

IN THE SUPREME COURT OF THE CHEROKEE NATION

KIMBERLIE A. GILLILAND,)
)
Defendant/Appellant)
)
v.)
)
CHEROKEE NATION,)
)
Plaintiff/Appellee)

SC 2017-08

District Court CN 2016-54

2018 APR 10 AM 11:36
CHEROKEE NATION
SUPREME COURT
MENDALL BIRD, COURT CLERK

FILED

REPLY BRIEF

Before this Court is the pivotal legal question: what is “Cherokee country” as referenced in 20 CNCA § 25 because it determines the criminal “territorial jurisdiction for the Cherokee Nation District Court.” The Nation in its Response Brief (“Response”) makes essentially two arguments that the District Court’s criminal jurisdiction extends to every square inch of the treaty boundaries of the Cherokee Nation (“Nation”). The first argument is that the Nation’s law defining criminal jurisdiction as “Cherokee country” pursuant to 20 CNCA § 25 is undisguisable from the federal definition of “Indian country” pursuant to 18 USC §1151. The Nation is wrong because there was no need for the Council to refer to “Cherokee country” if it intended to assert criminal jurisdiction over every square inch of the Cherokee Nation’s boundaries.

The second argument is that the Nation may assert inherent criminal jurisdiction outside its boundaries over its citizens because the alleged offense against the Cherokee Nation Foundation (“CNF”) affects tribal self-governance interests. This argument seems to confess that the Nation has no situs jurisdiction over the alleged instant criminal offense because jurisdiction is not based on situs; the Nation’s argument is based on the notion it may prosecute its citizens regardless of where the offense occurs if the alleged victim is a citizen and the offense affects tribal self-governance. The Nation argues a Sixth Circuit case *Kelsey v. Pope*,

809 F.3d 849 (6th Cir 2015) allows it to prosecute tribal citizens outside its territory however; this outlier case is distinguishable because the *Kelsey* tribe's constitution granted the tribe expansive personal jurisdiction. The Nation's does not. Therefore this argument is without merit.

Gilliland will address the Nation's arguments in detail in this Reply Brief.

The Nation concluded its Response by arguing, "The Defendant now cries foul and asserts that the Nation doesn't have jurisdiction over her and these alleged crimes." On this point, the Nation is right. There are good reasons this prosecution is "foul." As s jurists and as private practitioners who have prosecuted and defended criminal actions, this Court understands the process for criminal prosecutions. In criminal prosecutions, a law enforcement agency investigates an alleged criminal action, gathers evidence and interviews witnesses. The law enforcement agency then presents its case to prosecuting attorneys (Attorney General, District Attorneys, City Attorneys) to file and litigate the law enforcement agency's case. *Not one* law enforcement officer is listed as witness in the Complaint because no law enforcement agency investigated this case- not the Cherokee Nation Marshal Service, the Oklahoma Bureau of Investigation, or the Federal Bureau of Investigation. This case was not even referred to the Cherokee Nation Marshal Service or the Federal Bureau of Investigation for investigation, which is the standard process for investigating crimes in Indian country.

Instead, the Attorney General appointed a "Special Prosecutor" who hired a private contractor to review the documents in this case. Why did the Attorney General go so far off the rails to mount a prosecution against Gilliland contrary to standard process and protocol?

The foul of this prosecution is affirmed by the fact in the twenty- seven year modern history of the District Court, no one has been charged for an offense off trust lands but within

the Nation's boundaries.¹

ARGUMENT

Proposition One through Four: The Nation has failed to show that the definition of “Cherokee country” found in 20 CNCA § 25 extends to fee lands.

It is the Nation's burden to show that the District Court has jurisdiction over this case. However, the Nation “asserts that this Court may affirm on grounds other than those relied upon by the honorable District Court.” Response at pg. 4. If the Nation has established District Court jurisdiction in this case, why does it ask this Court to find *any* grounds for jurisdiction, argued or not; this request appears to be an admission that it has not established jurisdiction.

The Nation argues that “what qualifies an Indian country or Cherokee country may fluctuate, according to judicial interpretation.” Response at pg. 5. Really? In *Murphy v. Royal*, 866 F.3d 1164 (10th Cir. 2017), the Tenth Circuit applied United States Supreme Court decisions and principles to the question of whether the State of Oklahoma had jurisdiction over crimes in the Muskogee Creek Nation. The issue in *Murphy* is whether or not the Nation's territorial boundaries have been disestablished; the issue in this case is whether or not the Nation has by statute asserted jurisdiction over fee lands within its territorial boundaries. There has been no case by the Cherokee Nation Supreme Court ever suggesting the Nation has criminal jurisdiction over fee lands. Due process is denied to Cherokee citizens if jurisdiction fluctuates or is arbitrary.

The Nation has not questioned the fundamental principle herein, that the District Court's criminal jurisdiction is established only by the Nation's law-not federal law. Therefore, cases

¹ The Nation suggests there were criminal prosecutions at Hasting Hospital, Sequoyah High School and casino parking lots but has wholly failed to produce one case number where the offense took place on fee land. The Nation does not state what government prosecuted the alleged criminal action or if the prosecution was based on dependent Indian community or federal enclave status. For example, Hastings Hospital is not trust land, but was acquired by the federal government as a federal enclave which allows the State of Oklahoma to assert concurrent criminal jurisdiction. Sequoyah High School is dependent Indian community pursuant to *C.M.G. v State*, 594 P.2d 798, thus the tribal court has jurisdiction over criminal actions at the school.

