

APPENDIX A

**COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

No. F-2017-1203

VICTOR MANUEL CASTRO-HUERTA,
Appellant

v.

STATE OF OKLAHOMA,
Appellee

Filed: April 29, 2021

OPINION

ROWLAND, Vice Presiding Judge.

Appellant Victor Manuel Castro-Huerta was convicted in Tulsa County District Court, Case No. CF-2015-6478, of Child Neglect, in violation of 21 O.S.Supp.2014, § 843.5(C). The Honorable William D. LaFortune, District Judge, presided over Castro-Huerta's jury trial and sentenced him, in accordance with the jury's verdict, to thirty-five years imprisonment. Castro-Huerta appeals raising the following issues:

- (1) whether improper testimony rendered his trial unfair;

(1a)

- (2) whether cumulative, evidence elicited sympathy from the jurors and deprived him of a fair trial;
- (3) whether inadequate jury instructions prevented a fair trial;
- (4) whether he was denied his constitutional right to a speedy trial;
- (5) whether prosecutorial misconduct prevented a fair trial;
- (6) whether he received the effective assistance of trial counsel;
- (7) whether his sentence is excessive;
- (8) whether the State lacked jurisdiction to prosecute him; and
- (9) whether an accumulation of errors deprived him of a fair trial.

We find relief is required on Castro-Huerta's jurisdictional challenge in Proposition 8, rendering his other claims moot. Castro-Huerta claims the State of Oklahoma did not have jurisdiction to prosecute him. He relies on 18 U.S.C. § 1153 and *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020).

On August 19, 2020, this Court remanded this case to the District Court of Tulsa County for an evidentiary hearing. The District Court was directed to make findings of fact and conclusions of law on two issues: (a) the Indian status of his victim, A.C., and (b) whether the crime occurred within the boundaries of the Muscogee Creek Reservation or the Cherokee Reservation. Our order provided that, if the parties agreed as to what the evidence would show with regard to the questions presented, the

parties could enter into a written stipulation setting forth those facts, and no hearing would be necessary.

On October 8, 2020, the parties filed written stipulations in the District Court. On October 15, 2020, the parties appeared for an evidentiary hearing on the remand order. On December 8, 2020, the District Court filed its Findings of Fact and Conclusions of Law.

The parties agreed by stipulation that: (1) the victim, A.C., had some Indian blood; (2) that A.C. was a registered citizen of the Cherokee Nation on the date of the charged offense; and (3) that the Cherokee Nation is a federally recognized tribe. The District Court accepted this stipulation and reached the same conclusion in its Findings of Fact and Conclusions of Law.

As to the second question on remand, whether the crime was committed in Indian country, the stipulation of the parties was less dispositive. They agreed only that the charged crime occurred within the historical geographic area of the Cherokee Nation as designated by various treaties.

In a thorough and well-reasoned order, the District Court examined the treaties between the Cherokee Nation and the United States of America. The District Court concluded that the treaties established a reservation for the Cherokee Nation and that no evidence was presented showing that Congress had ever erased the boundaries of, or disestablished, the Cherokee Reservation. This Court adopted this same conclusion of law in *Spears v. State*, 2021 OK CR 7, ___ P.3d ___. For purposes of federal criminal law, the land upon which the parties agree Castro-Huerta allegedly committed the crime is within the Cherokee Reservation and is thus Indian country.

The State briefed the issue of concurrent jurisdiction below arguing that Oklahoma and the federal government have concurrent jurisdiction over all crimes committed by non-Indians in Indian country, including Castro-Huerta's case. Castro-Huerta filed a reply brief addressing the issue. The District Court declined to hear arguments of counsel, issue any rulings, or make any findings of fact or conclusions of law on the issue but allowed the parties to preserve the issue for this Court. We rejected the State's argument regarding concurrent jurisdiction in *Bosse v. State*, 2021 OK CR 3, ¶¶ 23-28, ___ P.3d ___. We do so again in the present case.

The ruling in *McGirt* governs this case and requires us to find the District Court of Tulsa County did not have jurisdiction to prosecute Castro-Huerta. Accordingly, we grant relief based upon argument raised in Proposition 8.

DECISION

The Judgment and Sentence of the District Court is **VACATED**. The matter is **REMANDED WITH INSTRUCTIONS TO DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2021), the **MANDATE** is **ORDERED** to issue in twenty (20) days from the delivery and filing of this decision.

