ORIGINAL

No. M-2022-984

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MARVIN KEITH STITT,

Appellant;

v.

THE CITY OF TULSA,

Appellee.

AN APPEAL FROM THE MUNICIPAL CRIMINAL COURT OF THE CITY OF TULSA (TULSA COUNTY) CASE NO. 7569655 – HON. MITCHELL MCCUNE, MUNICIPAL JUDGE

BRIEF OF THE APPELLANT

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1. STATEMENT OF THE CASE

The State of Oklahoma lacks subject matter jurisdiction to commence a criminal prosecution for any offenses defined as a crime by state law allegedly committed by an American Indian while within the jurisdiction of the Muskogee Nation after the Supreme Court of the United States decided McGirt v. Oklahoma, [illegible], 140 S.Ct. 2452, 207 L.Ed. 985, 2020 U.S. LEXIS 3554 (2020), finding that the ratification by the 20th United States Congress of the 1833 U.S.-Muscogee Treaty, art. IV, created a reserve that has remained in continuous existence to date constituting Indian Country as defined by 18 U.S.C. § 1151.

The Appellant is an American Indian person such as that term is defined by U.S. law by virtue of his citizenship in the Cherokee Nation, an Indigenous national government having established formal recognition with the United States of America's national government, in addition to the records of the U.S. national government that certify that the Appellant has had a verified degree of Indigenous descent purely as a biological matter through an antecedent affiliated with the Cherokee. (O.R. 15). The absolute fact that the Appellant has been an American Indian and Cherokee Nation citizen at all times relevant to the issue at hand was established by stipulation. (O.R. 248). The Appellant's grant of citizenship by the Cherokee national government occurred on March 17, 1992, meaning the Appellant had been a Cherokee national citizen for over 28 years prior to McGirt. (O.R. 178).

Notwithstanding the clear fact that an American Indian can never be subjected to the State of Oklahoma's laws and penalties for criminal charges occurring within Indian Country, the underlying case in this matter involves a criminal prosecution commenced in the name and by the authority of the State of Oklahoma by a municipal political subdivision in operation of

one of the Oklahoma Legislature's municipal criminal courts located within Indian Country, charging Appellant with criminal misdemeanors that occurred in Indian Country.

The subject matter of the proceedings involves actions first taken by the Appellee's employees in a prior case called *City of Tulsa v. Samantha Shaffer*, No. 6108204, in the aftermath of McGirt v. Oklahoma, 140 S.Ct. 2452, 207 L.Ed. 985, 2020 U.S. LEXIS 3554 (2020), beginning on October 30, 2020 and concluding on February 2, 2021 – the day before the incident giving rise to the Appellant's state criminal charges. This case involved a motion to dismiss for lack of subject matter jurisdiction under McGirt filed by Shaffer's attorney, Melanie Lander, who is now a special district judge for Rogers County. After the motion was filed, but before the Appellee filed a written response, attorneys representing a number of the State of Oklahoma's political subdivisions in operation of municipal criminal courts were preparing their response and defenses to a civil suit that was commenced in Okmulgee County by an attorney named John Dunn on behalf of his client named Justin Slade Hooper and others seeking compensation for fines paid on pre-McGirt cases for which the State of Oklahoma lacked subject matter jurisdiction. This case ultimately resulted in the decision of Nicholson v. Stitt, 2022 OK 35, 508 P.3d 442.

At the onset of the case underlying Nicholson, a member of the Oklahoma Bar Association employed by the Appellee by the name of Hayes Thomas Martin (OBA No. 32059) began this scheme of manufacturing the false statements of fact and law into reality from the safety of the State of Oklahoma's municipal criminal court exclusively under the Appellee's control where he served the Appellee as a prosecuting officer under Okla. Stat. tit. 11, § 28-109. The jurisdiction of this state tribunal to hear and decide cases is limited by the state constitution to certain criminal prosecutions commenced for unlawful acts prohibited by

local ordinances. The acts prohibited by these ordinances are defined by state law as crimes in the form of misdemeanors. City of Elk City v. Taylor, 2007 OK CR 15, 157 P.3d 1152.

On October 30, 2020, Martin first advanced the position on behalf of the Appellee that constitutes the entire issue herein in a written response to the aforementioned motion to dismiss previously filed in *City of Tulsa v. Shaffer*. Therein, Martin represented as a statement of law that the 55th United States Congress expressly conferred criminal subject matter jurisdiction to the Appellee under the Act of June 28, 1898, § 14, and that this express delegation not only survived the admission of the State of Oklahoma to the federal union on November 16, 1907, but still exists to date such that the Appellee has state criminal subject matter jurisdiction to prosecute crimes in the name and by the authority of the State of Oklahoma. (O.R. 318-327). Specifically, Martin represented to this state tribunal that "[i]n § 14 of the Curtis Act, Congress explicitly granted criminal subject matter jurisdiction to incorporated towns in Indian Territory, which includes Tulsa." (O.R. 322). The only judicial authority Martin cited to support his represented statement of law was an inferior federal court decision in City of Tulsa v. Oklahoma Natural Gas Co., 4 F.2d 399, 400 (E. Dist. Okla. 1925), a decision this Court will find has no relevance to the claim he made. (O.R. 321-322).

From the onset, Martin's representation constituted false statements of fact and law because legal authority in existence for 111 years prior thereto in the controlling jurisdiction of the State of Oklahoma had conclusively established the precedent that Congress expressly granted only civil subject matter jurisdiction to the incorporated towns in Indian Territory to hear and decide ordinance violation proceedings in the mayoral courts established there prior to statehood. In 1909, the Oklahoma Supreme Court held in the case of Everts v. Town of Bixby, 1909 OK 164, ¶ 0, 103 P. 621 (Syllabus by the Court, n. 1) that "[a] prosecution for the

violation of an ordinance of an incorporated town, under the laws in force in the Indian Territory prior to statehood, is a civil, and not a criminal, proceeding." In Everts, the Supreme Court bridged the federal-state divide by upholding as settled law the 1904 and 1905 federal decisions in the case of Fortune, 1904 IT 21, ¶ 0, 82 S.W. 738 (U.S. Ct. App. Indian Terr. 1904), *aff'd* Id. 142 F. 114, 73 C.C.A. 338, 4 L.R.A.N.S. 782 (U.S. Cir. Ct. App. 8th Cir. 1905), by explicitly affirming that Fortune "a controlling case, has expressly decided that a prosecution for the violation of a town ordinance is a civil, and not a criminal, action." (O.R. 349-351).

Fortune arose from a civil proceeding commenced in the mayoral court of the Incorporated Town of Wilburton in the Choctaw Nation to enforce a local ordinance prohibiting public intoxication and disorderly conduct. Following the imposition of monetary penalties, Fortune attempted to appeal to the United States Court in the Indian Territory for the Central District, for a trial de novo. Under the specific laws put into force within the Indian Territory by Congress governing civil appeals of this nature, the jurisdictional act required for review by a higher court mandated that Fortune file an affidavit with the mayoral court. Fortune failed to do this, and the United States Court in the Indian Territory dismissed his appeal. Undeterred, Fortune appealed to the intermediate federal appellate court established by Congress called the United States Court of Appeals for the Indian Territory where he argued that his failure to perform the jurisdictional act was not required because the matter was a criminal prosecution. This incongruous claim was rejected in Fortune, 1904 IT 21, ¶ 0, 82 S.W. 738 (U.S. Ct. App. Indian Terr. 1904). Aggrieved, Fortune perfected a writ of error for review in the United States Circuit Court of Appeals for the Eighth Circuit, a precursor to the Tenth Circuit prior to its 1929 creation. Once again, Fortune's criminal subject matter jurisdiction

claims were rejected in a 1905 opinion affirming the decisions of the two Indian Territory federal courts below. Fortune, 142 F. 114, 73 C.C.A. 338, 4 L.R.A.N.S. 782.

