

FILED IN DISTRICT COURT  
In County, Oklahoma

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

**OCT 13 2020**

**SHAUN MICHAEL BOSSE,** )  
 )  
 **Petitioner,** )  
 )  
 v. )  
 )  
 **THE STATE OF OKLAHOMA,** )  
 )  
 **Respondent.** )

Kristel Gray, Court Clerk  
by \_\_\_\_\_, Deputy

**Case No. CF-2010-213  
PCD-2019-124**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter came on for hearing the 30th day of September, 2020 pursuant to the remand order of the Oklahoma Court of Criminal Appeals issued August 12, 2020. Petitioner appeared by and through Assistant Federal Public Defenders Michael Lieberman and Sarah Jernigan. Petitioner previously filed a written *Waiver of Right to Appear at Evidentiary Hearing* and this Court approved the same. Respondent appeared by and through Assistant Attorneys General Caroline Hunt and Jennifer Crabb, along with District Attorney Greg Mashburn and First Assistant District Attorney Travis White. The Chickasaw Nation of Oklahoma appeared as *Amicus Curiae*, pursuant to the agreement of the parties, by and through counsel Debra Gee and Stephen Greetham. A record was taken by Certified Court Reporter Dawn Flick. The parties announced ready for hearing and Respondent asserted full compliance with Okla. Const. art. 2, § 34.

This matter was remanded to the District Court by the Oklahoma Court of Criminal Appeals to address only: (1) the status as Indians of Petitioner's victims; and (2) whether the crime occurred in Indian Country. This Court will address each of the issues separately.

## I. The Status as Indians of Petitioner's Victims

The Oklahoma Court of Criminal Appeals (hereinafter referred to as "OCCA") remanded the above-entitled matter to this Court to determine, inter alia, the status as Indians of Petitioner's victims.<sup>1</sup> In making the determination, the OCCA further directed this Court to evaluate whether (1) the victims had some Indian blood, and (2) were recognized as an Indian by a tribe or by the federal government.<sup>2</sup> In complying therewith, the Court undertakes the following analysis:

### Findings of Fact

1. Katrina Griffin, Christian Griffin and Chasity Hammer were the named victims in the above-entitled matter.
2. The parties stipulated that Katrina Griffin was an Indian for purposes of the General Crimes Act, 18 U.S.C. 1152.<sup>3</sup>
3. The parties stipulated that Christian Griffin had 23/256ths Indian blood quantum and was recognized as a Chickasaw Nation Citizen.<sup>4</sup>
4. The parties stipulated that Chasity Hammer had 23/256ths Indian blood quantum and was recognized as a Chickasaw Nation Citizen.<sup>5</sup>

### Conclusions of Law

As set forth above, in assessing the status as Indians of Petitioner's victims, the OCCA ordered this Court to determine whether (1) the victims had some Indian blood and (2) were recognized as an Indian by a tribe or by the federal government.<sup>6</sup> With respect to victim Katrina

---

<sup>1</sup> Order Remanding for Evidentiary Hearing filed August 12, 2020, pg. 3.

<sup>2</sup> *Id.*

<sup>3</sup> Pet. Ex. 1, Stipulations (2)(a).

<sup>4</sup> Pet. Ex. 1, Stipulations (2)(b).

<sup>5</sup> Pet. Ex. 1, Stipulations (2)(c).

<sup>6</sup> Order Remanding for Evidentiary Hearing filed August 12, 2020, pg. 3.

Griffin, the parties stipulated that she was an Indian for purposes of the General Crimes Act; this Court adopts the parties stipulations and finds that Katrina Griffin was, in fact, an Indian victim.

