

SOUND JUDGMENT

Hello Judges!

By Judge Rod Ring, (Ret.)
OBA/OHSO Judicial Outreach Liaison

I wish everyone a Healthy and Happy New Year!

2021 is in the past but COVID has not left us and is still taking a toll on our state. I know it has been a chore to keep the courts open and operating safely and commend all the judges and staff who have taken a risk to do so. At least this latest variant is less dangerous too most of us. It has hit the younger members of my family, but they have all recovered, we hope.

I want to start the new year by thanking the Oklahoma Bar Association for making it a successful year despite the virus. We had a short program in the summer and a full day program in November that both went well. Janet Johnson, OBA Director of Educational Programs, and Gary Berger, OBA Production Specialist, deserve a big thanks for help with the programs and this Newsletter. Jaclynn Frace, Program Manager, with the Oklahoma Highway Safety Office keeps everything running smoothly and provides invaluable resources to us. I also want to thank Tammy Reaves from the AOC because we could not have a successful program without her help.



We are planning for 2022 and hope to make our program even better and more valuable to you. We are hoping to provide 2 hours of education at the Summer Judicial Conference and another full day program at the OBA Annual Meeting in November. I hope both of those will be in person programs. The purpose of our program is to reduce deaths, serious injuries and collisions caused by impaired driv-

Watch Washington Supreme Court Chief Justice Steven González's Inspirational and Entertaining Justice Jackson Lecture

The National Judicial College is a wealth of educational opportunities, some at no cost. This lecture is timely as well as entertaining. Sometimes its good to know that other judges are going through the same thing we are. I hope you enjoy this lecture.

[CLICK HERE to watch the video](#)

Washington state's first chief justice of color wowed a crowd of more than 100 new and aspiring judges in attendance at the NJC and nearly 300 NJC alumni online with an often humorous talk titled "You Don't Look Like a Judge." One commenter on Facebook called it "Fabulous and inspirational!"



INSIDE PAGES

New: Incentives, Sanctions and, Therapeutic Adjustments Training

Application Deadline: January 28, 2022. ADCP is now accepting applications for training from NADCP's National Drug Court Institute

[See Page 2](#)

Oklahoma Appellate Court Opinions are Available to All Judges

Oklahoma Appellate Court Opinions are available to all Judges who subscribe, at no cost to you.

[See Page 2](#)

ing. I will try to bring you the latest news from Oklahoma and around the country. We cannot plan without knowing what you would like for us to include in the programs so please let me know of your suggestions.

I look forward to seeing all of you next year.

Rift Between Stitt and Tribal Leaders Grows

Judges I'm sure you will be seeing more and more of these disputes in your courtroom. These issues of jurisdiction will continue, and we need to be aware. We had a great program on Federal, State, Tribal jurisdiction in our November program but the cases and changes to the law are coming fast and furious. We will try to keep you informed and give you some tips on dealing with these issues.

[Click here](#) to read the following article from [KOCO.com](#)...*Rift between Stitt and tribal leaders grows deeper over fishing, gaming compacts*

Oklahoma Appellate Court Opinions are available to all Judges

Oklahoma Appellate Court Opinions are available to all Judges who subscribe, at no cost to you.

You can select the courts you are interested in and choose to have the notices sent hourly or daily.

This is really a convenient way to keep up with the latest opinions from Oklahoma appellate courts.

<https://www.oscn.email/>

Upholding Judicial Independence through Civics Education

American Bar Association

We must always be mindful of attacks and attempts to undermine the judiciary. This is especially true during an election year when Oklahoma Judges have increased pressure from advocacy groups. This is a timely article to begin the year.

[Click here](#) to read the full article at www.americanbar.org

New: Incentives, Sanctions, and Therapeutic Adjustments Training

Application deadline: Friday, January 28

ADCP is now accepting applications for training from NADCP's National Drug Court Institute on Standard IV of the Adult Drug Court Best Practice Standards: Incentives, Sanctions, and Therapeutic Adjustments (ISTA).

Designed to provide knowledge and skills practice, the ISTA training will help treatment court teams coordinate an effective, research-based strategy and integrated response to participant behaviors and compliance. Over the course of two days, your team will receive instruction in the theory and application of behavior modification principles as they apply to an effective treatment court. This training includes a 90-day follow-up faculty coaching session to observe staff meetings and status hearings, and to provide feedback on progress with implementation plans developed during the training.