All three of these controlling authorities – Fortune (1904), Fortune (1905), and Everts (1909) – interpreted the congressional laws put into force such as they existed after the Curtis Act of June 28, 1898. Moreover, with special reference to the provision in the Everts syllabus, in this state, the syllabus of the Supreme Court of Oklahoma states the law of Oklahoma. Eckels v. Traverse, 1961 OK 139, ¶ 12, 362 P.2d 683. In each of these cases, the attorney for the municipal corporation opposed the novel criminal subject matter jurisdiction theory put forward by Mr. Fortune and Ms. Everts by accurately taking the position that Congress never granted criminal subject matter jurisdiction to territorial era municipal corporations due to the fact that Congress only expressly granted limited civil jurisdiction over such matters. The reason for this is because prior to the Act of June 28, 1898, Congress expressly precluded the possibility in the Indian Territory under § 32 of the Act of May 2, 1890, 26 Stat. 81, 94, mandating "all prosecutions therein shall run in the name of the 'United States.'"

This controlling authority is directly adverse to the position advanced by Hayes Thomas Martin on behalf of the Appellee. Critically, despite the fact that the 1909 decision in Everts is the conclusion to a progeny of cases that began in 1901 with the case of Luce v. Garrett, 1901 IT 20, ¶ 1, 64 S.W. 613 (U.S. Ct. App. Indian Terr. 1901) applying Capital Traction Co. v. Hof, 174 U.S. 1, 19 S.Ct. 580, 43 L.Ed. 873 (1899) to the Indian Territory, Martin omitted any reference whatsoever to these authorities, which included both Fortune cases. It was as if they did not exist. The omission was intentional as evidenced by Martin's citation of two federal Indian Territory cases from this line immediately preceding the first Fortune decision and one Oklahoma Supreme Court case immediately preceding Everts, which

was the penultimate case in the line. Additionally, the one case cited in support of the claim, the 1925 inferior federal court opinion in City of Tulsa referenced above, actually stands for the rule that those municipalities incorporated prior to statehood under the laws of Congress provided became subservient to the replacement sovereign – the State of Oklahoma.

After Martin's first response, Shaffer's attorney filed a reply attacking the paradoxical appellate route required to provide review of Appellee's claim. At the same time, and prior to Martin's surreply, the Okmulgee County civil suit filed by John Dunn on behalf of his client Justin Slade Hooper was dismissed by the Hon. Pandee Ramirez on the motion of the municipalities, including the Appellee's employed city attorney. Thus, it came to be that on December 3, 2020, Hayes Thomas Martin finished the scheme and developed the false statement of law underlying the Appellee's claim to maturity by making additional false statements of fact and law to a state tribunal in his written surreply filed on that date. Therein, Martin first advanced the Appellee's position with regard to appellate jurisdiction:

> Defendant asks two questions regarding the appellate path of this case, and others like it, which the City is prepared to answer. Defendant asks, 'where would lie the defendant's right to appeal?' The answer is federal district court. In 1903, the Court of Appeals for the Indian Territory stated that an appeal from a Curtis Act municipal court would go to federal district court. Missouri, K. & T. Ry. Co. v. Phelps, 4 Ind. T. 706, 76 S.W. 285, 286 (Indian Terr. 1903). The Supreme Court of Oklahoma agreed in 1908 and stated, 'This had become the settled construction of the statute in the Indian Territory, and no good reason has been called to the attention of this court why the rule announced by the court in those cases should be overruled.' Baker v. Marcum & Toomer, 1908 OK 171, 22 Okla. 21, 97 P. 572, 573. This makes Defendant's second question, 'How could the State of Oklahoma have jurisdiction the issue on appeal?', moot. The appellate path is clear and well-settled.
>
> (O.R. 350)

The two civil cases cited by Martin therein come from the aforementioned Luce progeny, which constituted a line of seven (7) judicial determinations on the inherently civil subject matter jurisdiction conferred upon mayoral courts in all cases that ended with Everts in 1909. Missouri K. & T. Railway Co. v. Phelps, 1903 IT 21, 76 S.W. 285, cited by Martin, was a 1903 decision from the United States Court of Appeals for the Indian Territory immediately preceding the Fortune decision released by that same court the following year in 1904. The Oklahoma Supreme Court decision cited by Martin in Baker v. Marcum & Toomer, 1908 OK 171, 97 P. 572, constituted the next and penultimate case in the Luce progeny, coming immediately after both federal Fortune opinions and immediately preceding the final case in the line of Everts, a case also decided by the Oklahoma Supreme Court the following year.

The inherent fallacy of Martin's false statements of fact and law in this regard is laid bare simply by reading the opinions in Marcum & Toomer and Everts because each case was pending in a mayoral court on civil actions at law commenced prior to the admission of the State of Oklahoma to the federal union on November 16, 1907. By operation of law upon statehood, both cases went to the State of Oklahoma's judiciary – not to Martin's "federal district court" – where both cases worked their way up to the Oklahoma Supreme Court. The fallacy is most striking in Everts considering the Supreme Court decided case after the 1st Oklahoma Legislature created this Honorable Court by legislation in 1908, precisely because the subject matter of ordinance violation proceedings was not criminal. 1908 Okla. Laws 291.

Hayes Thomas Martin made his false statements to a state tribunal presided over by an attorney appointed and compensated by the Appellee's governing body and designated as the presiding judge in conformity with the provisions of Title 11 of the Oklahoma Statutes governing state municipal political subdivisions. Id. § 28-103. Appellee's presiding judge,

Mitchell Marion McCune, presided over every case referenced to herein. His exercise of power has been in the capacity as a public official of the State of Oklahoma. Prior to this, while in private practice, Judge McCune was involved in an unsuccessful jurisdictional attack on this Honorable Court that the Oklahoma Supreme Court rejected in a published opinion with Judge McCune's name on it elucidating to him the still-current binding authority on the constitutional mandate of the Oklahoma Legislature to create, modify and abolish legislative courts and provide for criminal appeals in the case of Jackson v. Freeman, 1995 OK 100, 905 P.2d 217.

On February 2, 2021, Judge McCune legitimized Hayes Thomas Martin's false statements of fact and law with the force of a state municipal court. This he did by subscribing to Martin's written false statements of fact and law and making them into his own in the form of findings in a memorandum opinion and order denying Shaffer's motion to dismiss for lack of subject matter jurisdiction under McGirt. Judge McCune took great care to avoid citing authority controlling in the jurisdiction in decreeing that Ms. Shaffer could not take an appeal to this Honorable Court, but only to an unidentified "U.S. District Court," citing Phelps and Marcum & Toomer as cited by Hayes Thomas Martin. Shaffer did not appeal.

The very next day, on February 3, 2021, the Appellant and one of the Appellee's employees having the power to deprive persons of their liberty met on a Muscogee Nation roadside. The Appellee's employee unilaterally forced state jurisdiction over the person of the Appellant on the side of the road by summoning him to the Appellee's home court to answer for the crime of speeding over the posted limit on March 5, 2021 by means of a promise to appear. (O.R. 1).[1] This was done entirely under laws enacted by the Oklahoma Legislature. The Appellant identified himself to the Appellee's employee as an American Indian.