With regard to victims Christian Griffin and Chasity Hammer, this Court must first consider whether they each had some Indian blood.<sup>7</sup> Respondent noted in the *State's Supplemental Proposed Findings of Fact and Conclusions of Law* that the term 'Indian' is not statutorily defined, but has been previously defined by different courts to require "a significant percentage of"<sup>8</sup>, "sufficient"<sup>9</sup>, "substantial"<sup>10</sup> or "some"<sup>11</sup> Indian blood. However, the OCCA was clear in its mandate when it ordered this Court to determine "whether the victims had *some* Indian blood."<sup>12</sup> This Court answers this inquiry in the affirmative.

The record before this Court is clear. The parties stipulated that both Christian Griffin and Chasity Hammer had 23/256th Indian blood quantum.<sup>13</sup> This Court adopts the parties' stipulations and, as a result, finds that Christian Griffin and Chasity Hammer both had "some Indian blood."

Likewise, this Court also finds that the second prong of the analysis, recognition as an Indian by a tribe or by the federal government, has been satisfied. Specifically, the parties stipulated that both of these victims were recognized as Chickasaw Nation citizens.<sup>14</sup> This stipulation is further supported by the memoranda of the Chickasaw Nation verifying the tribal enrollment of Christian Griffin and Chasity Hammer.<sup>15</sup> After adopting the stipulations of the

---

<sup>7</sup> *Id.*

<sup>8</sup> *Goforth v. State*, 1982 OK CR 48, ¶ 6, 644 P.2d 114, 116.

<sup>9</sup> *United States v. LaBuff*, 658 F.3d 873, 874-75 (9th Cir. 2011).

<sup>10</sup> *Vialpando v. State*, 640 P.2d 77, 79-80 (Wyo. 1982).

<sup>11</sup> *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012); *United States v. Dodge*, 538 F.2d 770, 786 (8th Cir. 1976).

<sup>12</sup> Order Remanding for Evidentiary Hearing filed August 12, 2020, pg. 3.

<sup>13</sup> Pet. Ex. 1, Stipulations 2(b) and 2(c).

<sup>14</sup> Pet. Ex. 1, Stipulations (2)(c).

<sup>15</sup> Pet. Ex. 1, Stipulations (2)(d).

parties and answering answered both questions in the affirmative, this Court finds that Christian Griffin and Chasity Hammer were, in fact, Indian victims.

WHEREFORE, this Court finds that Katrina Griffin, Christian Griffin and Chasity Hammer were Indian victims.<sup>16</sup>

## **II. Whether the Crime Occurred in Indian Country**

The OCCA further remanded the above-entitled matter for this Court to determine whether the crime occurred in Indian Country.<sup>17</sup> In making the determination, the OCCA directed this Court to ascertain (1) whether Congress established a reservation for the Chickasaw Nation, and (2) if so, whether Congress specifically erased those boundaries and disestablished the reservation.<sup>18</sup> Therefore, the Court undertakes the following analysis:

### Findings of Fact

1. The Indian Removal Act of 1830 authorized the President's representatives to negotiate with Native American tribes for their removal to federal territory west of the Mississippi River in exchange for their ancestral lands.<sup>19</sup>
2. Pursuant to the authority outlined in the Indian Removal Act of 1830, the 1830 Treaty of Dancing Rabbit Creek was entered. Specifically, in the 1830 Treaty of Dancing Rabbit Creek, the United States granted to the Choctaw Nation certain lands "in fee simple to them and their descendants, to insure to them while they shall exist as a nation and live on it" in exchange for the

---

<sup>16</sup> Order Remanding for Evidentiary Hearing filed August 12, 2020, pg. 3; *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012); *Untied States v. Prentiss*, 273 F.3d 1277, 1280-81 (10th Cir. 2001).

<sup>17</sup> Order Remanding for Evidentiary Hearing filed August 12, 2020, pg. 3.

<sup>18</sup> *Id.* at 3-4.

<sup>19</sup> Indian Removal Act of 1830, Pet. Ex 7.

