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**OPINION OF THE COURT OF CRIMINAL
APPEALS, STATE OF OKLAHOMA,
REMANDING WITH
INSTRUCTIONS TO DISMISS
(JULY 8, 2021)**

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

KEVIN TYLER FOSTER,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. F-2020-149

Before: Dana KUEHN, Presiding Judge.,
Scott ROWLAND, Vice Presiding Judge.,
Gary L. LUMPKIN, Judge., David B. LEWIS, Judge.,
Robert L. HUDSON, Judge.

**OPINION REMANDING
WITH INSTRUCTIONS TO DISMISS**

KUEHN, PRESIDING JUDGE:

Kevin Tyler Foster was tried by jury and convicted of Count 1, Murder in the First Degree; Count 2, Arson in the First Degree; Count 3, Desecration of

a Corpse; Count 4, Possession of a Firearm During the Commission of a Felony; Count 6, Trespassing (Misdemeanor); and Count 7, Injury to a Cemetery/Gravestone/Tomb (Misdemeanor) in the District Court of Rogers County, Case No. CF-2018-784.¹ In accordance with the jury's recommendation the Honorable Sheila Condren sentenced Appellant to life without the possibility of parole (Count 1); thirty-five (35) years imprisonment and a \$25,000.00 fine (Count 2); seven (7) years imprisonment and an \$8,000.00 fine (Count 3); ten (10) years imprisonment and a \$1,000.00 fine (Count 4); six (6) months in county jail (Count 6), and ninety (90) days in county jail with a \$1,000.00 fine (Count 7). All sentences run consecutively. Appellant appeals from these convictions and sentences.

Appellant filed his brief in this Court on September 29, 2020. Contemporaneously, he filed a motion to supplement the record and asked this court to remand the case for an evidentiary hearing, challenging the State's jurisdiction pursuant to the Supreme Court's decision in *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452 (2020). Appellant claims he is a member of the Cherokee Nation and the crime was committed on the Cherokee Reservation. On December 28, 2020, Appellee the State of Oklahoma filed a motion to stay the briefing schedule and also requested an evidentiary hearing. On February 2, 2021, this Court granted Appellant's motion to supplement the record and Appellee's motion to stay the briefing schedule, and remanded the case to the District Court of Rogers County for an evidentiary hearing. This Court has determined that the Cherokee Reservation was not disestablished and

¹ Counts 5 and 8 were dismissed before trial.

is Indian Country. *Spears v. State*, 2021 OK CR 7, ¶¶ 15-16.

We directed the District Court to make findings of fact and conclusions of law on two issues: (a) Appellant's status as an Indian; and (b) whether the crime occurred within the boundaries of the Cherokee Nation. 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 March 25, 2021, the parties filed a written stipulation in the District Court of Rogers County. The parties stipulated that Appellant has some Indian blood and was a recognized member of the Cherokee Nation at the time of the crimes. The parties also stipulated to the location of the crimes, and that the location is within the boundaries of the Cherokee Nation and the Cherokee Reservation; that the Cherokee Reservation has never been disestablished by Congress; and that the crimes occurred in Indian Country. On the same date, the District Court accepted the stipulations and incorporated them into an Order with the same findings. Given the stipulation of the parties, as contemplated by our Order remanding, there was no need for an evidentiary hearing.

The District Court's Order was filed in this Court on March 29, 2021. We adopt the District Court's findings. We conclude that Appellant is a member of the Cherokee Nation, and the crime was committed within the boundaries of the Cherokee Nation Reservation. On April 19, 2021, Appellee filed a Supplemental Brief detailing the exhibits supplementing the appeal record, the stipulations entered into below, and the district

court's findings and Order. While not formally conceding the issue, Appellee recognizes that there is no further justiciable issue in the case. The ruling in *McGirt* applies. The District Court of Rogers County did not have jurisdiction to try Appellant.

Accordingly, Proposition 1 is granted. The remaining propositions are moot.

DECISION

The Judgments and Sentences of the District Court of Rogers County are **VACATED and 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 **STAYED** for twenty (20) days from the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT
OF ROGERS COUNTY THE HONORABLE
SHEILA CONDREN, DISTRICT JUDGE

ATTORNEYS AT TRIAL

Jenny Proehl-Day
P.O. Box 4146
Tulsa, OK 74159
Counsel for Defendant

Matthew Ballard
District Attorney
Isaac Shields
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200 South Lynn Riggs Blvd.
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ATTORNEYS ON APPEAL

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Asst. Attorney General
313 Ne 21st Street
Oklahoma City, OK 73105
Counsel for Appellee

Opinion by: Kuehn, P.J.