2022 available training dates:

March 3-4 (Eastern)

March 8-9 (Central)

April 6-7 (Mountain)

May 10-11 (Eastern)

June 15-16 (Pacific)



August 17-18 (Mountain)

August 30-31 (Eastern)

September 21-22 (Pacific)

October 19-20 (Central)

October 26-27 (Mountain)

[CLICK HERE TO LEARN MORE AND APPLY](#)

This training is supported by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

Medical Marijuana and Probationers

I know anyone who handles impaired driving cases is going to face the issue of probationers who claim that the use of prescribed medication cannot be prohibited. Each of you have had to make and enforce your probation rules. This Michigan Court of Appeals case may give you something to think about.

[Click here](#) to read the *Detroit Free Press* article, *Michigan Appeals Court OKs Medical Marijuana for Those on Probation*.



**2021 OK CR 38
IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

JEFFREY DON McCLAIN,)	
)	
Appellant,)	
v.)	No. F-2020-420
)	
THE STATE OF OKLAHOMA,)	
)	
Appellee.)	

OPINION

LUMPKIN, JUDGE:¹

¶1 Appellant Jeffrey Don McClain was tried by jury and convicted of Rape by Instrumentation (21 O.S.Supp.2015, § 1111.1) (Count I); Lewd Acts with a Child Under 16 (21 O.S.Supp.2018, § 1123(A)(4)) (Counts II and IV); and Pattern of Criminal Offenses (21

¹As stated in my separate writing in *Sizemore v. State*, 2021 OK CR 6, 485 P.3d 867 (Lumpkin, J., concurring in result), I am bound by my oath and adherence to the Federal-State relationship under the U.S. Constitution to apply the edict of the majority opinion in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). However, I continue to share the position of Chief Justice Roberts' dissent in *McGirt*, that at the time of Oklahoma Statehood in 1907, all parties accepted the fact that Indian reservations in the state had been disestablished and no longer existed.

O.S.2011, § 425) (Count III) in the District Court of McClain County, Case No. CF-2019-69. As punishment, the jury recommended imprisonment for ten (10) years in Count I, seven (7) years in Count II, three (3) years in Count IV, and no term of imprisonment for Count III. The trial court sentenced accordingly, ordering the sentences to run consecutively. It is from this judgment and sentence that Appellant appeals.

¶2 After the filing of the appellate briefs and submission of the case to this Court, Appellant filed a motion arguing for the first time that the District Court of McClain County lacked jurisdiction to try him because he is a registered member of the Choctaw Nation and his crime occurred in McClain County which falls within the boundaries of the Chickasaw Reservation.

¶3 Pursuant to *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), Appellant's claim raised two separate questions: (a) his Indian status, and (b) whether the crime occurred in Indian Country. These issues require fact-finding. We therefore remanded this case to the District Court of McClain County for an evidentiary hearing to be held within sixty (60) days from the date of the Order.

¶4 Recognizing the historical and specialized nature of this remand for evidentiary hearing, we requested the Attorney General and District Attorney work in coordination to effect uniformity and completeness in the hearing process. Upon Appellant's presentation of *prima facie* evidence as to his legal status as an Indian and as to the location of the crime in Indian Country, the burden shifts to the State to prove it has subject matter jurisdiction. The District Court was ordered to determine whether Appellant had some Indian blood and was recognized as Indian by a tribe or the federal government,² and whether the crime occurred in Indian Country. The District Court was directed to follow the analysis set out in *McGirt* to determine: (1) whether Congress established a reservation for the Chickasaw Nation; and (2) if so, whether Congress specifically erased those boundaries and disestablished the reservation. In so doing, the District Court was directed to consider any evidence the parties provided, including but not limited to treaties, statutes, maps, and/or testimony.

² See *Goforth v. State*, 1982 OK CR 48, ¶ 6, 644 P.2d 114, 116. See also *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012); *United States v. Prentiss*, 273 F.3d 1277, 1280-81 (10th Cir. 2001).

¶5 We also directed the District Court that, in the event the parties agreed as to what the evidence would show with regard to the questions presented, the parties may enter into a written stipulation setting forth those facts upon which they agree and which answer the questions presented and provide the stipulation to the District Court. The District Court was also ordered to file written findings of fact and conclusions of law with this Court.

¶6 An Order filed by the Honorable Charles N. Gray, Associate District Judge, stated that an evidentiary hearing had been held pursuant to this Court's remand order. The District Court's Order states in part that all counsel appeared as well as Appellant. The order states that the District Court was presented with proposed Findings of Fact and Conclusions of Law by both parties and an amended agreed stipulation. The Court accepted the amended agreed stipulation and adopted Appellant's Proposed Findings of Fact and Conclusions of Law.