Choctaw Nation ceding their lands east of the Mississippi River.<sup>20</sup> Article 4 granted the Choctaw people “the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation of Red People and their descendants; and that no part of the land granted them shall ever be embraced in any Territory or State.”<sup>21</sup> The land granted to the Choctaw Nation was described as: “beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork; if in the limited of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning.”<sup>22</sup>

3. The 1837 Treaty of Doaksville granted the Chickasaw people a “district within the limits of [the 1830 Treaty of Dancing Rabbit Creek territory] to be held on the same terms that the Choctaws now hold it [...]”<sup>23</sup> The 1837 Treaty entered between the Choctaws and Chickasaws made the provisions of the 1830 Treaty of Dancing Rabbit Creek applicable to the Chickasaw Nation.<sup>24</sup>

4. In 1855, the Treaty of Washington reaffirmed the 1837 Treaty of Doaksville and modified the Western boundary of the Chickasaw territory.<sup>25</sup> Congress explicitly asserted that “pursuant to [the Indian Removal Act], the United States do hereby forever secure and guarantee the lands embraced within the said limits, to the members of the Choctaw and Chickasaw tribes” and

---

<sup>20</sup> 1830 Treaty of Dancing Rabbit Creek, Pet. Ex. 8, art.2.

<sup>21</sup> *Id.* at Pet Ex. 8, art 4.

<sup>22</sup> *Id.*

<sup>23</sup> 1837 Treaty of Doaksville, Pet. Ex. 10, art. 1.

<sup>24</sup> *Id.*

<sup>25</sup> 1855 Treaty of Washington, Pet. Ex. 12 at art. 2.

reserved those lands from sale “without the consent of both tribes.”<sup>26</sup> The 1855 Treaty further reaffirmed the Chickasaw Nation’s right of self-government.<sup>27</sup>

5. Following the Civil War, the Chickasaw and Choctaw Nations entered into the 1866 Treaty, which did not alter the Chickasaw district but reiterated, once again, the Choctaw and Chickasaw Nations’ rights to self-governance and reaffirmed the rights granted under the previous Treaties.<sup>28</sup>

6. The parties stipulated that Petitioner’s crime occurred at 15734 212th St., Purcell, OK., and further stipulated that this “address is within the boundaries set forth in the 1855 and 1866 treaties between the Chickasaw Nation, the Choctaw Nation, and the United States.”<sup>29</sup>

7. The property on which the crime occurred was originally transferred directly from the Choctaw and Chickasaw Nations in a Homestead Patent to George Roberts in 1905.<sup>30</sup> Title to the property can be traced directly to the Reservation granted to the Choctaw and Chickasaw Nations by the United States and subsequently allotted to individuals, and was never owned by the State of Oklahoma.<sup>31</sup>

7. The Chickasaw nation is a federally recognized Indian tribe that exercised sovereign authority under a constitution approved by the Secretary of Interior.<sup>32</sup>

8. There is absolutely no evidence before the Court that these treaties have been formally nullified or modified in any way to reduce or cede the Chickasaw lands to the United States or to any other state or territory.

---

<sup>26</sup> *Id.* at art. 1.

<sup>27</sup> *Id.* at art. 7.

<sup>28</sup> 1866 Treaty of Washington, Pet. Ex. 13. art. 10.

<sup>29</sup> Stipulations (1)(a).

<sup>30</sup> Tr. pg. 11 ln. 21-25.

<sup>31</sup> Pet. Ex. 2; Tr. pg. 13, ln. 10-16, pg. 14, ln. 14-19.

<sup>32</sup> Constitution of the Chickasaw Nation, Pet. Ex. 5.