Rowland, V.P.J.: Concur

Lumpkin, J.: Concur in Results

Lewis, J.: Concur

Hudson, J.: Specially Concurring

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 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

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 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).

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. 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, J., SPECIALLY CONCURRING

Today's decision applies *McGirt v. Oklahoma*, 140 U.S. 2452 (2020) to the facts of this case and dismisses felony convictions from the District Court of Rogers County for first degree murder, first degree arson, desecration of a corpse; possession of a firearm during commission of a felony and two misdemeanor crimes. I fully concur in 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 has no jurisdiction to prosecute Appellant. Instead, Appellant must be prosecuted in federal court. I therefore as a matter of *stare decisis* fully concur in today's decision.

Further, 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, e.g., Bosse*, 2021 OK CR 3, ___ P.3d ___ (Hudson, J., Concur in Results); *Hogner v. State*, 2021 OK CR 4, ___ P.3d ___ (Hudson, J., Specially Concurs); and *Krafft v. State*, No. F-2018-340 (Okl. Cr., Feb. 25, 2021) (Hudson, J., Specially Concurs) (unpublished).

**ORDER OF THE DISTRICT COURT OF ROGERS
COUNTY, STATE OF OKLAHOMA,
ACCEPTING STIPULATIONS
(MARCH 25, 2021)**

IN THE DISTRICT COURT FOR
ROGERS COUNTY, STATE OF OKLAHOMA

KEVIN TYLER FOSTER,

Defendant/Appellant,

v.

STATE OF OKLAHOMA,

Plaintiff/Appellee.

Rogers County District Court Case No.: CF-2018-784

Court of Criminal Appeals Case No.: F-2020-149

Before: Hon. Sheila CONDREN,
Judge of the District Court.

**ORDER RELATING TO
EVIDENTIARY HEARING**

COMES NOW the Court, upon receipt of the agreed stipulations, and hereby accepts the same which are incorporated and made a part of this Order. The Court directs the Court Clerk to transmit this order along with the agreed stipulation and attachments thereto to the Clerk of the Appellate Courts.

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SO ORDERED,

/s/ Sheila Condren
Judge of the District Court

**AGREED STIPULATION
(MARCH 25, 2021)**

IN THE DISTRICT COURT OF
ROGERS COUNTY, STATE OF OKLAHOMA

KEVIN TYLER FOSTER,

Plaintiff/Appellee,

v.

STATE OF OKLAHOMA,

Defendant/Appellant.

Rogers County District Court Case No.: CF-2018-784
Court of Criminal Appeals Case No.: F-2020-149

**AGREED STIPULATION ON INDIAN COUNTRY
REMAND AND JOINT MOTION TO STRIKE
EVIDENTIARY HEARING**

This case comes before the Court pursuant to an Order of the Oklahoma Court of Criminal Appeals (“OCCA”) dated February 2, 2021, regarding Defendant-Appellant Kevin Tyler Foster’s Indian Country jurisdictional claim. In that Order, the OCCA remanded the matter and directed this Court to make findings of fact on Defendant-Appellant Foster’s status as an Indian—including whether he has some Indian blood and whether a tribe or the federal government recognizes him as an Indian—and whether the crimes in this case

occurred in Indian Country within the boundaries of the Cherokee Nation.

In an effort to conserve judicial resources and streamline the hearing process, the parties wish to see the current matter resolved by stipulation. *See Hogner v. State*, 2021 OK CR 4, ¶¶ 2-3, ___ P.3d ___, ___ (Kuehn, P.J., concurring in result) (commending the parties for reaching factual stipulations ahead of the *McGirt*-based remanded evidentiary hearing, in the interest of “conserving judicial resources and entering into the spirit of our Order”). To that end, the OCCA’s Order remanding this matter explicitly authorizes the parties to stipulate to factual matters on remand: “Provided however, in the event the parties agree as to what the evidence will show with regard to the questions presented, they may enter into a written stipulation setting forth those facts upon which they agree and which answer the questions presented and provide the stipulation to the District Court.” (Order at 5.) Accordingly, and in response to the questions the OCCA directed this Court to answer, the parties stipulate to the following:

