

IN THE DISTRICT COURT OF THE CHEROKEE NATION

FILED
2018 MAY 17 AM 10:58

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

Case No. CRM-2016-54

CHEROKEE NATION
DISTRICT COURT
KIMBERLIE A. MONCOOYEA
COURT CLERK

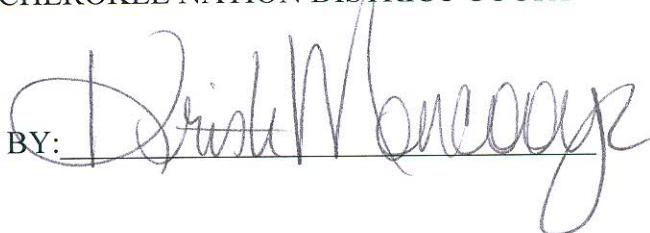
CERTIFICATE OF COURT CLERK

I, KRISTI MONCOOYEA, COURT CLERK IN AND FOR THE DISTRICT COURT OF THE CHEROKEE NATION, HEREBY CERTIFY:

THAT I HAVE COPIED AND CERTIFIED TO THE ORIGINAL PLEADINGS ON FILE IN MY OFFICE IN THE ABOVE-STYLED CASE DESIGNATED BY THE PLAINTIFF/APPELLEE AND DEFENDANT/APPELLANT, AND SAID PLEADINGS ARE SUBMITTED TO THE CHEROKEE NATION SUPREME COURT ON THIS DATE.

DATED THIS 17th DAY OF MAY, 2018.

KRISTI MONCOOYEA, COURT CLERK
CHEROKEE NATION DISTRICT COURT

BY: 



FILED
2018 MAY 17 AM 11:19
CHEROKEE NATION
SUPREME COURT
KRISTI MONCOOYEA
COURT CLERK

COPIES MAILED OR HAND-DELIVERED TO:
CLERK OF THE CHEROKEE NATION SUPREME COURT, P.O. BOX 1097, TAHLEQUAH,
OK 74465

PARTIES OF RECORD:
Diane Hammons, Attorney for Appellee, P.O. Box 141, Tahlequah, OK 74465
Chad Smith, Attorney for Appellant, 22902 S. 494 Rd., Tahlequah, OK 74464

IN THE DISTRICT COURT OF THE CHEROKEE NATION

CHEROKEE NATION,)	
Plaintiff/Appellee,)	
)	
Vs.)	Case No. CRM-2016-54
)	
KIMBERLIE A. GILLILAND,)	
Defendant/Appellant.)	

DOCKET SHEET

07/26/2017	Motion to Dismiss Criminal Proceeding
08/10/2017	Nation's Response to Defendant's Motion to Dismiss Criminal Procedure with Argument and Authority
09/05/2017	Reply to Nation's Response to Defendant's Motion to Dismiss and Motion to Strike
10/11/2017	Jurisdiction Order

FILED

**IN THE DISTRICT COURT OF THE CHEROKEE NATION
CRIMINAL DIVISION**

2017 JUL 26 PM 3: 01

CHEROKEE NATION
DISTRICT COURT
EAST TALEQUAH
COURT CLERK

CHEROKEE NATION,)	
)	
Plaintiff,)	
)	
Vs.)	CM 2016-54
)	
KIMBERLIE A. GILLILAND,)	
)	
Defendant.)	

MOTION TO DISMISS CRIMINAL PROCEEDING

Comes now Defendant Kimberlie A. Gilliland, (“Gilliland”) and moves the Court to dismiss the above styled and numbered case because this Court has no territorial jurisdiction over the matter.

The Cherokee Nation (“Nation”) filed the instant criminal complaint on July 28, 2016, alleging that Gilliland violated provisions of the Nation’s criminal code “within the territorial boundaries of the Cherokee Nation including within Indian Country as defined by 18 U.S.C. 1151.” *See* Complaint and Information page 1. In all counts of the Complaint, the Nation alleges that Gilliland defrauded the Cherokee Nation Foundation (“CNF”). The Nation does not specify where the alleged criminal actions took place.

Gilliland did not transact any of the alleged actions on Indian country. Gilliland conducted her work as Executive Director at the offices of CNF. CNF’s offices were never located on Indian country- trust or restricted allotments or tribal trust lands. Since 2009, CNF rented office space in Tahlequah held by private landowners in Tahlequah at 115 East Delaware, 306 West Choctaw, and 800 South Muskogee. CNF’s offices at all times pertinent herein were located on fee land in the City of Tahlequah, Oklahoma- not trust or restricted allotted land or

tribal trust lands. The situs of CNF is its offices. Neither the alleged crimes occurred, nor was the alleged victim ever on Indian country.

The Nation's statutes limited the jurisdiction of its courts to actions occurring on Indian country. See 20 CNCA § 25. The definition of Indian Country is a precise term of law and is set forth by federal law, 18 U.S.C. § 1151, as follows:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The CNF offices do not fall under any provision of 18 U.S.C. § 1151.

In *Fife v. Moore*, 808 F. Supp. 2d 1310, 1311 (2011), the Federal Court for the Eastern District Court of Oklahoma decided a criminal case brought by the Muskogee Creek Nation in tribal court against a tribal citizens and the Court noted, "It is undisputed that the situs of the alleged crimes was fee land, rather than trust land."

The Eastern District held the tribal court had no jurisdiction and stated the law:

In *United States v. Antelope*, 430 U.S. 641, 97 S.Ct. 1395, 51 L.Ed.2d 701 (1977), the Supreme Court describes 18 U.S.C. § 1153 as "a carefully limited intrusion of federal power into the otherwise exclusive jurisdiction of the Indian tribes to punish Indians for crimes committed *on Indian land*." *Id.* at 642-43 n. 1, 97 S.Ct. 1395. (emphasis added). In *Bruce*, the Ninth Circuit states that the exception in 18 U.S.C. § 1152 "preserves the right of tribal courts to try offenses *committed in Indian country* by Indians against Indians...." 394 F.3d at 1219 (emphasis added). See also *Nevada v. Hicks*, 533 U.S. 353, 365, 121 S.Ct. 2304, 150 L.Ed.2d 398 (2001) ("Sections 1152 and 1153 of Title 18, which give United States and tribal criminal law generally exclusive application, apply only to crimes committed *in Indian *1315country ...*") (emphasis in original). This court is persuaded that the tribal court is proceeding without jurisdiction in the present prosecution. *Fife* at 808 F. Supp. 2d 1310, 1314-15. The *Fife* case is attached.