9. The parties further stipulated that “[i]f the Court determines that those treaties established a reservation, and if the court further concludes that Congress never explicitly erased those boundaries and disestablished that reservation, then the crime occurred within Indian Country as defined by 18 U.S.C. 1151(a).<sup>33</sup>

#### Conclusions of Law

First, the Court finds that a reservation was established for the Chickasaw Nation by the treaties discussed above. Title 18 U.S.C. 1151(a) defines “Indian Country” as “all land within the limits of any Indian reservation under the jurisdiction of the United States Government...” As noted by the United States Supreme Court in *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2461, “early treaties did not refer to the Creek lands as a ‘reservation’—perhaps because that word had not yet acquired such distinctive significance in federal Indian law. But we have found similar language in treaties from the same era sufficient to create a reservation.” The Court in *McGirt* stated that the “most authoritative evidence of [a tribe’s] relationship to the land...lies in the treaties and statutes that promised the land to the Tribe in the first place.”<sup>34</sup> It specifically noted that Creek treaties promised a “permanent home” that would be “forever set apart,” and assured a right to self-government on lands that would lie outside both the legal jurisdiction and geographic boundaries of any state.<sup>35</sup> As such, the Supreme Court found that, “Under any definition, this was a [ ] reservation.”<sup>36</sup> The Chickasaw Nation is subject to the same analysis.

In applying the reasoning the Supreme Court used in *McGirt* to the case at bar, this Court must reach the same conclusion. Specifically, in the 1830 Treaty of Dancing Rabbit Creek, the

---

<sup>33</sup> Pet. Ex. 1, Stipulations (1)(b).

<sup>34</sup> *McGirt*, 140 S.Ct. at 2475-76.

<sup>35</sup> *Id.* at 2461-62.

<sup>36</sup> *Id.* at 2461.

Choctaw Nation was granted the land in question “in fee simple to them and their descendants, to insure to them while they shall exist as a nation.”<sup>37</sup> It secured the rights of self-government and jurisdiction over all persons and property within the Treaty Territory and promised that no state shall interfere with those rights.<sup>38</sup>

These rights applied equally to the Chickasaw Nation under the 1837 Treaty of Doaksville.<sup>39</sup> The Treaty of Doaksville secured to the Chickasaw Nation a “district within the limits of [the Treaty Territory],” and guaranteed them the same privileges, rights of homeland ownership and occupancy that the Choctaw held under the 1830 Treaty.<sup>40</sup>

In the 1855 Treaty of Washington, the Choctaw and Chickasaw governments were made independent of each other. The United States promised that it does “hereby forever secure and guarantee the lands embraced within the said limits, to the members of the Choctaw and Chickasaw tribes,” and explicitly reserved those lands from sale “without the consent of both tribes.”<sup>41</sup> It reaffirmed the tribes’ rights of self-government, stating “the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government, and full jurisdiction, over persons and property, within their respective limits...”<sup>42</sup> The aforementioned treaty rights were once again reaffirmed in the 1866 Treaty of Washington, which was entered when the Chickasaw and Choctaw Nations agreed to cede certain defined lands to the United States for a sum of money.<sup>43</sup> Therefore, like the Creek treaty promises, the United States’ treaty promises to the Chickasaw Nation were not made gratuitously.<sup>44</sup>

---

<sup>37</sup> Pet. Ex. 8, art 2.

<sup>38</sup> *Id.* at art. 4.

<sup>39</sup> Pet. Ex. 10.

<sup>40</sup> *Id.* art. 1.

<sup>41</sup> Pet. Ex. 12, art. 1.

<sup>42</sup> *Id.* art. 7

<sup>43</sup> Pet. Ex. 13, art. 2.

<sup>44</sup> *McGirt*, 140 S. Ct. at 2460.



Applying the reasoning used by the United States Supreme Court in *McGirt*, the plain wording of the treaties demonstrate the Chickasaw lands were set aside for the Chickasaw people and their descendants and assured the right to self-government on lands that would lie outside both the legal jurisdiction and geographic boundaries of any state.<sup>45</sup> It is, therefore, clear that Congress established a reservation for the Chickasaw Nation.