1. Defendant-Appellant Kevin Tyler Foster has 1/32 Cherokee blood. *See Ex. 1*. Defendant-Appellant Foster was a recognized member of the Cherokee Nation at the time of the crimes, which occurred on November 15, 2018. *See Exs. 1, 2*. The Cherokee Nation is an Indian Tribal Entity recognized by the federal government.
2. The crimes in this case occurred in Rogers County, Oklahoma, at 15400 East 495 Road, Claremore, OK 74019 and Woodlawn Cemetery in Claremore. These locations fall within

the historical boundaries of the Cherokee Nation—boundaries set forth in the Treaty of New Echota between the Cherokee Nation and the United States on December 29, 1835, 7 Stat. 478, adjusted by the Treaty of 1866 between the Cherokee Nation and the United States on July 19, 1866, 14 Stat. 799, and adjusted by the agreement of December 19, 1891, between the Cherokee Nation and the United States, which was ratified by an Act of Congress on March 3, 1893, 27 Stat. 612. *See* Exs. 3, 4.

3. As recognized by the decision of the Oklahoma Court of Criminal Appeals in *Hogner v. State*, Congress established a Cherokee Reservation within the above-referenced boundaries and never specifically erased those boundaries or disestablished the Cherokee Reservation. *Hogner*, 2021 OK CR 4, ¶ 18, ___ P.3d at ___. Consequently, the crimes in this case occurred within Indian Country.

The parties respectfully request that this Court accept and apply these factual stipulations to the questions set forth by the OCCA on remand and render findings of fact and conclusions of law accordingly. Further, in the interest of judicial economy, the parties request this Court to strike the evidentiary hearing set for March 26, 2021, and issue findings as directed by the OCCA.

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Respectfully submitted this ___ day of March, 2021.

/s/ Alex Richard
Oklahoma Indigent Defense System
Counsel for Defendant/Appellant

/s/ Tessa Henry
Oklahoma Attorney General's Office
Counsel for Plaintiff/Appellee

/s/ Matt Ballard
Rogers County District Attorney



**CHEROKEE NATION
REAL ESTATE SERVICES**

MEMORANDUM

To: Kim Marks, Investigator Homicide Direct Appeals
Division Oklahoma Indigent Defense System

From: Joel Bean, Realty Specialist, Cherokee Nation
Real Estate Services

Thru: Ginger Reeves, Director, Cherokee Nation Real
Estate Services

Subject: Woodlawn Cemetery

Date: 8/27/2020

Legal Description:

Part of the NE 1/4 of Section 16, T21N, R16E —
Rogers County Oklahoma

Finding Directions/Street Address:

Woodlawn Cemetery in the City of Claremore, bordered
by E Mayberry Ave., S Nome Ave & Academy Street.

Type of Property: Fee Property

Location:

Located within the Cherokee Nation Reservation,
boundaries of the Cherokee Nation territory shall be
those described by the patents of 1838 and 1846

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diminished only by the Treaty of July 19, 1866, and the Act of Mar. 3, 1893. 1999 Cherokee Constitution, art. 2

Should you have further questions or if I may be of further assistance, please contact me at (918) 453-5350 or (918) 525-2766 cell.



**CHEROKEE NATION
REAL ESTATE SERVICES**

MEMORANDUM

To: Kim Marks, Investigator Homicide Direct Appeals
Division Oklahoma Indigent Defense System

From: Joel Bean, Realty Specialist, Cherokee Nation
Real Estate Services

Thru: Ginger Reeves, Director, Cherokee Nation Real
Estate Services

Subject: 15400 E 495 Road, Claremore OK 74019

Date: 7/29/2020

Legal Description:

None Given —Part of Section 13, Township 21 North,
Range 16 East, Rogers County Oklahoma

Finding Directions/Street Address:

15400 E 495 Road, Claremore OK 74019

Type of Property: Fee Property

Location:

Located within the Cherokee Nation Reservation, boundaries of the Cherokee Nation territory shall be those described by the patents of 1838 and 1846 diminished only by the Treaty of July 19, 1866, and the Act of Mar. 3, 1893." 1999 Cherokee Constitution, art. 2.

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Should you have further questions or if I may be of further assistance, please contact me at (918) 453-5350 or (918) 525-2766 cell.



**CHEROKEE NATION
OFFICE OF THE ATTORNEY GENERAL**

**Sara Hill
Attorney General**

**P.O. Box 1533
Tahlequah, OK 74465
918-453-5000**

September 10, 2020

To Whom It May Concern:

This letter shall verify that Kevin John Tyler Foster, born January 23, 1986, is a registered citizen of the Cherokee Nation as of June 9, 2004.