[1] A more detailed statement of the facts underlying the crime for which Appellant was convicted can be found, supra, at Section 2.

In the subsequent cases of *City of Tulsa v. Justin Slade Hooper*, No. 7470397 on April 5, 2021, followed by *City of Tulsa v. Brent Allen Taylor*, No. 711214 (Dec. 3, 2021), both decided prior to the Appellant's initial challenge to subject matter jurisdiction herein, Judge McCune continued this process of issuing a state municipal court order granting himself unauthorized state criminal jurisdiction over the subject matter of criminal prosecutions of American Indians in Indian Country commenced by the Appellee. (O.R. 76).

The most important of these cases was *City of Tulsa v. Justin Slade Hooper*, No. 7470397, wherein Judge McCune issued a state order finding that Mr. Hooper's only appellate option would be to an inferior federal court, not this Honorable Court. (O.R. 87). Hooper appealed accordingly, and without the aid of the aforementioned Fortune and Everts authorities, the inferior federal court issued a memorandum opinion and order granting the Appellee City of Tulsa's motion to dismiss Justin Slade Hooper's ill-advised federal appeal of Judge McCune's April 5, 2022 memorandum order in *City of Tulsa v. Hooper*. Hooper v. City of Tulsa, 2022 WL 1105674 (N.D. Okla. Apr. 13, 2022).

Days later, Judge McCune issued his April 22, 2022 Memorandum Opinion and Order denying the Appellant's First Motion to Dismiss. (O.R. 248-258). This Order was nearly verbatim to his prior memorandum orders in *City of Tulsa v. Shaffer*, *City of Tulsa v. Hooper*, and *City of Tulsa v. Taylor*:

City of Tulsa v. Hooper (Apr. 5, 2021)	*City of Tulsa v. Stitt* (Apr. 22, 2022)
DEFENDANT HAS AN AVENUE TO APPEAL THIS COURTS JUDGMENT AND SENTENCE.	DEFENDANT HAS AN AVENUE TO APPEAL TO APPEAL
Under McGirt v. Oklahoma, the State of Oklahoma would not have jurisdiction to hear an appeal of a Native American who allegedly committed a municipal offense in Indian Country. However, there is a forum for appealing municipal court judgments and sentences.	
In 1903, in the case of Missouri, K. & T. Ry. Co. v. Phelps, 4 Ind. T. 706, 76 S.W.285, 286 (Indian Terr. 1903), the Court of Appeals for the Indian Territory stated that the appeal from a case rendered under the Curtis Act would be to the U.S. Federal District Court. Subsequent, to the ruling above, the Oklahoma Supreme Court, in 1908, upheld the settled law that an appeal under the Curtis Act would be heard in the United States District Court. Baker v. Marcum & Toomer, 1908 OK 171, 22 Okla. 21, 97 P. 572, 573 (1908).	In 1903, in the case of Missouri, K. & T. Ry. Co. v. Phelps, 4 Ind. T. 706, 76 S.W.285, 286 (Indian Terr. 1903), the Court of Appeals for the Indian Territory stated that the appeal from a case rendered under the Curtis Act would be to the U.S. Federal District Court. Subsequent, to the ruling above, the Oklahoma Supreme Court, in 1908, upheld the settled law that an appeal under the Curtis Act would be heard in the United States District Court. Baker v. Marcum & Toomer, 1908 OK 171, 22 Okla. 21, 97 P. 572, 573 (1908).
This Court finds that an appeal forum for violations of municipal ordinances under the jurisdiction granted by the Curtis Act has been established and is supported by case law. Therefore, this Court finds there would be no violation of the Defendant's appellate rights under the Curtis Act. (O.R. 87)	This Court finds that an appeal forum for violations of municipal ordinances under the jurisdiction granted by the Curtis Act has been established and is supported by case law. Therefore, this Court finds there would be no violation of the Defendant's appellate rights under the Curtis Act. (O.R. 257-258)

Thereafter, Judge McCune denied all the Appellant's challenges to subject matter jurisdiction, largely by citations to Hooper.

2. STATEMENT OF THE FACTS

On February 3, 2021, Tommy Barbee was "employed with the City of Tulsa as a police officer" with Appellee's police department. (O.R. 521; 12:5-8). That morning, Mr. Barbee was on his duty assignment with the traffic unit near 6600 U.S. Highway 75 South. (O.R. 521; 12:14-20). This specific location is within the Muscogee Nation. (O.R. 248). This entire area has continuously been located therein for a period of 188 years since 1834 pursuant to the

holding in McGirt. The location first came to be within the state lines of Oklahoma and the bounds of its political county subdivision Tulsa County on November 16, 1907, and for the last 115 years and 3 months and counting, it has been continuously located within. *Accord* City of Sapulpa v. Oklahoma Natural Gas Co., 1920 OK 139, ¶ 19, 192 P. 224. Following statehood, another 58 years, 4 months, 2 days lapsed before 6600 U.S. Highway 75 South came to be within the so-called municipal boundaries of the State of Oklahoma's municipal political subdivision City of Tulsa via annexation in 1966. (O.R. 236, 585-587).

At 11:13 A.M. on the morning of February 3, 2021, Mr. Barbee observed a "light green Range Rover" at that location. (O.R. 523; 14:11-13). This particular motor vehicle was registered with the Cherokee Nation and displayed a Cherokee-issue license plate numbered C6346. (O.R. 1). The posted speed limit in this area of 6600 U.S. Highway 75 South was fifty (50) miles per hour. (O.R. 523; 14:4-6). At this time and place, Mr. Barbee "made a visual [estimation of its speed] of 80 miles per hour." (O.R. 525; 16:13-15). He then corroborated this estimation by LiDAR, which "confirmed a speed of 78 miles per hour." (O.R. 530; 21:3-8).

Only after this did Mr. Barbee effectuate a traffic stop of the light green Range Rover at bearing the Cherokee Nation plates at 6600 U.S. Highway 75 South in the Muscogee Nation. This is when he came into contact with the driver of the light green Range Rover. Mr. Barbee requested the driver's identification card (O.R. 521; 12:21-24). In response, the driver produced two identification cards to Mr. Barbee: a driver license and a "tribal card." (O.R. 556; 47:21–48:1). Mr. Barbee rejected the driver's proffered "tribal card" on account of it being something that "doesn't have an effect on [him]." (O.R. 558; 48:5-6). Instead, Mr. Barbee reached into the opened passenger side window of the driver's light green Range Rover, holding an electronic device. (O.R. 568). Mr. Barbee asked the driver to display the barcode

on the back of his state-issued driver license toward the electronic device, whereupon a scan was taken, and electronic data transmitted from the driver license to Mr. Barbee's electronic device. Only then did Mr. Barbee positively identify the driver of the light green Range Rover bearing Cherokee plates as the Appellant.

Mr. Barbee then returned to his patrol vehicle behind the Appellant's motor vehicle registered with the Cherokee Nation. (O.R. 521; 12:21-24). At this time, Mr. Barbee knew that he could summon Appellant to various jurisdictions for the criminal offense in his capacity as a police officer. (O.R. 558; 48:10-23). He also knew there was a state law that permitted him to release drivers on their own recognizance. Id.[2] At this time, Mr. Barbee created a citation pre-printed on thermal paper. One of the data points entered by Mr. Barbee at this time included a section indicating that the Appellant's tribe of registration was the Cherokee Nation. (O.R. 1). The "tribal card" that the Appellant produced before Mr. Barbee even knew his name that identified him as a citizen of the Cherokee Nation appears from Mr. Barbee's perspective on the six-minute-long body cam video admitted into evidence in the Appellee's case in chief as Exhibit 1 (O.R. 568). The card produced by the Appellant appears identical to the Cherokee Nation citizenship card appended to the Appellant's First Motion to Dismiss (O.R. 14).

