

ORIGINAL



**IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA**

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

DEC 11 2020

VICTOR MANUEL-CASTRO-HUERTA,)

JOHN D. HADDEN

Appellant,)

CLERK

v.)

Court of Criminal Appeals

Case No. F-2017-1203

THE STATE OF OKLAHOMA,)

District Case No. CF-2015-6478

Appellee.)

**REPLY BRIEF TO STATE'S BRIEF ON CONCURRENT JURISDICTION
QUESTION PRESENTED**

Does the State of Oklahoma have concurrent jurisdiction with the Federal government over crimes committed by a non-Indian against an Indian in Indian Country?

STATEMENT OF THE CASE

Mr. Castro-Huerta was convicted of neglecting his adopted daughter, A.C., who is a member of the Eastern Band of Cherokee Indians. This crime occurred within the Cherokee Nation reservation.

The Oklahoma Court of Criminal Appeals (OCCA) remanded this matter for an evidentiary hearing. The OCCA stated that "[u]pon Defendant's presentation of prima facie evidence as to the victim's legal status as an Indian and as to the location of the crime in Indian Country, the burden shifts to the State to prove it has subject matter jurisdiction." (August Order at p. 2-3)

Although the OCCA did not ask this Court to resolve the issue of concurrent jurisdiction, upon the State's request, this Court has permitted the

parties to brief the question of concurrent jurisdiction for the completeness of the record.

ARGUMENT

The OCCA and the 10th Circuit

“[T]he State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country.” *State v. Klindt*, 1989 OK CR 75, ¶3, 782 P.2d 401, 403.

The State attempts to circumvent this clear statement of the law by calling it dicta. State’s Brief at 3. Dicta is, “statements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case in hand.” *United States v. Barela*, 797 F.3d 1186, 1190 (10th Cir. 2015) Because what is and what is not dicta is case-specific, it is important to analyze what the OCCA was doing in *Klindt*.

Klindt involved a crime that was committed on Indian Country. See *Klindt*, 1989 OK CR 75, ¶1, 782 P.2d at 402. The defendant presented no evidence of his Indian status, which the Court said was necessary to divest the State of jurisdiction. *Klindt*, 1989 OK CR 75, ¶11, 782 P.2d at 404. The Court also made other holdings necessary to resolve the case. One such holding was whether the fact that Oklahoma did not adopt Public Law 280 preempted state jurisdiction in cases “by or against an Indian.” See *Klindt*, 1989 OK CR 75, ¶ 3 782 P.2d 401, 403. Recognition of this as a holding of *Klindt* is important, as this is question that the State is still raising more than 30 years later. See

State's brief at 9. So *Klindt*'s unequivocal answer after discussing the effect of Oklahoma not adopting PL-280 was, "[a]ccordingly, the State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country." *Klindt*, 1989 OK CR 75, ¶ 3, 782 P.2d at 403.

The State attempts to dissect the above sentence and say that half of it is the holding and half is dicta. However, further caselaw from the OCCA does not share in the State's interpretation. In *Cravatt v. State*, 1992 OK CR 6, ¶ 15-16 825 P.2d 277, 279, the OCCA recognized that the holding of *Klindt* was that not adopting Public Law 83-280 meant that the Oklahoma had no jurisdiction over crimes committed by or against an Indian in Indian Country.

In *Klindt*, this Court rejected the State's argument that the land in Eastern Oklahoma, originally allotted to Indians prior to statehood, was exempted from the subsequent Congressional enactments which supplanted state jurisdiction on those properties. We recognized:

Jurisdiction over Indian Country has been given to either the states or the federal government through statutes. The Act of August 15, 1953, Pub.L. No. 88-280, 67 Stat. 588 (1953) provided the states permission to assume criminal and civil jurisdiction over any "Indian Country" within the borders of the state. Under this public law, Oklahoma could have, without the consent of the affected Indians, assumed jurisdiction over any Indian Country in the state by constitutional amendment. Because of Title IV of the Civil Rights Act of 1968, 25 U.S.C. §§ 1321-1326 (1970), however the consent of the affected Indians is now required before a State is permitted to assume criminal and civil jurisdiction over "Indian Country...." The State of Oklahoma has never acted pursuant to Public Law 83-280 or Title IV of the Civil Rights Act to assume jurisdiction over the "Indian Country" within its borders."

Based on the State's failure to act in this regard, we **held** quite simply "the State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country." The

United States proffers no new reason why this result should be changed.

Cravatt v. State, 1992 OK CR 6, 825 P.2d 277, 279–80 (internal quotations and ellipsis in original) (emphasis added)

More recently, the OCCA has stated the holding of *Klindt* simply as, “Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country.” *Murphy v. State*, 2005 OK CR 25, ¶ 8, 124 P.3d 1198, 1200. The 10th Circuit also joined in this interpretation of *Klindt*, quoting *Cravatt* in its handling of *Klindt* as to say “[Q]uite simply the State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country.” *Murphy v. Royal*, 875 F.3d 896, 915 (10th Cir. 2017), *aff’d sub nom. Sharp v. Murphy*, 140 S. Ct. 2412, 207 L. Ed. 2d 1043 (2020). The State is alone in its reading of *Klindt*.

The United States Supreme Court

The United States Supreme Court has stated several times that States do not have concurrent jurisdiction over Indians who commit crimes against non-Indians. In *Solem v. Bartlett*, 465 U.S. 463, 465, 104 S. Ct. 1161, 1163, 79 L. Ed. 2d 443 (1984) The United State Supreme Court has stated,

Within Indian country, State jurisdiction is limited to crimes by non-Indians against non-Indians, see *New York ex rel. Ray v. Martin*, 326 U.S. 496, 66 S.Ct. 307, 90 L.Ed. 261 (1946), and victimless crimes by non-Indians. Tribes exercise concurrent jurisdiction over certain minor crimes by Indians, 18 U.S.C. §§ 1152, 1153, unless a State has assumed jurisdiction under *id.*, § 1162. *Id.*

Id.