He also has some degree of Indian blood according to the Bureau of Indian Affairs. Under Cherokee Nation and federal law and regulation, individual's degree of Indian blood is confidential. If you request confirmation of exact fraction of Indian blood you must provide a signed release by the citizen or their Sponsor per 3 C.N.C.A. § 3(0). The Authorization for Release of Information is available here: <https://www.cherokee.org/media/cwbnishl/authorization-for-release-of-information-form.pdf>

The response in this letter is based on information exactly as provided by the requesting party. Any incorrect or incomplete information may invalidate the

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above determination. Cherokee Nation can only confirm citizenship and blood degree for Cherokees. It is possible for the individual to be a member of another tribe and/or to have some degree of Indian blood from another tribe.

This letter does not reflect a finding of eligibility under the Federal Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.*, (“ICWA”). Per 25 U.S.C. § 1912(a) legal notice regarding an Indian child under ICWA must be sent to Cherokee Nation Indian Child Welfare, PO Box 948, Tahlequah, OK 74465.

If you have questions regarding this determination, please email CNOAG@cherokee.org or call the Cherokee Nation Office of the Attorney General at (918) 453-5262.



**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
EASTERN OKLAHOMA REGION
CERTIFICATE OF DEGREE OF INDIAN BLOOD**

Kevin John Tyler Foster
15144 E 495 RG
Claremore OK, 74019

June 08, 2004

This is to certify that according to the records of this office and pursuant to the provisions of Section 2, Act of August 4, 1947 (61 Stat. 732)

Kevin John Tyler Foster is proven to be 1/32 Degree Cherokee Indian Blood, and whose date of birth is 01/23/1986.

Father Name: David Lynn Foster
Tribe: Cherokee
Number: NE
Degree: 1/16

Paternal Grandfather Name: Ted Foster Jr
Tribe: Cherokee
Number: NE
Degree: 1/8

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Pat. Gr. Grandfather Name: Theadore Foster
Tribe: Cherokee
Number: NE
Degree: 1/4

Pat. Gr. Gr. Grandfather Name: John Foster
Tribe: Cherokee
Number: 11290
Degree: 1/4

Pat. Gr. Gr. Grand Mother Name: Susan Foster
Tribe: Cherokee
Number: 11291
Degree: 1/4

Certified to be a True Copy

/s/ Signature not Legible

Cherokee Nation Tribal Registration

**ORDER OF THE COURT OF CRIMINAL
APPEALS, STATE OF OKLAHOMA
REMANDING MATTER FOR
EVIDENTIARY HEARING
(FEBRUARY 2, 2021)**

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

KEVIN TYLER FOSTER,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

No. F-2020-149

Before: Dana KUEHN, Presiding Judge.,
Scott ROWLAND, Vice Presiding Judge.,
Gary L. LUMPKIN, Judge., David B. LEWIS, Judge.,
Robert L. HUDSON, Judge.

**ORDER GRANTING APPELLANT'S MOTION
FOR SUPPLEMENTATION OF RECORD AND
REQUEST TO REMAND FOR EVIDENTIARY
HEARING; REMANDING MATTER FOR
EVIDENTIARY HEARING; AND GRANTING
STATE'S MOTION TO STAY BRIEFING
SCHEDULE PENDING OUTCOME OF
EVIDENTIARY HEARING**

Appellant Foster filed his brief in chief on September 29, 2020, appealing from his conviction in the District Court of Rogers County, Case No. CF-2018-784. Also on September 29, 2020, Appellant filed a Motion for Supplementation of the Record and Request to Remand for Evidentiary Hearing, challenging the State's jurisdiction pursuant to the Supreme Court's decision in *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452 (2020). Appellant claims that he is an enrolled member of the Cherokee Nation and that the crimes were committed within the boundaries of the Cherokee Nation Reservation. Appellant requests this Court remand the matter for an evidentiary hearing on that claim.