Mr. Barbee was at a location affirmed as Indian Country almost seven months earlier under McGirt and had every indication that the Appellant was an American Indian (Cherokee citizen). Instead of issuing Appellant a citation to the Muscogee Creek District Court for the crime of speeding in excess of the posted limit under Muscogee law, Mr. Barbee unilaterally chose to force state jurisdiction over the Appellant's person by summoning him under the State

[2] This is the State and Municipal Traffic Bail Bond Procedure Act of 1986 now codified as amended under Okla. Stat. tit. 22, §§ 1115–1115.5 and known as the State and Municipal Traffic, Water Safety, and Wildlife Bail Bond Procedure Act.

and Municipal Traffic, Water Safety, and Wildlife Bail Bond Procedure Act to the Oklahoma Legislature's Municipal Criminal Court of Record of the City of Tulsa. Mr. Barbee returned to Appellant's vehicle and informed him that he had cited him for speeding in excess of the posted limit. Mr. Barbee informed the Appellant how to pay his employer, the Appellee, prior to the appearance date Mr. Barbee set of March 5, 2021. (O.R. 568).

Next, in accordance with the State and Municipal Traffic, Water Safety, and Wildlife Bail Bond Procedure Act and § 28-113.1 of the Oklahoma Municipal Code, Barbee presented his complaint to the Appellee's city prosecutor who endorsed the charge of speeding (16-20 MPH) in excess of the posted limit in violation of Title 37, Section 617A of the City of Tulsa's Code of Ordinances. (O.R. 1, 584). In accordance with Okla. Stat. tit. 11, § 28-113, the Appellee's city prosecutor endorsed the citation and the underlying case of *City of Tulsa v. Marvin Keith Stitt*, No. 7569655, was generated and state-derived criminal jurisdiction over the subject matter formally vested in the Oklahoma Legislature's municipal criminal court of record operated by the Appellee, ready for immediate online disposition by payment of $250.00 to the Appellee prior to the March 5, 2021 appearance date.

On June 16, 2022, concomitant with the denial of the Appellant's Second Motion to Dismiss for lack of subject matter jurisdiction under McGirt in which Appellant made it known that he intended to pursue his statutory appellate rights to this Honorable Court in contravention of Judge McCune's April 22, 2022 Order in this case and prior order in *City of Tulsa v. Hooper*, Judge McCune granted the Appellee's Motion to Amend Information to increase the charge from a fine-only violation of Title 37, Section 617A to a jailable offense of aggravated speeding under Title 37, Section 617C. (O.R. 477). This crime is defined in the City of Tulsa Code of Ordinances as follows:

> Aggravated speeding is defined as any speed greater than twenty (20) miles per hour over the speed limit, whether posted or unposted. 'Aggravated speeding' is hereby declared unlawful and any person violating this subsection shall be guilty of an offense and, upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars ($500.00), excluding costs, fees and assessments, and/or by imprisonment in the City jail for a period of not more than ten (10) days.
>
> (O.R. 584)

3. STANDARD OF REVIEW ON APPEAL

The standard of review of a state district court's rulings involving Indian country jurisdiction is as follows:

"We afford a district court's factual findings that are supported by the record great deference and review those findings for an abuse of discretion. We decide the correctness of legal conclusions based on those facts without deference." Wadkins v. State, 2022 OK CR 2, ¶ 6, 504 P.3d 605, 608-609 (internal citations omitted), citing Parker v. State, 2021 OK CR 17, 495 P.3d 653; *see also* Buck v. State, 2023 OK CR 2, ¶ 20.

4. PROPOSITION OF ERROR AND ARGUMENT

Under McGirt, jurisdiction over the subject matter of a criminal prosecution of an American Indian under state law for a misdemeanor crime defined by state law that allegedly occurred in Indian Country can never vest in the State of Oklahoma's criminal courts. "A distinction must be made in the vesting of subject matter jurisdiction upon the trial court, which cannot be waived, and obtaining in personam jurisdiction over a person, which may be waived if no objection is made." Buis v. State, 1990 OK CR 28, ¶ 4, 792 P.2d 427 (analysis of subject matter jurisdiction in a near-identical context at issue herein which involves the earliest possible vestment of jurisdiction over the subject matter to a state court to hear the potential commencement of a state misdemeanor criminal prosecution over traffic crimes).

As such, the Appellant contends that the Appellee misrepresented controlling authority and made false statements of law in securing the municipal court orders underlying Hooper, using the power of the State of Oklahoma to legitimize false statements with the force of a court order. The Appellee then proceeded to weaponize the inferior federal court order in the denial of the Appellant's procedural due process rights.

More specifically, the Appellant contends that the trial court erred on the grounds:

A. The trial court erred in finding the appeal forum from the State of Oklahoma's municipal criminal court of record to be the United States District Court because the City of Tulsa is a political subdivision of the State of Oklahoma with no sovereignty whatsoever and appeals from the municipal criminal court of record can only go to the Oklahoma Court of Criminal Appeals by mandate of the Oklahoma Legislature.

"A municipal corporation possesses no powers except those expressly granted or necessarily implied." Owen v. City of Tulsa, 1910 OK 293, ¶ 6, 111 P. 320, 322. The relationship between the City of Tulsa and the State of Oklahoma has been repeatedly and explicitly determined by the Oklahoma Supreme Court over the decades, such as in Fine Airport Parking v. City of Tulsa, 2003 OK 27, ¶ 18, 71 P.3d 5: "In the relationship between Oklahoma and its municipalities, the State is the sovereign, and the municipality is a political subdivision of the State. The State delegates power to the municipality and the municipality exercises that power subject to the control of the State." *See also* City of Tulsa v. Wheetley, 1940 OK 114, ¶ 9, 101 P.2d 834 ("It is well settled that a municipality is but a subdivision of the State engaged in exercising some of the functions of government in a limited locality"); and 1980 OK AG 44 ¶ 4 (citing City of Tulsa, 1940 OK 114, "[m]unicipal corporations exercise a portion of the State's sovereignty in the administration of government on the local level.").

None of the State of Oklahoma's municipal political subdivisions are sovereign. The subservience of the City of Tulsa to the mandates of its sovereign is extensive and encompasses governmental activities across all its branches. One year after City of Tulsa (2003 OK 27), the Oklahoma Supreme Court decided In re Deannexation of Property v. City of Seminole, 2004 OK 60, ¶ 10, 102 P.3d 120:

> There is only one sovereign power in state government. The exercise of that power in Oklahoma is through the State Legislature. Municipalities are political subdivisions of the State. Their governmental activities – executive, legislative and judicial – must conform to both the mandates of the State's constitution and to the general laws upon matters of statewide interest.

It has long been the law of Oklahoma as decided by the Supreme Court that the State of Oklahoma's municipal political subdivisions exercise what limited power the Oklahoma Legislature grants them in a dual capacity, effectively constituting two classes of powers, one of which is governmental and the other is quasi-private proprietary: "In its governmental capacity, a municipality acts mainly as an arm of the state for the convenient administration of the government in the incorporated territory, for the public good on behalf of the State rather than for itself," whereas "[i]n its proprietary, private, or quasi-private capacity a municipality acts mainly for its own ends, purposes, and benefits, separately from or in addition to the burdens and benefits imposed or conferred upon it by the State." Public Service Co. v. City of Tulsa, 1935 OK 904, ¶ 0, 50 P.2d 166 (Syllabus by the Court); *accord* City of Tulsa, 4 F.2d 399, 401-402 (E. Dist. Okla. 1925) (pre-N.D. Okla. 1925 rejection of a claim by the City of Tulsa that power granted by Congress to the Incorporated Town of Tulsa by virtue of its 1898 incorporation and exercised during the territorial period was continuing and unaffected by statehood in 1907 such as to place City of Tulsa outside the authority of the Oklahoma Legislature).