And *Solem* is not alone. In dealing with an Arizona case, the Supreme Court stated that the United States and not the State, had jurisdiction over a crime committed by a non-Indian on an Indian. See *Williams v. United States*, 327 U.S. 711, 714, 66 S. Ct. 778, 780, 90 L. Ed. 962 (1946).

The State, disagreeing with the Supreme Court in *Williams*, argues that the *Williams* language is dicta. (The State does not address with *Solem*). However, even if the language is dicta, it should still be afforded its due weight, rather than being ignored.

The 3rd Circuit, in *Coleman v. Green*, dealt with a case-like the one before this Court; where the State asked the court to disregard the language of the Supreme Court on the basis of that language being dicta. The 3rd Circuit ultimately found that the language was not dicta, ruled against the State, and added in a footnote,

Even if the Court's actual innocence requirement were dicta, "we [will] not idly ignore considered statements the Supreme Court makes in dicta." *In re McDonald*, 205 F.3d 606, 612 (3d Cir. 2000). "To ignore what we perceive as persuasive statements by the Supreme Court is to place our rulings, and the analysis that underlays them, in peril." *Galli v. N.J. Meadowlands Comm'n*, 490 F.3d 265, 274 (3d Cir. 2007). So even if we found the Court's analysis of the actual innocence requirement to be dicta, we would reach the same result.

Coleman v. Greene, 845 F.3d 73, 77 (3d Cir. 2017)

State v. Schaeffer

In the entirety of its brief, the State can only point to one court which may possibly be construed to have reached the result that the State wants this Court to reach. *State v. Schaefer*, 239 Mont. 437, 781 P.2d 264 (1989).

Schaeffer was charged with violations of Montana's pawnbroking laws, including two misdemeanor counts of charging excessive interests rates. See *Schaefer*, 239 Mont. 437, 438, 781 P.2d at 264. Schaeffer, a non-Indian, charged the interest to two non-Indians. See *Id.*

Because the transactions happened on Indian Country, the question before the Montana court was whether the state had jurisdiction to prosecute Schaeffer. See *Schaefer*, 239 Mont. 437, 438, 781 P.2d at 265. The court had previously held in *State v. Greenwalt*, 204 Mont. 196, 663 P.2d 1178 (1983) that the state had no jurisdiction over a non-Indian who committed a crime against an Indian in Indian country. *State v. Schaefer*, 239 Mont. 437, 439, 781 P.2d 264, 265 (1989). The court distinguished *Greenwalt*, by pointing to the fact that there was no federal or tribal law which could prosecute Shaeffer, and therefore state jurisdiction was proper. *Schaefer*, 239 Mont. 437, 440, 781 P.2d at 265 ("In the case at bar, unless the State had brought these charges against Schaefer, Bear Child and Wippert, Indian citizens of Montana, would be without the State's protection for offenses committed on an Indian reservation by a non-Indian.")

The court also made references to "certain elements" expressed by decisions involving victimless crimes—such as failing to discharge a reporting duty—while also referencing the "rights of Indian citizens...to be protected by [Montana's] laws." *Schaefer*, 239 Mont. 437, 440, 781 P.2d at 266. The dissent was quick to point out the inconsistencies in those two positions. *Schaefer*, 239 Mont. 437, 443, 781 P.2d at 267 (Weber, J. dissenting. "The opinion states that

the Indian citizens of our State are entitled to the protection of laws regulating pawnbrokers, yet concludes that the crime is victimless. This is inconsistent.”)

The State understandably does not argue that child neglect is a victimless crime, that this case involves a reporting duty, or that there is not a corresponding federal crime of child neglect. *Shaeffer*’s holding does not apply to the facts in this case, and has no bearing on the issue.

Protecting victims

The State then asserts that federal authorities “frequently decline to prosecute crimes on their reservations,” and cites to a *New York Times* opinion article. State’s brief at 10. This issue is jurisdictional, and enforcement of the laws or the lack thereof should not be a consideration for this Court. Regardless of the State’s lack of confidence in federal law enforcement, “[a]venues to extended jurisdiction must come from the legislature, not from the courts and not from the fiat of county governments.” *Ross v. Neff*, 905 F.2d 1349, 1353 (10th Cir. 1990)

It is not the place of the courts to extend jurisdiction due to the perceived laxity of the federal government, nor is it the role of the State to penalize “abusers and murderers of Indians” that they assume may be escaping federal jurisdiction. State’s brief at 10. And as the Supreme Court recently commented, “So while the federal prosecutors might be initially understaffed and Oklahoma prosecutors initially overstaffed, it doesn’t take a lot of imagination to see how things could work out in the end” *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2480, 207 L. Ed. 2d 985 (2020)

Conclusion

It is telling that the State cannot cite any court, state or federal, that has adopted the position that the State presents today. The OCCA, the 10th Circuit, the United States Supreme Court, and various state courts have all spoken on this issue and are uniform in their application that the State has no jurisdiction to prosecute Mr. Castro-Huerta.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on October 8, 2020 a true and correct copy of the foregoing Motion/Application was caused to be mailed via United States Postal Service, postage pre-paid, to the following, via U.S. Postal Service, postage-prepaid:

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Danny Joseph

I, Don Newberry, Court Clerk, for Tulsa County, Oklahoma,
hereby certify that the foregoing is a true, correct and full
copy of the instrument herewith set out as appears on record
in the Court Clerk's Office of Tulsa County, Oklahoma, this

DEC 09 2020
By  Deputy