “the laws of the various tribes or nations of Indian shall not be enforce at law or in equity by the courts of the United States in the Indian Territory,” pressured the Five Tribes into accepting allotment agreements.

So too was the process of unifying all people regardless of race in the Indian Territory under the same system of laws and privileges. In 1897, Congress vested the United States courts in the Indian Territory with “exclusive jurisdiction” to try “all civil causes in law and equity” and all “criminal causes” for the punishment of offenses by “any person” in the Indian Territory. Act of June 7, 1897 (Indian Department Appropriations Act), 30 Stat. 83. Congress made the laws of the United States and Arkansas controlling in the Indian Territory applicable to “all persons therein, irrespective of race.” *Id.*

Oklahoma’s Enabling Act later extended the laws of the Oklahoma Territory over the Indian Territory, in place of the laws of Arkansas, until the new state legislature provided otherwise. §§ 2, 13, 21, 34 Stat. 268-269, 275, 277-278; *see*, *Jefferson v. Fink*, 247 U.S. 288,

294 (1908). The next year, Congress amended the Enabling Act to ensure that “[a]ll [non-federal] criminal cases pending in the United States courts in the Indian Territory” would be “prosecuted to a final determination in the State courts of Oklahoma.” Act of March 4, 1907 § 3, 34 Stat. 1286. The new state courts of Oklahoma were deemed the “successors” to the federal court in the Oklahoma and Indian Territories. Oklahoma Enabling Act, §§ 16, 17, 20, 34 Stat. 276-277, as amended by Act of March 4, 1907, § 3, 34 Stat. 1286-1288. Local, as opposed to federal, cases that were pending in federal court were transferred to the new state courts of Oklahoma. Until then, cases arising out of the Quapaw Agency, including the Quapaw Nation, were tried in the district court of Kansas. 1890 Census Report at 245. Through the Enabling Act, the laws of the state of Oklahoma were substituted. *See*, SAMUEL THOMAS BLEDSOE, INDIAN LAND LAWS: BEING A TREATISE ON INDIAN LAND TITLES IN OKLAHOMA, 291 (1913) (Indian Land Law) (noting the substitution of Oklahoma state law for that of Kansas regarding the law of descent).

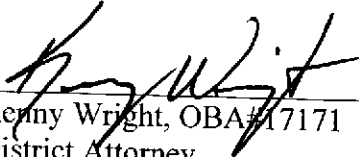
PROPOSITION ONE: THE QUAPAW NATION RESERVATION WAS CREATED BY THE UNITED STATES CONGRESS AND HAS NOT BEEN DISESTABLISHED

The standard of review for a reserved question of law is *de novo*. The Quapaw Nation was first granted a reservation in Oklahoma by the Treaty with the Quapaw, 1833. Act of May 13, 1833, 7 Stat. 424. This reservation was diminished by the Treaty with the Seneca, Mixed Seneca and Shawnee, Quapaw, etc., 1867. Act of February 23, 1867, 15 Stat. 513. Through the Act of February 23, 1867, the Quapaw Nation ceded to the United States twelve sections of land in the State of Kansas. The Quapaw Nation also ceded to the United States the western part of their Oklahoma reservation that was then given to other tribes to settle on. *Id.* at Article 4.

Following extensive research, Appellant finds no evidence that the Quapaw Nation Reservation has been disestablished by the United States Congress.

Conclusion

The State of Oklahoma prays this Court issue an opinion confirming or reversing the Trial Court's ruling that the Quapaw Nation Reservation has not been disestablished.


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CERTIFICATE OF SERVICE

On this 19 day of April, 2021, I do hereby certify that a true and correct copy of the above and foregoing document was delivered via U.S. mail to the following:

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