Consistent with this, Appellee City of Tulsa's municipal criminal court, such as it exists today, operates by the authority of the State of Oklahoma pursuant to a limited grant of state authority by its creator, the Oklahoma Legislature. In City of Tulsa v. King, 1978 OK CR 23, 574 P.2d 1088, this Honorable Court accurately found that the Municipal Criminal Court of Record for the City of Tulsa was created by the state legislature in 1970.

As noted above, the Oklahoma Legislature established appellate rights under § 28-128 of the Oklahoma Municipal Code. The Appellant has a right to appeal solely to the Oklahoma Court of Criminal Appeals. This is because "[t]he prosecution in a municipal court for the violation of a city ordinance is a criminal matter as a finding of guilt carries with it criminal penalties, i.e, incarceration or fines or both." City of Elk City v. Taylor, 2007 OK CR 15, ¶ 9, 157 P.3d 1152 (dismissal of a municipal corporation's appeal transferred from Okla. to Okla. Crim. App.).

These appeal rights are guaranteed to all citizens of the United States, citizens of all nations formally recognized by the United States (such as the French Republic and the Cherokee Nation), citizens of all nations not formally recognized, such as the Donetsk People's Republic, and all stateless persons. American Indians are persons by law and have been since 1879 when the undersigned's ancestor Standing Bear successfully argued the point in U.S. ex rel., Standing Bear v. Crook, 25 F. Cas. 695, 700-701, 5 Dill. 453, 1879 U.S. App. LEXIS 1667 at 27-28 (C.C.D. Neb. 1879).

This is in conformity with the Oklahoma Constitution which provides that "[t]he courts of justice of the state shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice." Okla. Const. art. II, § 6. This

provision constitutes "a mandate to the judiciary and was not intended as a limitation on the legislative branch of government." St. Paul Fire & Marine v. Getty Oil, 1989 OK 139, ¶ 15, 782 P.2d 915, quoting Adams v. Iten Biscuit Co., 1917 OK 47, ¶ 5, 162 P. 938.

Defying this mandate, Judge McCune's orders target a very specific class of persons within the jurisdiction of the State of Oklahoma: citizens of Indigenous nations who dare exercise the Oklahoma Code of Criminal Procedure, challenging subject matter jurisdiction, and citing the authority of a landmark ruling of the Supreme Court. These actions are wholly without authority of law and constitute the exercise of unauthorized jurisdiction. In effect, this constitutes a gross denial of state procedural due process rights under Okla. Const. art. II, § 7 by failing the comply with the procedures under state law as articulated in Hogner v. State, 2021 OK CR 4, ¶ 4, 500 P.3d 629, 631, wherein this Court set forth procedures for evidentiary hearings in McGirt matters. Judge McCune has absolutely no use for "uniformity and completeness in the hearing process." Judge McCune failed to shift the burden to the Appellee to prove it has subject matter jurisdiction. None of these words like "prima facia" and "burdens of proof" matter in the trial court. The transcript indicates Appellant fully complied with establishing his prima facia case in proving the Appellant was enrolled in a federally recognized tribe at the time of the alleged crimes and that the alleged crimes occurred in Indian Country.

B. The State of Oklahoma lacked criminal subject matter jurisdiction over the Appellant pursuant to McGirt v. Oklahoma and the trial court erred in finding that the Act of June 28, 1898, 30 Stat. 499, § 14, expressly conferred criminal subject matter jurisdiction to incorporated towns and cities of the Indian Territory.

The Indian Territory was created by the 51st United States Congress under the Act of May 2, 1890, 26 Stat. 81, §§ 29-44, bearing the long title of An Act to Provide a Temporary Government for the Territory of Oklahoma and Enlarge the Jurisdiction of the United States Court in the Indian Territory. This aforementioned United States Court was created one year

earlier by the 51st Congress under the Act of March 1, 1889, 25 Stat. 783, §§ 1–27, or An Act to Establish a United States Court in the Indian Territory. The sole plenary power exercised by Congress through its legislation of the Act of May 2, 1890 was its absolute, undisputed plenary power under Article IV, Section 3 of the Constitution to make law for the territories and properties of the United States. Ex parte Dickson, 1902 IT 52, ¶ 0, 69 S.W. 943 (U.S. Ct. App. Indian Terr. 1902) ("Under Const. U.S. art. 4, § 3, providing that 'the Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state,' Congress had power to pass Act Cong. May 2, 1890...").

Congress' final incarnation of the Indian Territory existed from May 2, 1890 until November 16, 1907, when it was incorporated into the Oklahoma Territory and that territory admitted to the federal union as the State of Oklahoma. The time between these exact dates is herein referred to varyingly as the territorial period or the territorial era. As is relevant to the issue at hand, Congress passed three relevant federal laws governing the Indian Territory during the territorial period in decreasing importance: the first and most important was the Act of May 2, 1890 (26 Stat. 81), then the Act of March 2, 1895 (28 Stat. 693), followed by the least significant of all – the so-called Curtis Act of June 28, 1898 (30 Stat. 495).

Under the Act of May 2, 1890, 26 Stat. at 93-100, §§ 28-44, Congress extended and applied all the provisions of the Constitution of the United States over the Indian Territory. "The Constitution of the United States and all general laws of the United States which prohibit crimes and misdemeanors in any place within the sole and exclusive jurisdiction of the United States, except in the District of Columbia, and all laws relating to national banking associations

shall have the same force and effect in the Indian Territory as elsewhere in the United States." Act of May 2, 1890, § 31, 26 Stat. at 96; *accord* Luce v. Garrett, 1901 IT 20, ¶ 1, 64 S.W. 613 (U.S. Ct. App. Indian Terr. 1901)("The Constitution of the United States was directly extended over and put in force in this Territory by the 31st Section of the Act of Congress of May 2, 1890"). In so legislating for the Indian Territory, Congress used the statutory law of the State of Arkansas. "Mansfield's Digest is the law of the Indian Territory, just as much as if it had been enacted by Congress in haec verba." Leak Glove Manuf. Co. v. Needles, 69 F. 68, 16 C.C.A. 132 (U.S. Cir. Ct. App. 8th Cir. 1895).

This, of course, was inclusive of the Sixth Amendment governing criminal prosecutions, which Congress complemented by extending and applying all the general federal laws as codified in the Revised Statutes of the United States of 1874 relative to criminal prosecutions. Indeed, during the entirety of the territorial period, the United States of America was vested with exclusive criminal subject matter jurisdiction over criminal prosecutions under § 32 of the Act of May 2, 1890, 26 Stat. at 96, which provided that within the Indian Territory, "[a]ll criminal prosecutions therein shall run in the name of the 'United States.'" A criminal proceeding is prosecuted by the sovereign in its own name, or in the name of its people. (O.R. 3-7). Thereafter, no congressional measure enacted into law during the entire territorial period ever repealed or altered § 32 of the Act of May 2, 1890.

