

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUL 21 2023

THE STATE OF OKLAHOMA,

Appellant,

v.

STEVEN LEON FULLER,

Appellee.

)	APPEAL CASE NO.	JOHN D. HADDEN
)		CLERK
)	S-2023-409	
)	DISTRICT COURT CASE NO.	
)	CF-2022-215	
)	TYPE OF APPEAL	
)	<input type="checkbox"/> Direct Felony Appeal	
)	<input type="checkbox"/> Direct Misdemeanor Appeal	
)	<input type="checkbox"/> Certiorari	
)	<input type="checkbox"/> Revocation/Acceleration	
)	<input type="checkbox"/> Termination From Drug Court	
)	<input checked="" type="checkbox"/> State Appeal - 1089.1 – 1089.7	
)	<input type="checkbox"/> State Appeal - 1053/1053.1	
)	<input type="checkbox"/> Juvenile - Adjudication	
)	<input type="checkbox"/> Juvenile - (Certification)	
)	<input type="checkbox"/> Juvenile - (Reverse Certification)	
)	<input type="checkbox"/> Youthful Offender - (Sentencing as Adult)	
)	<input type="checkbox"/> Youthful Offender - Bridge to DOC	
)	<input type="checkbox"/> Other (specify)	
<hr/>		
)	<input type="checkbox"/> CAPITAL	
)	<input checked="" type="checkbox"/> NON-CAPITAL	

PETITION IN ERROR

Appellee by and through Gentner F. Drummond, Attorney General of the State of Oklahoma, and pursuant to Rules 1.4, 3.1, and 6.1(D), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2023), submits this Petition in Error as follows:

1. This appeal is lodged from the District Court of Ottawa County, Oklahoma, case number CF-2022-215.

2. Appellee is charged with the following offenses: one count of Driving a Motor Vehicle under the Influence of Alcohol, Second and Subsequent after Former Conviction of a Felony, in violation of 47 O.S.2021, § 902(A)(1); one count of Driving with License Canceled/Suspended/Revoked, in violation of 47 O.S.Supp.2022, § 6-303(B); one count of Failure to Wear a Seatbelt, in violation of 47 O.S.Supp.2022, § 12-417; and one count of Transporting Open Container of Alcoholic Beverage, in violation of 37A O.S.2021, § 6-101(A)(7).

3. Appellee has not been convicted or sentenced in relation to the previously referenced crimes.

4. On March 31, 2023, the magistrate judge granted Appellee's motion to dismiss the criminal case against him based on *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), holding that the Wyandotte Nation reservation was never disestablished and is "Indian country" for purposes of federal law. A copy of this order is attached as Exhibit A. The State timely filed an Application to Appeal from an Adverse Ruling of a Magistrate Judge. On April 24, 2023, the reviewing judge, the Honorable Rebecca Gore, Associate District Judge, held a hearing on the State's Application but reserved ruling at that time. On April 26, 2023, Judge Gore entered an order affirming the ruling of the magistrate judge. A copy of this order is attached as Exhibit B. The State timely filed Notice of Intent to Appeal and Designation of Record, pursuant to Rules 1.2(A)(3)(a), 2.1(D), and 2.5, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2023).

5. Appellee is out of custody on a personal recognizance bond.

6. The statutory authority under which the State is appealing the District Court's ruling is 22 O.S.2021, § 1089.7, as an appeal from an order by a reviewing judge affirming the order of a magistrate judge adverse to the State.

7. The nature of relief sought by Appellant is a determination by this Court of an application of *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), and *State v. Brester*, 2023 OK CR 10, 531 P.3d 125, to the Wyandotte Nation boundaries. Such a determination is necessary so that State, federal, and tribal authorities have certainty regarding who has criminal jurisdiction within these boundaries over Indian defendants.

WHEREFORE, Appellant, State of Oklahoma, moves this Honorable Court to decide this appeal based on an application of *McGirt* and *Brester* to the Wyandotte Nation boundaries.

Respectfully submitted,

GENTNER F. DRUMMOND
ATTORNEY GENERAL OF OKLAHOMA



CAROLINE E.J. HUNT, OBA #32635
ASSISTANT ATTORNEY GENERAL

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Oklahoma City, OK 73105
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(405) 522-4534 (FAX)

CERTIFICATE OF MAILING

On this 21st day of July, 2023, a true and correct copy of the foregoing was mailed to:

Doug Pewitt
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Ottawa County District Attorney's Office
102 E. Central, Suite 201
Miami, OK 74354

Chad Johnson
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Oklahoma Indigent Defense System
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Norman, OK 73070

The Honorable Rebecca J. Gore
Mayes County Courthouse
One Court Place, Suite 210
Pryor, OK 74361

The Honorable Becky Baird
Ottawa County Courthouse
102 E. Central
Miami, OK 74354

Court Clerk Cassie Key
Ottawa County Courthouse
102 E. Central Ave., Suite 203
Miami, OK 74354



Caroline E.J. Hunt

tribe at the time the alleged offense occurred. The testimony further establishes that the alleged crime took place within the historical boundaries of the Wyandotte reservation.

