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

RESPONSE BRIEF OF CHEROKEE NATION

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.

STANDARD OF REVIEW

Because the questions here are strictly legal ones, Appellant is correct that this Court's standard of review is *de novo*. See, e.g., *Unger v. Cherokee Nation Comprehensive Care Agency*, SC-2015-07, Opinion, 3/20/17; *Nolan v. Cherokee Nation Businesses, LLC*, SC-2015-12, Option, 8/15/16.

ARGUMENT AND AUTHORITY

As a preliminary matter, the Nation would assert that this Court may affirm the decision of the District Court upon other grounds, particularly upon grounds that were fully briefed below. The District Court based its decision regarding the jurisdictional authority of Cherokee Nation Courts under the holdings of *Solem*[2] and *Murphy*[3]. However, the parties also fully argued the scope of the applicable portions of Title 20 in the Cherokee Nation statutes, and those grounds enumerated in Proposition Five, herein. The Nation would assert that this Court may affirm on grounds other than those relied upon by the honorable District Court. This is a well-established principle of law; both federal and Oklahoma state courts have recognized it. *See e.g, SEC v. Chenery Corp.,* 318 U.S. 80, 88, 63 S.Ct. 454, 87 L.Ed. 626 (1943); *Hayes v. Whitman,* 264 F.3d 1017, 1025 (10th Cir.2001); *McMinn v. City of Oklahoma City,* 1997 OK 154, 952 P.2d 517.

PROPOSITIONS ONE - FOUR: THE CHEROKEE NATION HAS NOT LIMITED ITS CRIMINAL JURISDICTION TO ONLY FEDERALLY DEFINED 'INDIAN COUNTRY' BY STATUTE.

The Defendant asserts to this Court that the jurisdiction of the Cherokee Nation district courts is limited to federally defined "Indian Country"[4] within the Nation's borders (thus,

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[2] *Solem v. Bartlett,* 465 U.S. 463, 470, 104 S.Ct. 1161, 79 L.Ed.2d 443 (1984).
[3] *Murphy v. Royal*, 866 F.3d 1164 (10th Cir. 2017).
[4] Every definition of "Indian Country" in the Cherokee Nation code includes either a specific reference 25 U.S.C. 1151 or a general reference to "federal law." Under federal law, that includes Cherokee Nation's entire 14 country jurisdiction, regardless of the status of the land.

according to Defendant, only trust, restricted allotment, or dependent Indian country lands). However, the federal definition of "Indian Country" at 25 U.S.C. § 1151 includes all land within the 14 county "Reservation" of Cherokee Nation. Defendant claims that "Indian Country" only includes "trust and restricted land" and not all of Cherokee Nation, based on what "Counsel understood in 1990." This argument completely ignores the plaint language of the Cherokee Nation Code. Defendant cites Title 20, Section 25 of the Cherokee Nation code in support of the argument that the Cherokee Nation Courts do not have jurisdiction over the crimes alleged in the Complaint. Section 25 states:

> The territorial jurisdiction of Cherokee Nation District Court shall extend to include all "Indian country" also known as "Cherokee country" within the fourteen (14) county area of northeastern Oklahoma as defined by the Treaties of 1828, 1833, and 1835 and the Patent of 1838 between the United States of American and Cherokee Nation, ***and at such other locations within the United States which qualify as Cherokee country***.

(emphasis added). It should first be noted that Section 25 does not use any limiting terminology such as "only" or "exclusively" in describing its jurisdiction. Indeed, the language "to include all" does not suggest that is the ***extent*** of the jurisdiction; it is inclusory language, not exclusory. And, the last phrase, highlighted above, clearly anticipated that there might be additional lands that qualified as "Cherokee country." As we can see from the *Murphy* decision, what qualifies as Indian country or Cherokee country may fluctuate, according to judicial interpretation. Furthermore, the statute should be read in conjunction with the immediately preceding section (§24), which states, in pertinent part:

> The District Court of Cherokee Nation shall have general jurisdiction and is vested with original jurisdiction, not otherwise reserved to the Supreme Court, to hear and resolve disputes arising under the laws or Constitution of Cherokee Nation in both law and equity, whether criminal or civil in nature. Such actions shall include, ***but are not limited to***, the following:
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> 1. Crimes. All violations of the Criminal Code of Cherokee Nation committed ***within its territorial jurisdiction*** within the following categories:

See 10 C.N.C.A § 1407(2)(M); 18 C.N.C.A. § 5(C); 21 C.N.C.A. § 2101(20); 27 C.N.C.A. § 902(17); 29 C.N.C.A. § 107(1)(c); 33 C.N.C.A § 3(8); 39 18 C.N.C.A. § 103(B); 57 18 C.N.C.A. § (3)(4); 68 18 C.N.C.A. § (3)(1). Cherokee Nation Legislators have obviously always understood that Cherokee Nation would exercise both criminal and civil jurisdiction to the fullest extent allowed by federal law. For Defendant to argue otherwise is wrong.