The following year, the 51st United States Congress transformed appellate jurisdiction in the federal judiciary with the enactment of the Act of March 3, 1891, 26 Stat. 826 (codified as 28 U.S.C. § 211), creating the modern federal appellate system. This law, commonly known as the Judiciary Act of 1891, created nine appellate circuits seated at various cities across the United States. Id. 26 Stat. at 826, § 3. Congress also established appellate review from the

United States Court in the Indian Territory to the Circuit Court of Appeals for the Eighth Circuit located in St. Louis in the same manner as those taken from United States district courts. Id. 26 Stat. at 829, § 13. Following the creation of the Tenth Circuit by the 70th United States Congress in 1929 by means of detaching six states – including Oklahoma – from the Eighth Circuit under the Act of February 28, 1929, Pub. L. 70-840, 45 Stat. 1346, § 1 (amending 28 U.S.C. § 211), the decisions rendered from appeals taken from the United States Court in the Indian Territory from 1891 until 1907 and decisions rendered by the federal courts in the State of Oklahoma took on precedential value in the Tenth Circuit rather than the modern Eighth Circuit since they initially arose within a state presently within the Tenth Circuit jurisdiction.

Under the Act of March 1, 1895, 28 Stat. 693, §§ 1–13, the 53rd United States Congress supplemented the Act of May 2, 1890 by extending the jurisdiction of the United States Court in the Indian Territory in the form of creating several more inferior courts known as U.S. Commissioner's Court and providing that no appeal shall be allowed from a U.S. Commissioners' Court in civil cases where the amount of the judgment, exclusive of costs, does not exceed $20.00. Id., 28 Stat. at 696, § 4.

Thereafter, the small groups of U.S. nationals occupying townsites within the Cherokee Nation, the Chickasaw Nation, the Choctaw Nation, the Muscogee Nation, the Seminole Nation, and the various nations of the Quapaw Agency began petitioning the United States Court in the Indian Territory for municipal incorporation under § 31 of the Act of May 2, 1890. The provisions governing the creation and regulation of municipal corporations in the Indian Territory put in force under this same section of the 1890 Act (§ 31) permitted the election of a mayor and aldermen, who could then make local regulations in the form of ordinances. This section of the Act of May 2, 1890 also permitted an inferior tribunal known as a mayor's court

which operated in a very similar manner to the State of Oklahoma's small claims courts today. Beginning with § 31 of the Act of May 2, 1890 and continuing through every single piece of congressional legislation that followed during the territorial period, every proceeding ever had in a mayoral court was civil in nature and was commenced in the name of a real party in interest for the remedy of a private wrong under the various common law forms of action such as debt, contract, trover, assumpsit, and scire facias. *See generally* Luce, 1901 IT 20, 64 S.W. 613 (a civil action commenced in the U.S. Commissioners' Court for the recovery of a debt sounding in contract that is the progenitor of the line of cases that follows because of its holding that § 4 of the Act of March 1, 1895, 28 Stat. at 696, violates the Seventh Amendment), Dennee v. Cromer, 114 F. 623, 52 C.C.A. 403 (a civil action commenced in the Second Class City of Ardmore by a local against resident attorneys over a promissory note); Missouri K. & T. Railway Co. v. Phelps, 1903 IT 21, 76 S.W. 285 (a civil action commenced in the Incorporated Town of Caddo by a local whose cow was hit by a train there), Fortune v. Incorporated Town of Wilburton, 1904 IT 21, ¶ 0, 82 S.W. 738, *aff'd* 142 F. 114, 73 C.C.A. 338 (a territorial era civil action commenced in the Incorporated Town of Wilburton by the incorporation town against a resident Black U.S. Marshal in the nature of debt), Baker v. Marcum & Toomer, 1908 OK 171, 97 P. 572 (a pre-statehood civil action commenced in the Incorporated Town of Muskogee by a local law firm against a resident attorney sounding in contract), Everts v. Town of Bixby, 1909 OK 164, ¶ 0, 103 P. 621 (a pre-statehood civil action commenced in the Incorporated Town of Bixby by the incorporated town against a resident in the nature of debt).

Territorial era actions commenced in Indian Territory mayoral courts by incorporated towns or second-class cities with respect to whatever local ordinances they passed were no different. Such cases were just another civil action commenced by just another private real

party in interest seeking a private remedy for a private wrong in the nature of debt. These actions were commenced – not by a sovereign in its own name – but by just another private real party in interest, either the incorporated town or second-class city as a corporate entity, seeking a money judgment for a private wrong. Unlike criminal prosecutions, which are governed by the Sixth Amendment from commencement through jury trial, every single action ever commenced in a mayoral court in the Indian Territory during the territorial period was governed by the Seventh Amendment regulating civil actions at common law:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.
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> U.S. Const. amend. VII (effective Dec. 15, 1791).

This is because at common law, local ordinance violations were always civil actions, and it did not matter that the judgment debtor could be jailed by the incorporated town or second-class city because imprisonment was not viewed as punishment, but as means to force payment of the money debt solely in the event the debtor defaults on immediate payment. Proof that Congress intended for this can be found in § 31 of the Act of May 2, 1890 where they put into force the common and statute law of England over the Indian Territory. Nor did § 14 of the so-called Curtis Act of June 28, 1898 do anything whatsoever to change the then-existing status quo with regard to the jurisdiction of mayoral courts. In § 14, Congress merely summarized the laws already put in force over the Indian Territory with regard to municipal corporations under the Act of May 2, 1890 and the Act of March 1, 1895. Like its forebear the Act of May 2, 1890, the sole plenary power exercised in enacting the so-called Curtis Act was that of Territorial and Property Clause. *Accord* Ex parte Dickson, 1902 IT 52, ¶ 0, 69 S.W. 943 (U.S. Ct. App. Indian Terr. 1902).

Thus, under the Act of May 2, 1890, the Appellant contends that Congress mandated that all actions commenced in mayoral courts of an incorporated town or second-class city created thereafter be civil in nature by restricting criminal subject matter jurisdiction to the United States under § 32. This evinces unassailable legislative intent that Congress never permitted proceedings for the violation of a municipal ordinance during the territorial era to be anything more than common law civil actions between two private parties for debt collection, not a criminal prosecution for a public offense by a sovereign.

Indeed, all of this with respect to civil ordinance violation proceedings was so held by the United States Court of Appeals for the Indian Territory in Fortune v. Incorporated Town of Wilburton, 1904 IT 21, ¶ 0, 82 S.W. 738, a decision affirmed by the United States Circuit Court of Appeals for the Eighth Circuit, Id., 142 F. 114, 73 C.C.A. 338 (1905), both of which were affirmed and Fortune declared as a "controlling case" by the Oklahoma Supreme Court in Everts v. Town of Bixby, 1909 OK 164, ¶ 0, 103 P. 621, 622 (Syllabus by the Court, n. 1). Each of these decisions involved municipal corporations that were incorporated after the so-called Curtis Act of June 28, 1898 and in each the attorneys for the municipal corporations argued that ordinance violation proceedings were not criminal prosecutions at all, but civil actions. Most important still, Fortune and Everts remain controlling authority to this day.

The matter underlying Fortune arose from the 1904 commencement of an ordinance violation proceeding in the mayoral court of the Incorporated Town of Wilburton against a Black man named Robert Fortune for the alleged violation of a local ordinance prohibiting public intoxication. (O.R. 307). Just like the Incorporated Town of Tulsa, Wilburton was incorporated under § 31 of the Act of May 2, 1890; however, unlike Tulsa, which incorporated

under said law prior to the existence of § 14 of the so-called Curtis Act of June 28, 1898, Wilburton was incorporated several years thereafter in 1903.

