

IN THE DISTRICT COURT IN AND FOR OKMULGEE COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff,

vs.

MICHAEL JAJUAN HILL,

Defendant.

Case No.: CF-2020-263

FILED
IN DISTRICT COURT
SEP 30 2021
OKMULGEE COUNTY, OKLAHOMA
CHARLY CRINER, Court Clerk
By _____ Deputy

**ORDER DENYING DEFENDANT'S MOTION TO DISMISS
BASED ON LACK OF JURISDICTION**

NOW, on this 15th day of September, 2021, the Defendant's Motion to Dismiss Based on Lack of Subject Matter Jurisdiction comes on for hearing before me, the undersigned Judge. The State is present represented by Carol Iski. The Defendant is present and represented by his attorney, Phillip Peak.

No testimony was presented by either party. The Defendant moved to introduce into evidence a letter from the Cherokee Nation verifying the Defendant's enrollment in that tribe, and marked as Defendant's Exhibit 1. Said Exhibit was admitted without objection from the State. The Defendant then moved to introduce Defendant's Exhibit 2, a copy of the Defendant's enrollment card from the Cherokee Nation. Said Exhibit was admitted without objection from the State. Neither exhibit indicates the existence of a blood quantum. Through counsel, the Defendant advises the Court he has no blood quantum and is enrolled in the Cherokee Nation as a descendant of a Freedman. The Defendant then rests. The parties stipulate that the alleged crimes all occurred within the historical boundaries of the Muscogee Nation and that the Defendant is an enrolled member of a federally recognized Indian tribe. At the conclusion of the Defendant's evidence, the State interposed a demurrer to the evidence arguing that without proof that he possesses some degree of Indian blood, the Defendant has failed to make a *prima facie* case he is an Indian for purposes of Indian Country Jurisdiction.

After the Court has heard the arguments of counsel, reviewed the exhibits, the file and all pleadings, and accepted the stipulations of counsel, the Court makes the following findings:

The defendant has the burden to prove he is an Indian by producing *prima facie* evidence that he has some Indian blood and that he is recognized as an Indian by a tribe or federal government. ***State v. Klindt***, 1989 OK CR 75. This is a two prong evidentiary test and both prongs must be satisfied to be an Indian for purposes of federal law. ***United States v. Diaz***, 679 F.3d 1183 (10th Cir. 2012)


The term "Indian" as defined above, has specific meaning within the federal criminal jurisdiction and the definition under federal law may differ from the definition and requirements for membership of an Indian tribe. This Court is unaware of any case law that holds enrollment alone qualifies a defendant as an Indian for purposes of Indian Country jurisdiction.

The Court finds:

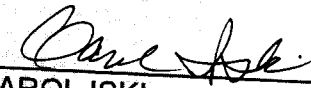
- 1) The defendant was recognized as an Indian by a federally recognized Indian tribe at the time of the offense;
- 2) The defendant has failed to set forth *prima facie* evidence of some degree of Indian blood;
- 3) The defendant has failed to set forth *prima facie* evidence of his legal status as an Indian for purposes of Indian Country jurisdiction.

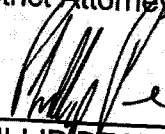
As a result of the above findings, the Court concludes the defendant is not Indian for Indian Country jurisdiction pursuant to **Diaz, Id., Goforth v. State**, 1982 OK CR 48, 644 P.2d 114, and **United States v. Prentiss**, 206 F. 3d 960 (10th Cir. 2000).

The Defendant's Motion to Dismiss Based on Lack of Jurisdiction is hereby DENIED.


DEBORAH REHEARD
JUDGE OF THE DISTRICT COURT

Approved as to Form:


CAROL ISKI
District Attorney


PHILLIP PEAK
Attorney for Defendant