Upon finding that a reservation was established by Congress for the Chickasaw Nation, this Court must next determine whether Congress has erased those boundaries and disestablished the reservation.<sup>46</sup> As the Supreme Court made clear in *McGirt*, “[t]o determine whether a tribe continues to hold a reservation, there is only one place we may look: the Acts of Congress.”<sup>47</sup> The constitutional authority to breach a Treaty “belongs to Congress alone,” and the Court will not lightly infer such a breach “once Congress has established a reservation.”<sup>48</sup> “[O]nce a reservation is established, it retains that status ‘until Congress explicitly indicates otherwise.’”<sup>49</sup> While “[d]isestablishment has never required any particular form of words, it does require that Congress clearly express its intent to do so, [c]ommon[ly with an] [e]xplicit reference to cession or other language evidencing the present and total surrender of all tribal interests.”<sup>50</sup>

The Petitioner and the State disagree where the burden to prove disestablishment should be placed. However, regardless which party bears the burden, no evidence was presented to the Court to establish that Congress explicitly erased or disestablished the boundaries of the Chickasaw nation or that the State of Oklahoma has jurisdiction of this matter. No evidence was

---

<sup>45</sup> *McGirt*, 140 S.Ct. at 2461-62.

<sup>46</sup> Order Remanding for Evidentiary Hearing filed August 12, 2020, pg. 3-4.

<sup>47</sup> *McGirt*, 140 S.Ct. at 2462.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 2469 (quoting *Solem v. Bartlett*, 465 U.S. 463, 470 (1984)).

<sup>50</sup> *McGirt*, 140 S. Ct. at 2463 (quoting *Nebraska v. Parker*, 136 S. Ct. 1072, 1079 (2016)).

presented that the Chickasaw reservation was “restored to public domain,”<sup>51</sup> “discontinued, abolished or vacated.”<sup>52</sup> Without, explicit evidence of a present and total surrender of all tribal interests, the Court cannot find the Chickasaw reservation was disestablished.<sup>53</sup>

This Court finds that Congress established a reservation for the Chickasaw Nation, and Congress never specifically erased those boundaries and disestablished the reservation. Therefore, the crime occurred in Indian Country.

### CONCLUSION

WHEREFORE, this Court finds that Katrina Griffin, Christian Griff and Chasity Hammer were Indians and that the crime for which Petitioner was convicted occurred in Indian Country for purposes of the General Crimes Act, 18 U.S.C. 1152.

**IT IS HEREBY ORDERED!**

  
LEAH EDWARDS,  
District Judge

---

<sup>51</sup> *Id.* at 2462.

<sup>52</sup> *Mattz v. Arnett*, 412 U.S. 481, 504, (1973).

<sup>53</sup> *McGirt*, 140 S.Ct. at 2463.

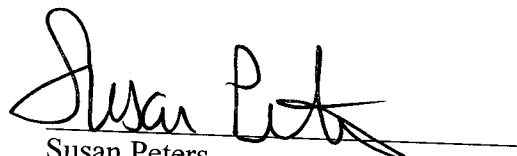
Certificate of Mailing

I, Susan Peters, bailiff for Judge Leah Edwards, do hereby certify that on the 13 day of October, 2020, I emailed or mailed, postage prepaid, a true and correct copy of the foregoing Order to the following:

Michael Lieberman and Sarah Jernigan  
Assistant Federal Public Defenders  
Western District of Oklahoma  
215 Dean A. McGee, Suite 707  
Oklahoma City, OK 73102  
Attorneys for Petitioner

Caroline Hunt and Jennifer Crabb  
Assistant Attorneys General  
Office of the Oklahoma Attorney General  
313 N.E. 21<sup>st</sup> St.  
Oklahoma City, OK 73105  
Attorneys for Respondent

Greg Mashburn and Travis White  
District Attorney and First Assistant District Attorney  
McClain County District Attorney's Office  
121 N. 2<sup>nd</sup> St., Suite 212  
Purcell, OK 73080  
Attorneys for Respondent

  
Susan Peters,  
District Court Bailiff