The matter underlying Everts arose from the 1907 commencement of an ordinance violation proceeding in the mayoral court of the Incorporated Town of Bixby against a White woman named Lindsey Lela Everts for the alleged violation of a local ordinance prohibiting the operation of a business within the corporate boundaries of the incorporated town without paying a fee (O.R. 312). Just like the Incorporated Town of Tulsa and the Incorporated Town of Wilburton, the Incorporated Town of Bixby was incorporated under § 31 of the Act of May 2, 1890; however, unlike Tulsa, which incorporated under said law prior to the existence of § 14 of the so-called Curtis Act of June 28, 1898, Bixby was incorporated less than a year before statehood on December 2, 1906.

On Saturday, November 16, 1907, Theodore Roosevelt signed an executive order at the White House in Washington, which officially incorporated the Indian Territory into Oklahoma Territory and admitted that territory to the federal union as the State of Oklahoma. Exec. Procl. 780 (Nov. 16, 1907), *reprinted in* 35 Stat. 2160; State ex rel. Bridges v. Klein, 1908 OK 45, ¶ 24, 94 P. 1065 ("[t]he existence of the state government did not begin until the president issued his proclamation..."). The moment Roosevelt's hand lifted his pen off the proclamation, the State of Oklahoma instantaneously replaced the United States of America as a sovereign over the former Indian Territory. City of Sapulpa v. Oklahoma Natural Gas Co., 1920 OK 139, ¶ 19, 192 P. 224 ("Upon Oklahoma becoming a state and Sapulpa becoming a part thereof, the State of Oklahoma became substituted in place of the United States, and Sapulpa then became a governmental agency of the State of Oklahoma"); *accord* City of Tulsa v. Oklahoma Natural Gas Co., 4 F.2d 299 (E. Dist. Okla. 1925). Sapulpa, like Tulsa, petitioned United States in the

Indian Territory, Northern District, for incorporation under the Act of May 2, 1890, § 31, *putting in force* Mansfield's Digest Stat. Ark. ch. 20, §§ 785-799 (1883). The U.S. Ct. Indian Terr. granted both petitions prior to the existence of the Curtis Act of June 28, 1898, and both were legally incorporated towns under the laws put into force by Congress in 1890. City of Sapulpa has never been overruled and remains controlling authority on the issue. Importantly, at the exact moment Roosevelt's hand lifted his pen, the laws of the Oklahoma Territory were extended over the entirety of the State of Oklahoma as provided by the Oklahoma Constitution:

> In order that no inconvenience may arise by reason of a change from the forms of government now existing in the Indian Territory and in the Territory of Oklahoma it is hereby declared as follows: All laws in force in the Territory of Oklahoma at the time of the admission of the State into the Union which are not repugnant to this Constitution and which are not locally inapplicable shall be extended to and remain in force in the State of Oklahoma until they expire by their own limitation or are altered or repealed by law.
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> Okla. Const. sched. § 2 (OSCN 2023)

Put another way, "the laws 'in force' in the Territory of Oklahoma remained in force and did not pass to the State of Oklahoma by adoption as they did [in the Indian Territory] by virtue of the Act of May 2, 1890, which put certain laws from Arkansas 'in force' in the Indian Territory, for the reason that the State of Oklahoma is the successor of the Territory of Oklahoma by virtue of the terms of the Enabling Act [Act of June 16, 1906, 34 Stat. 267] and the Constitution, and, as such, succeeded to its laws on the admission of the state into the Union, while the Indian Territory and the State of Arkansas stood in no such relation, the one being a sovereign state, and the other an unorganized territory of the United States." Frick Co. v. Oats, 1908 OK 33, ¶ 27, 94 P. 682, 687.

The practical effect of this was the instant repeal of the legislation enacted by Congress governing civil subject matter jurisdiction in mayoral courts under the Act of May 2, 1890 and all territorial era congressional measures that followed up to that exact moment. Specifically, § 31 of the Act of May 2, 1890, 26 Stat. at 60 put in force the Act of April 29, 1873, §§ 1–127, 1873 Ark. Acts 430 (An Act to Define the Jurisdiction and Regulate the Course of Proceedings in the Courts of Justices of the Peace in Civil Actions), *digested as* Mansfield's ch. 91, §§ 4016–4156 (1883); and, the 1868 Arkansas Code of Practice in Civil Cases, 1868 Ark. Acts 145, *digested as* Mansfield's ch. 119 §§ 4910–5317 (1883). As a direct legal consequence, "[t]he mayor's court of incorporated towns and cities of the Indian Territory was not continued in existence upon admission of the state into the Union." Hillis v. Addle, 1912 OK 801, ¶ 0, 128 P. 702 (Syllabus by the Court).

After statehood, the 1st Oklahoma Legislature convened and began enacting state statutory law, including the Act of December 21, 1907, §§ 1–15, 1907 Okla. Laws 205, *amended by* Act of March 12, 1908, §§ 1–2, 1907 Okla. Laws 212, which governed the transfer of all pending civil causes in the mayoral courts at statehood to the State of Oklahoma's judiciary. The long title of the act clearly manifests the true appellate route for civil proceedings arising with the mayoral courts:

> AN ACT PROVIDING FOR THE TRANSFER OF ALL THOSE CAUSES, BOTH CIVIL AND CRIMINAL, TRANSFERRED FROM THE COURTS OF THE TERRITORY OF OKLAHOMA AND THE UNITED STATES COURTS IN THE INDIAN TERRITORY, TO THE COURTS OF THIS STATE, INCLUDING A TRANSCRIPT OF THE RECORDS OF MAYORS AND UNITED STATES COMMISSIONERS' COURTS IN THAT PART OF THE STATE FORMERLY KNOWN AS THE INDIAN TERRITORY, WHICH WOULD HAVE BEEN PROPERLY TRIABLE IN ANY OTHER COURT OF ANY COUNTY OR DISTRICT OF THE STATE, HAD SUCH SUIT OR PROCEEDINGS BEEN COMMENCED AFTER THE ADMISSION OF THIS STATE INTO THE UNION. AN EMERGENCY IS DECLARED HEREIN

By and by, every single case pending in the abolished mayoral courts of the former Indian Territory was transferred, including the civil proceedings underlying Marcum & Toomer and Everts. This explains why the Oklahoma Supreme Court decided both of these cases on appeal and not a federal court. Pursuant to the Act of December 21, 1907, the civil ordinance violation proceeding underlying Everts was transferred to the Tulsa County District Court and set on the civil docket where it then made its way up to the Supreme Court.

Precisely 27 months after the Oklahoma Supreme Court's 1912 decision in Hillis, the State of Oklahoma's municipal political subdivisions were granted criminal subject matter jurisdiction for the first time in their history by the 5th Oklahoma Legislature under the Act of March 12, 1915, §§ 1-16, 1915 Okla. Laws 234. This the state legislature did under authority of Okla. Const. art. VII, § 1. Under § 1 of the Act of March 12, 1915, the state legislature defined "municipal courts" and first declared ordinance violation proceedings to be criminal in nature, governed by the Oklahoma Criminal Code:

> The term 'municipal courts' as herein used is hereby defined to mean and include all the courts of the State of Oklahoma, organized and existing in the various towns and cities thereof which shall have and possess, under the laws of the State, original jurisdiction to hear and determine offenses against the ordinances of municipalities, and an 'offense' is hereby defined to mean the doing of some act, or the failure to perform some duty, commanded by some municipal ordinance or by law, and for the violation of which a penalty or punishment is provided thereby. Such proceedings are hereby declared to be criminal in their nature; and except as otherwise specifically provided, shall be governed by, and subject to, general laws relating to criminal procedure.

