

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

**FILED**  
IN DISTRICT COURT

SEP 28 2020

OKMULGEE COUNTY, OKLAHOMA  
By CHARLY CRINER, Court Clerk  
Deputy

THE STATE OF OKLAHOMA, )  
)  
Plaintiff, )  
)  
-vs- )  
)  
MICHAEL JAJUAN HILL, )  
)  
Defendant. )

NF  
Case No. ~~CF~~-2020-491

MOTION TO DISMISS BASED ON LACK OF JURISDICTION

COMES NOW Phillip R. Peak on behalf of Defendant, Michael Jajuan Hill, in the above captioned action requesting this court to dismiss for lack of jurisdiction.

Procedural History:

1. On September 26, 2020, Mr. Hill was arrested in Okmulgee County for Assault and Battery on a Police Officer, Domestic Assault and Battery, Resisting Arrest, Obstructing an Officer, and Misuse of 911 call in Okmulgee County within the boundaries of the Creek Nation.
2. Mr. Hill has not been granted a bond as of the filing of this motion.
3. Mr. Hill is a member of the Cherokee Nation. His registry number is 408066.
4. On July 9, 2020, The Supreme Court of the United States through *McGirt v. Oklahoma* No. 18-9526 recognized Indian County for the Creek Nation. The Supreme Court also affirmed *Sharp v. Murphy* No. 17-1107 out of the 10<sup>th</sup> Circuit.

## Argument and Authority

Mr. Hill is a member of the Cherokee Nation. Cherokee Nation is a federally recognized tribe. The alleged offenses occurred in a location that is in Indian Country as defined by 18 U.S.C. § 1151. The jurisdiction for this charge is vested in the Indian Court or Federal Court. In *U.S. v. John*, 587 F. 3d 683 (5 Cir. Miss. 1979), the 5<sup>th</sup> circuit Court of Appeals stated under Federal Law, specifically 18 U.S. C §§ 1152 and 1153 that depending on whether or not the offender or victim are Indian determines the appropriate jurisdiction for pursuing criminal charges. Oklahoma has never taken the necessary steps to obtain state jurisdiction over offenses committed by or against Indians in Indian country as been detailed by 18 U.S. C. 1162. The Creek Nation has not conceded jurisdiction. (*McGirt, State ex Rel. May v. Senaca-Cayuga Tribe of Oklahoma*, 1985 OK 54, 711 P.2d 77. The Court of Criminal Appeals has stated that Oklahoma has no jurisdiction over crimes committed in Indian Country by or against an Indian. *State v. Klindt*, 1989 OK CR 75, 782 P.2d 401. Domestic assault is listed under the Major Crimes Act under 18 U.S.C. § 1153, 18 USC 113, granting exclusive jurisdiction to Federal Court.

As the Court is aware, jurisdictional issues may not be waived and may be raised at any time. *Bowen v. State*, 1972 OK CR 146, 497 P.2d 1094, 1097 The Creek Nation has been declared as Indian Country by the Supreme Court of the United States and since Mr. Nabors is a member of the Choctaw tribe, the State of Oklahoma does not have jurisdiction over Mr. Nabors in this case and therefore should be dismissed at this time.

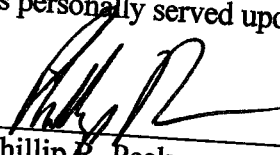
Respectfully submitted,

  
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Attorney for Mr. Hill

CERTIFICATE OF SERVICE

On September 28, 2020 this motion was personally served upon the Tulsa County District Attorney's Office.

  
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Phillip R. Peak