On December 28, 2020, the date on which the State of Oklahoma's brief was due, the State filed a motion to stay briefing schedule. Appellant has moved to supplement the record on appeal with a letter from the Cherokee Nation's Office of the Attorney General stating that Appellant possesses some degree of Indian Blood and has been an enrolled member of the Cherokee Nation since June 9, 2004. Appellant also proffers a letter from the Cherokee Nation's Real Estate Services stating that the scene of the murder and arson is located within the boundaries of the Cherokee Nation Reservation. A third letter, also from the Cherokee Nation's Real Estate Services, states that the cemetery which was the site of the injury to the cemetery/gravestone is within the boundaries of the Cherokee Nation Reservation. In its Motion, the State does not dispute that Appellant is an enrolled member of the Cherokee Nation, with 1/32 of Indian blood, and that the crimes occurred within the boundaries of the Cherokee Nation. The State includes in

its Motion a letter from the Cherokee Nation's Office of the Attorney General stating that Appellant possesses 1/32 Indian blood, as well as a map of the Cherokee Nation Reservation.

Appellant claims that, due to the *McGirt* decision, it must be determined whether he is an Indian who committed a major crime on an Indian reservation. The State requests briefing in this matter be stayed pending this Court's ruling on Appellant's motion to supplement and his request for an evidentiary hearing. Appellant's Motion to Supplement the Record is **GRANTED** for the narrow purpose of considering the necessity for an evidentiary hearing on these claims.

IT IS THEREFORE THE ORDER OF THIS COURT that Appellant's Motion to Supplement the Record and Request to Remand for Evidentiary Hearing is **GRANTED**. The State's motion to stay briefing schedule pending the outcome of the evidentiary hearing is **GRANTED**.

Appellant's claim raises two separate questions: (a) his Indian status and (b) whether the crime occurred in the Cherokee Nation. These issues require fact-finding. We therefore **REMAND** this case to the District Court of Rogers County, for an evidentiary hearing to be held within sixty (60) days from the date of this Order.

Recognizing the historical and specialized nature of this remand for evidentiary hearing, we request the Attorney General and District Attorney work in coordination to effect uniformity and completeness in the hearing process. Upon Appellant's presentation of *prima facie* evidence as to the Appellant'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 jurisdiction.

The hearing shall be transcribed, and the court reporter shall file an original and two (2) certified copies of the transcript within twenty (20) days after the hearing is completed. The District Court shall then make written findings of fact and conclusions of law, to be submitted to this Court within twenty (20) days after the filing of the transcripts in the District Court. The District Court shall address only the following issues.

First, the Appellant's status as an Indian. The District Court must determine whether (1) Appellant has some Indian blood, and (2) is recognized as an Indian by a tribe or the federal government.¹

Second, whether the crime occurred within the boundaries of the Cherokee Nation. In making this determination the District Court should consider any evidence the parties provide, including but not limited to treaties, statutes, maps, and/or testimony.

The District Court Clerk shall transmit the record of the evidentiary hearing, the District Court's findings of fact and conclusions of law, and any other materials made a part of the record, to the Clerk of this Court, and counsel for Appellant, within five (5) days after the District Court has filed its findings of fact and conclusions of law. Upon receipt thereof, the Clerk of this Court shall promptly deliver a copy of that record to the Attorney General. A supplemental brief,

¹ See *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012); *United States v. Prentiss*, 273 F.3d 1277, 1280-81 (10th Cir. 2001).

addressing only those issues pertinent to the evidentiary hearing and limited to twenty (20) pages in length, may be filed by either party within twenty (20) days after the District Court's written findings of fact and conclusions of law are filed in this Court.

Provided however, in the event the parties agree as to what the evidence will show with regard to the questions presented, they may enter into a written stipulation setting forth those facts upon which they agree and which answer the questions presented and provide the stipulation to the District Court. In this event, no hearing on the questions presented is necessary. Transmission of the record regarding the matter, the District Court's findings of fact and conclusions of law and supplemental briefing shall occur as set forth above.

IT IS FURTHER ORDERED that the Clerk of this Court shall transmit copies of the following, with this Order, to the District Court of Rogers County: Appellant's Brief in Chief and his Motion to Supplement the Record, each filed September 29, 2020; and the State's Motion to Stay Briefing Schedule and Response to the Appellant's Motion, filed December 28, 2020.

The Clerk of this Court is **DIRECTED** to transmit a copy of this Order to the Court Clerk of Rogers County; the District Court of Rogers County, the Honorable Sheila Condren, District Judge; Appellant, the State of Oklahoma, and all counsel of record.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 2nd day of February, 2021.

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/s/ Dana Kuehn
Presiding Judge

/s/ Scott Rowland
Vice Presiding Judge

/s/ Gary L. Lumpkin
Judge

/s/ David B. Lewis
Presiding Judge

/s/ Robert L. Hudson
Judge

ATTEST:

/s/ John D. Hadden
Clerk