Ever since March 12, 1915, when the 5th Oklahoma Legislature first regulated a delegation of state sovereignty to the State of Oklahoma's municipal political subdivisions, state legislators have delegated state criminal subject matter jurisdiction as they see fit under

Okla. Const. art. VII, § 1. For example, two years later, the 6th Oklahoma Legislature enacted the Act of March 15, 1917, §§ 1–7, 1917 Okla. Laws 253, amending the sections of 1915 Okla. Laws 234 with regard to jury trials in municipal courts, and in that same session passed another law creating "city courts" in small counties in the Act of March 30, 1917, §§ 1–30, 1917 Okla. Laws 195.

This Court has interpreted the various laws regulating municipal criminal jurisdiction over the past century. *See generally e.g.* Ex parte Johnson, 1917 OK CR 3, 161 P. 1097 (held that the state legislature made offenses against ordinances criminal in nature under 1915 Okla. Laws 234 and that default imprisonment violated U.S. Const. art. VI right to jury trial); Ex parte Monroe, 1917 OK CR 14, 162 P. 233 (held that default imprisonment under 1915 Okla. Laws 234 violated U.S. Const. art. VI right to jury trial); Ex parte Bochmann, 1921 OK CR 203, 201 P. 537; Eisiminger v. City of Oklahoma City, 1937 OK CR 104, 69 P.2d 1046 (historical analysis of municipal criminal jurisdiction as it pertained to a state charter city in 1937 that first incorporated pre-statehood under the 1893 laws of Oklahoma Territory, noting the state legislature's 1915 repeal of prior laws and the effects of the legislature's 1917 amendments thereto).

In 1967, the 31st Oklahoma Legislature approved a proposed constitutional amendment to drastically reform the State of Oklahoma's judiciary by amending the original version of Okla. Const. art. VII, § 1 (effective Nov. 16, 1907). The Legislature's proposal called for the creation of a unified state judiciary, the abolition of all courts not provided for within the new structure such as justices of the peace, and severely restricted the extant inferior courts operating within the State of Oklahoma's municipal political subdivisions. The legislators referred the proposal to the state's supreme sovereign – the People of the State of Oklahoma –

for approval or rejection by means of a ballot initiative. On July 11, 1967, the sovereigns considered the amendment and amended their state constitution by majority vote.

Judge McCune is well aware of this because this is not the first time that he has been involved in an appellate action attacking the jurisdiction of this Court. Jackson v. Freeman, 1995 OK 100, 905 P.2d 217. Jackson laid down the law on legislative courts and the Appellant incorporates that analysis herein.

> The judicial power of this State shall be vested in the Senate, sitting as a Court of Impeachment, a Supreme Court, the Court of Criminal Appeals, the Court on the Judiciary, the State Industrial Court, the Court of Bank Review, the Court of Tax Review, and such intermediate appellate courts as may be provided by statute, District Courts, and such Boards, Agencies and Commissions created by the Constitution or established by statute as exercise adjudicative authority or render decisions in individual proceedings. Provided that the Court of Criminal Appeals, the State Industrial Court, the Court of Bank Review and the Court of Tax Review and such Boards, Agencies and Commissions as have been established by statute shall continue in effect, subject to the power of the Legislature to change or abolish said Courts, Boards, Agencies, or Commissions.
>
> Municipal Courts in cities or incorporated towns shall continue in effect and shall be subject to creation, abolition or alteration by the Legislature by general laws, but shall be limited in jurisdiction to criminal and traffic proceedings arising out of infractions of the provisions of ordinances of cities and towns or of duly adopted regulations authorized by such ordinances.
>
> Okla. Const. art. VII, § 1 (effective Jul. 11, 1967).

On January 13, 1969, a law passed in 1968 by the 31st Oklahoma Legislature went into effect and wholly divested the State of Oklahoma's municipal political subdivisions of subject matter jurisdiction to hear civil actions in municipal courts. This law is codified as Okla. Stat. tit. 20, § 91.1, and specifically provides that "[t]he District Courts of the State of Oklahoma are the successors to the jurisdiction of all other courts, including . . . municipal courts in civil matters and proceedings for the violation of state statutes . . ." *See also* Okla. Stat. tit. 22, § 4A

(providing that the terms "courts" and "courts in the state" such as they are used in the title of Oklahoma Statutes on criminal procedure mean the State of Oklahoma's district courts as defined by 20 O.S. § 91.1); *accord* the Oklahoma Criminal Discovery Code under Okla. Stat. tit. 22, § 2001 (providing that "[t]he Oklahoma Criminal Discovery Code shall govern the procedure for discovery in all criminal cases in all 'courts in this state.'").

The framework for the current delegation was created by the 36th Oklahoma Legislature through the enactment of the Oklahoma Municipal Code, §§ 1-101–55-101, 1978 Okla. Laws 695 (codified as Okla. Stat. tit. 11, §§ 1-101 et seq.) In the intervening 45 years, the state legislature has amended and added to the Oklahoma Municipal Code, but one universal truth remains true: at no time since has the Oklahoma Legislature ever granted civil subject matter jurisdiction to its municipal criminal courts.

According to the learned stare decisis of this Honorable Court, it is well established that "[t]he inferior federal courts exercise no appellate jurisdiction over state tribunals. Therefore, decisions from these inferior federal courts are not conclusive on state courts." Dean v. Crisp, 1975 OK CR 95, ¶ 3, 536 P.2d 961, 963. Therefore, the orders of the trial court in reliance on such authority were inherently in error and actually contrary to the binding authority briefed herein.

5. CONCLUSION

The statement of law upon which everything in this case is predicated is false and wholly revisionist history and Judge McCune's clearly incorrect legal conclusions in that regard constitute an abuse of discretion. In real life, during the entire territorial period (May 2, 1890, to November 16, 1907), every municipality located in the Muscogee Nation, the Cherokee Nation, the Choctaw Nation, the Chickasaw Nation, the Seminole Nation, and the

Quapaw Nation lacked an express grant of criminal jurisdiction from their sovereign during the period, the U.S. government.

Most importantly, the Eighth Circuit conducted a careful, contemporary review of all the laws in the Indian Territory, including Appellee's Curtis Act. They found "the civil and criminal procedure of Arkansas and the laws relating to municipal corporations and to the jurisdiction and procedure of the justices of the peace in civil and criminal cases were put in force in the Indian Territory" by Congress. Fortune, 142 F. at 115. The Eighth Circuit concluded, "[a] careful investigation has failed to disclose anything in these statutes that changes the prevailing doctrine as announced by the courts, or that prescribes for this particular class of cases a different procedure for appeals than obtains in civil actions generally." Id. (**specifically citing "Act June 28, 1898, c. 517, § 14, 30 Stat. 499" as part of their "careful investigation**") (emphasis added).

In sum, the trial court erred in denying the Appellant's various motions to dismiss citing the controlling authority. This farce must end. Congress most certainly never "explicitly granted subject matter jurisdiction" contrary to the claims made by the City of Tulsa. The judgement and sentence herein must be reversed and dismissed and the opinion published finding that the State of Oklahoma lacks subject matter jurisdiction to prosecute American Indians in Indian Country for any state crime.

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6. CERTIFICATE OF SERVICE

I hereby certify that I delivered an identical copy of this filing on April 13, 2023, via United States mail and electronic mail to the following:

THE CITY OF TULSA
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