The State requests the Court take judicial notice of the relevant treaties, as well as the "termination act" and "reinstatement act" and the Defendant does not object.

The State argues that the "termination act" was the congressional action which disestablished the Wyandotte reservation, and that even if re-established thereafter, the Allotment Act enacted at statehood gave concurrent jurisdiction over criminal matters to the State of Oklahoma. The State announces that they have no other evidence of the Wyandotte reservation being disestablished by any Act of Congress.

The Court finds, based on the arguments of counsel and the evidence and testimony introduced, that the above named defendant is an Indian, that there is insufficient evidence presented to demonstrate that the Wyandotte reservation has been disestablished, and the alleged crime was committed on Indian land. Thus, the State lacks jurisdiction to proceed with its prosecution for the same reasons as set out in *McGirt v. Oklahoma*, 591 U.S. ____ (2020). The Court would further note that the arguments put forth by the State are identical to those argued, unsuccessfully, before the United States Supreme Court and are thus not persuasive.

Therefore, the Court sustains Defendant's Motion to Dismiss, and hereby quashes and dismisses the information for the reasons set forth above.

The Court orders the Defendant be released, subject to any holds or detainers, and bond, if any, is exonerated and the Bondsman released from further liability.

The State of Oklahoma announces its intent to appeal the ruling of the Court. Pursuant to State v. Durham, 1976 OK CR 20, 545 P.2d 805, and the request of the State, the Defendant executes an Own Recognizance Bond and is returnable on the 15th day of December, 2023, at 9:30 a.m. for tracking on appeal status.

Becky R. Baird

Special District Judge

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

FILED
DISTRICT COURT
OTTAWA CO. OKLA.

APR 26 2023

STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
 v.)
)
 STEVEN LEON FULLER,)
)
 Defendant.)
 _____)

CASSIE KEY COURT CLERK
BY tk

Case No. CF-22-215

**ORDER DENYING STATE’S APPLICATION TO APPEAL FROM ADVERSE RULING
OF MAGISTRATE AND AFFIRMING MAGISTRATE’S DECISION**

Now on this 21st day of April, 2023 the above styled matter and cause comes on for hearing, before the undersigned Judge, upon the State of Oklahoma’s *Application to Appeal from Adverse Ruling of the Magistrate*, filed the 4th day of April, 2023. The State of Oklahoma is present by Caroline Hunt, Assistant Attorney General. The Defendant is present by his attorney, Terry Allen. The Court, upon reviewing Defendant’s *Motion to Dismiss for Lack of Subject Matter Jurisdiction*, filed herein the 28th day of November, 2022; the transcript of the hearing on Defendant’s motion, conducted March 30, 2023; the magistrate’s order with findings of facts and conclusions of law, filed March 31, 2023; the State of Oklahoma’s *Brief in Support of its Appeal from an Adverse Ruling of the Magistrate Judge*, and hearing the arguments of counsel in the above-entitled cause, Finds and Orders as follows:

1. The Court finds that Defendant, having some quantum of Indian blood, is a member of the federally recognized tribe of the Cherokee Nation, and was a tribal member of the Cherokee Nation at the time of the alleged offense. The State does not dispute this finding.



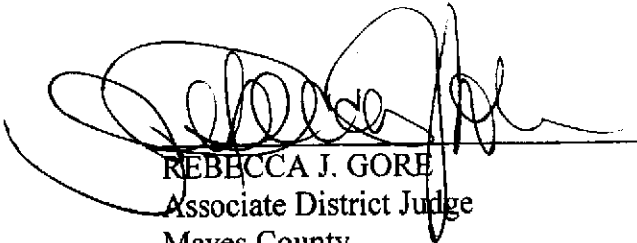
2. The Court finds that the alleged incident occurred within the historical boundaries of the Wyandotte Reservation, located in Indian Territory (Oklahoma) and established by Articles 13 through 15 of the Treaty of February 23, 1867, between the United States and the Seneca, Mixed Seneca and Shawnee, Quapaw, and other tribes. The State does not dispute this finding.
3. As such, the Court finds that the burden shifts to the State to demonstrate that the Wyandotte Reservation has been disestablished. *Hogner v. State*, 2021 OK CR 4 ¶ 4.
4. The Court finds that the Wyandotte Reservation was subject to the General Allotment Act of 1887, 24 Stat. 388, as was the Quapaw Reservation (which has not been disestablished per *State v. Lawhorn*, 2021 OK CR 37), whereby individual trust allotments were issued to tribal members. The State argues that all Wyandotte Reservation property was allotted by 1917.
5. Subsequently, in the 1930s Congress passed the Oklahoma Welfare Indian Act, 25 U.S.C. § § 5201-5210, allowing Oklahoma tribes to organize and to incorporate their own governments. The Oklahoma Wyandotte Tribe did so in 1937.
6. The Court finds that the federal government intended to terminate its supervision of the Wyandotte Tribe under the Act of August 1, 1956 (Termination Act) (70 Stat. 893; 25 U.S.C. § § 791-807) in which the United States vowed to terminate its supervision over tribal lands, discontinue services to individual Indians because of their status, and make state law applicable to all tribal members, once certain conditions were met.
7. The Court finds that one condition, that being the sale of the Huron Cemetery, never took place.

