

IN THE SUPREME COURT OF THE CHEROKEE NATION

KIMBERLIE A. GILLILAND,)
Appellant,)
v.)
CHEROKEE NATION,)
Appellee.)

Sup. Ct. Case # SC-2017-08
Dist. Ct. # CRM-2016-54

2017 DEC 27 PM 12: 26
CHEROKEE NATION
SUPREME COURT
KENDALL BIRD, COURT CLERK

FILED

~~2017 DEC 27 PM 12: 24
CHEROKEE NATION
SUPREME COURT
KENDALL BIRD, COURT CLERK~~

~~FILED~~

**NATION'S RESPONSE TO
PETITION IN ERROR**

COMES NOW the Cherokee Nation in the above-styled case, by and through its attorney of record, and hereby respectfully responds to the Petition in Error in the appeal of criminal defendant and appellant, Kimberlie A. Gilliland.

Counsel for Appellee received an emailed copy of the Petition in Error on December 5, 2017, and hereby submits this Response, along with a Counter Designation of Record, filed herewith.

The Nation does not dispute the assertions in Sections I – VII in the Appellant’s Petition in Error.

For its Statement of the Case the Nation has attached Exhibit B and for its Issues for Appeal it has attached Exhibit C.



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EXHIBIT B

STATEMENT OF THE CASE

In June, 2016, the Nation filed in this Court a criminal complaint against Kimberlie Gilliland, who is a citizen of the Cherokee Nation. The Nation alleges that the Defendant committed several counts of wrongful misappropriation, use, or embezzlement of Cherokee Nation Education Corporation aka Cherokee Nation Foundation (“CNF”) funds and/or property which were intended for CNF and/or the Cherokee students that CNF serves.

During the time that all the criminal actions were alleged, the Defendant was employed by, or contracted by CNF to perform services on its behalf. CNF is a not-for-profit charitable institution organized under the Cherokee Nation code and is designed to provide education assistance and scholarships to qualifying Cherokee students.

CNF’s headquarters are located within Tahlequah, the capitol city of the Cherokee Nation, and located within the Nation’s historic boundaries. At all times pertinent, CNF used banking services, including debit and credit cards, from banks located within the Nation’s historic boundaries.

The Nation alleged in its Complaint that the defendant’s illegal actions took place “within the territorial boundaries of the Cherokee Nation including within Indian Country.”

Over a year after the filing of the Complaint, in July, 2017, the defendant filed a Motion to Dismiss, alleging that the Cherokee Nation courts did not have jurisdiction over this matter. The Nation filed a response, and District Court Judge Barteaux ruled in the Nation’s favor, finding that the Cherokee Judiciary does have jurisdiction. From this Order, the defendant has initiated this appeal.

EXHIBIT C

ISSUES PRESENTED FOR APPEAL

The underlying criminal case involves allegations that a Cherokee citizen improperly used the funds and property of a Cherokee non-profit corporation while she was employed there. That corporation, the Cherokee Nation Education Corporation aka Cherokee Nation Foundation, was set up to provide educational and scholarship opportunities for Cherokee youth. It is funded, in large part, by Cherokee Nation and Cherokee Nation Business funds; its Board is selected by the Principal Chief and confirmed by the Tribal Council. It is incorporated under Cherokee Nation law. The improper use of the non-profit's funds occurred within the jurisdictional boundaries of the Cherokee Nation. The defendant claims that the Cherokee Nation courts have no jurisdiction over these alleged crimes. There are a number of cases holding that such crimes, committed by a tribal citizen, which involve issues of tribal self-government and internal control are within the jurisdictional authority of the Tribe. The facts at bar fall squarely within those cases.

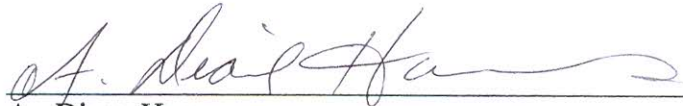
Additionally, there are recent cases, including the holding of the District Court here, which hold that Five Tribes' jurisdictional boundaries were not disestablished by Treaty, and that therefore those Tribes possess criminal jurisdiction over their citizens within those exterior boundaries.

The Nation respectfully submits that it has the jurisdiction over its citizens to prosecute crimes committed by those citizens, within the Nation's jurisdictional boundaries, which were perpetrated against the Nation's funds and/or the funds and property of its non-profit corporations.

CERTIFICATE OF SERVICE

On this 27th day of December, 2017, I sent a true and correct copy of this Response to Petition in Error to Mr. Chad Smith, counsel for the Defendant, to chad@chadsmith.com and by mail to:

Chad Smith
22902 S. 494 Road
Tahlequah, OK 74464

A handwritten signature in cursive script, appearing to read "A. Diane Hammons", written over a horizontal line.

A. Diane Hammons