LUMPKIN, Judge, concurring in results:

Bound by my oath and the Federal-State relationships dictated by the U.S. Constitution, I must at a minimum concur in the results of this opinion. While our nation's judicial structure requires me to apply the majority opinion in the 5-4 decision of the U.S. Supreme Court in *McGirt v. Oklahoma*, ___ U.S. ___, 140 S. Ct. 2452 (2020), I do so reluctantly. Upon the first reading of the majority opinion

in *McGirt*, I initially formed the belief that it was a result in search of an opinion to support it. Then upon reading the dissents by Chief Justice Roberts and Justice Thomas, I was forced to conclude the Majority had totally failed to follow the Court's own precedents, but had cherry picked statutes and treaties, without giving historical context to them. The Majority then proceeded to do what an average citizen who had been fully informed of the law and facts as set out in the dissents would view as an exercise of raw judicial power to reach a decision which contravened not only the history leading to the disestablishment of the Indian reservations in Oklahoma, but also willfully disregarded and failed to apply the Court's own precedents to the issue at hand.

My quandary is one of ethics and morality. One of the first things I was taught when I began my service in the Marine Corps was that I had a duty to follow lawful orders, and that same duty required me to resist unlawful orders. Chief Justice Roberts's scholarly and judicially penned dissent, actually following the Court's precedents and required analysis, vividly reveals the failure of the majority opinion to follow the rule of law and apply over a century of precedent and history, and to accept the fact that no Indian reservations remain in the State of Oklahoma.¹ The result seems to be some form of "social justice" created out of whole cloth rather than a continuation

¹ Senator Elmer Thomas, D-Oklahoma, was a member of the Senate Committee on Indian Affairs. After hearing the Commissioner's speech regarding the Indian Reorganization Act (IRA) in 1934, Senator Thomas opined as follows:

I can hardly see where it (the IRA) could operate in a State like mine where the Indians are all scattered out among the whites and **they have no reservation**, and they could not get them into a community without you would go and buy land and put them on

of the solid precedents the Court has established over the last 100 years or more.

The question I see presented is should I blindly follow and apply the majority opinion or do I join with Chief Justice Roberts and the dissenters in *McGirt* and recognize “the emperor has no clothes” as to the adherence to following the rule of law in the application of the *McGirt* decision?

My oath and adherence to the Federal-State relationship under the U.S. Constitution mandate that I fulfill my duties and apply the edict of the majority opinion in *McGirt*. However, I am not required to do so blindly and without noting the flaws of the opinion as set out in the dissents. Chief Justice Roberts and Justice Thomas eloquently show the Majority’s mischaracterization of Congress’s actions and history with the Indian reservations.

it. Then they would be surrounded very likely with thickly populated white sections with whom they would trade and associate. I just cannot get through my mind how this bill can possibly be made to operate in a State of thickly-settled population. (emphasis added).

John Collier, Commissioner of Indian Affairs, *Memorandum of Explanation* (regarding S. 2755), p. 145, hearing before the United States Senate Committee on Indian Affairs, February 27, 1934. Senator Morris Sheppard, D-Texas, also on the Senate Committee on Indian Affairs, stated in response to the Commissioner’s speech that in Oklahoma, he did not think “we could look forward to building up huge reservations such as we have granted to the Indians in the past.” *Id.* at 157. In 1940, in the Foreword to Felix S. Cohen, *Handbook of Federal Indian Law* (1942), Secretary of the Interior Harold Ickes wrote in support of the IRA, “[t]he continued application of the allotment laws, **under which Indian wards have lost more than two-thirds of their reservation lands**, while the costs of Federal administration of these lands have steadily mounted, must be terminated.” (emphasis added).

Their dissents further demonstrate that at the time of Oklahoma Statehood in 1907, all parties accepted the fact that Indian reservations in the state had been disestablished and no longer existed. I take this position to adhere to my oath as a judge and lawyer without any disrespect to our Federal-State structure. I simply believe that when reasonable minds differ they must both be reviewing the totality of the law and facts.

HUDSON, Judge, concurring in results:

Today's decision applies *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020) to the facts of this case and dismisses a child neglect conviction from Tulsa County. I concur in the results of the majority's opinion based on the stipulations below concerning the Indian status of the victim and the location of this crime within the historic boundaries of the Cherokee Reservation. Under *McGirt*, the State cannot prosecute Appellant. Thus, as a matter of *stare decisis*, I fully concur in today's decision.

I disagree, however, with the majority's definitive conclusion based on *Spears v. State*, 2021 OK CR 7, ___ P.3d ___, that Congress never disestablished the Cherokee Reservation. We should find instead no abuse of discretion based on the record evidence presented.

Finally, I maintain my previously expressed views on the significance of *McGirt*, its far-reaching impact on the criminal justice system in Oklahoma and the need for a practical solution by Congress. See *Bosse v. State*, 2021 OK CR 3, ___ P.3d ___ (Hudson, J., Concur in Results); *Hogner v. State*, 2021 OK CR 4, ___ P.3d ___ (Hudson, J., Specially Concur); and *Krafft v. State*, No. F-2018-340 (Okl.Cr., Feb. 25, 2021) (Hudson, J., Specially Concur) (unpublished).