8. The Court finds that the Wyandotte Tribe was again recognized by virtue of the Act of May 15, 1978 (Restoration Act) (92 Stat. 246; 25 U.S.C. § § 861-861c), reinstating federal supervision and recognition to the Tribe.
9. The Court further finds that said Restoration Act specifically repealed the Termination Act and reinstated all rights and privileges of the Wyandotte Tribe and its members under federal treaty, statute, or otherwise, which may have been diminished or lost by the now repealed Termination Act. 25 U.S.C. § 861 (May 15, 1978).
10. The Court finds that if the Wyandotte Tribe was disestablished by Congress through the Termination Act, Congress, thereafter, explicitly reinstated all rights and privileges to the Tribe and its members by virtue of the Restoration Act, and fully placed the Tribe in the same position as if it had never lost federal supervision.
11. As such, the Court finds that the Wyandotte Tribe continues to have a reservation that has not been disestablished.
12. The State argues that even if the Wyandotte Reservation has not been disestablished, the State still possesses at least concurrent jurisdiction on fee land within the reservation. According to the State, this is because the General Allotment Act subjects every member of the tribe receiving an allotment to both criminal and civil law of the State and Territory in which he or she may reside.
13. Even if this is true, state jurisdiction may be preempted by either (i) federal law under ordinary principles of federal preemption, or (ii) when the exercise of state jurisdiction would unlawfully infringe on tribal self-government. *Oklahoma v. Castro-Huerta*, 597 U.S._____, 142 S. Ct. 2486, 2494 (2022).

14. In this case, the Court finds that Defendant is charged with Count 1: Driving a Motor Vehicle while Under the Influence of Alcohol, Second and Subsequent, a felony, Count 2: Driving with License Cancelled/Suspended/Revoked, a misdemeanor, Count 3: Failure to Wear Seatbelt, a misdemeanor, and Count 4: Transporting an Open Container of Alcoholic Beverage, a misdemeanor. As none of these are major crimes in which the United States would have exclusive jurisdiction to prosecute per the Major Crimes Act, the Court may proceed to balance tribal, federal, and state interests per the *Bracker* test. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).
15. In this case, having only an Indian defendant and no named victim, the Court finds that the exercise of state jurisdiction would unlawfully infringe upon tribal self-government. See generally *Castro-Huerta*, 142 S. Ct. at 2500-2502. Accordingly, any state jurisdiction is preempted.
16. The Court finds that the Defendant is an Indian as that is defined and that the alleged crime occurred on Indian Country. Additionally, any concurrent jurisdiction of the State of Oklahoma is preempted. Following *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452 (2020), the magistrate's ruling dismissing this case and quashing the Information is affirmed.

IT IS ORDERED, ADJUDGED, AND DECREED by the Court that the State's *Application to Appeal from Adverse Ruling of the Magistrate* is hereby **DENIED** and the magistrate's ruling sustaining Defendant's *Motion to Dismiss for Lack of Subject Matter Jurisdiction* is hereby **AFFIRMED**.

IT IS SO ORDERED.


REBECCA J. GORE
Associate District Judge
Mayes County

CERTIFICATE OF SERVICE

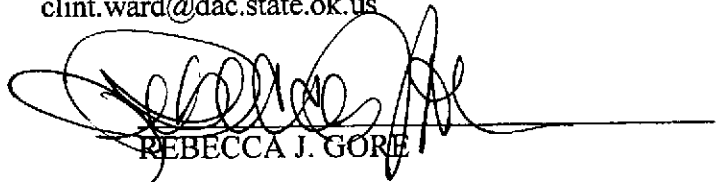
The undersigned hereby certifies that on the 24th day of April, 2023, a true and correct copy of the within and foregoing instrument was mailed by first class mail, postage prepaid, to the following persons:

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