¶7 Attached to the Court's Order are copies of the Proposed Findings of Fact and Conclusions of Law from both parties. Appellant's Proposed Findings, which the Court adopted, states in part: 1) Appellant initially received his CDIB card establishing his enrollment

in the Choctaw Nation as early as 1990 (Appellant was born in 1989); 2) his information was updated with his father's Creek tribal heritage and Appellant received his current CDIB card in 1991; 3) a United States Department of the Interior Bureau of Indian Affairs Certificate of Degree of Indian Blood Card issued November 1, 1991, shows that Appellant is of 5/32 degree of Indian blood of the Choctaw/Creek Tribes; 4) a Choctaw Nation membership card issued September 6, 2013, shows Appellant is a registered member of the Choctaw Nation; 5) both Appellant and his mother testified at the hearing that Appellant has been a member of the Choctaw Nation since he was an infant, that his membership had never been revoked, and that he is a member of the tribe to the present day; 6) the Choctaw Nation of Oklahoma is a federally recognized Indian Tribe; 7) the crime for which Appellant was convicted occurred on or around November 14 to November 25, 2018; and 8) upon intake with the Oklahoma Department of Corrections, Appellant identified himself as "white"; however, at the hearing Appellant held himself out as an Indian, and he testified that he identifies as Indian, although from his appearance alone, others may identify him as "white."

¶8 Based upon the foregoing, the Court found that Appellant has “some Indian blood,” and that Appellant was a member of the Choctaw Nation at the time of the crimes for which he was convicted.

¶9 Regarding the issue of Indian Country, the Proposed Findings of Fact state in part: 1) the court accepts the parties stipulation that the locations of the charged crimes falls within the boundaries of the Chickasaw Nation set forth in the Treaty of Dancing Rabbit Creek in 1830;³ and 2) that in *Bosse v. State*, 2021 OK CR 3, 484 P.3d 286, (opinion subsequently withdrawn, *Bosse v. State*, 2021 OK CR 23, 495 P.3d 669) this Court determined that *McGirt* applied to the Chickasaw Nation Reservation because the Chickasaw Nation Reservation had not been disestablished, and the State of Oklahoma had no jurisdiction to prosecute an Indian for an offense occurring within that reservation’s boundaries.

¶10 The Proposed Findings concluded that the crimes in this case occurred within the historical boundaries of the Chickasaw

³ Footnote 1 of the Proposed Findings of Fact, states that the parties signed an Amended Agreed Stipulation which stipulated that the location of the crimes for which Appellant was convicted occurred in Pauls Valley, located in Garvin County, Oklahoma and Purcell, located in McClain County, Oklahoma, both of which fall within the boundaries of the Chickasaw Nation.

Nation Reservation and that Congress has never disestablished or erased the boundaries of the Chickasaw Nation Reservation.

¶11 In a supplemental brief after remand, the State asserts that it takes no position as to the existence of a Chickasaw Reservation, but argues even if the existence of the Chickasaw Reservation is assumed, the State has concurrent jurisdiction with the federal government to prosecute Appellant. The State further argues that should this Court find Appellant is entitled to relief, this Court should stay any order reversing the conviction for thirty (30) days to allow the United States Attorney's Office for the Eastern District of Oklahoma to secure custody of Appellant. *Cf.* 22 O.S. 2011, § 846.

¶12 Appellant has not filed a supplemental brief after remand.

¶13 After thorough consideration of the arguments and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we find that under the law and the evidence relief is warranted. Under the record before us, we find the District Court did not abuse its discretion and its findings are supported by the evidence presented at the evidentiary hearing. *See State v. Delso*, 2013 OK CR 5, ¶ 5, 298 P.3d 1192, 1194. We find Appellant has met his burden of showing that he is of 5/32 degree of

Indian blood of the Choctaw/Creek Tribes and recognized tribal member of the Choctaw Nation of Oklahoma. We further find Appellant has met his burden of showing that the crime occurred within the boundaries of the Chickasaw Nation and that no evidence has been presented that Congress has ever explicitly erased those boundaries and disestablished the Chickasaw reservation.

¶14 Further, this Court addressed and rejected an argument concerning concurrent jurisdiction between the state and federal governments in *Roth v. State*, 2021 OK CR 27, ___ P.3d ___. The State's argument in the present case is similar and we find it is not persuasive.

¶15 Therefore, we hold that for purposes of federal criminal law, the land upon which the parties agree Appellant committed these crimes is within the Chickasaw Reservation and is thus Indian Country. We find that pursuant to *McGirt*, the State of Oklahoma did not have jurisdiction to prosecute Appellant in this matter.⁴ The Judgments and Sentences in this case are hereby reversed and the

⁴ While Art. 7 of the Oklahoma Constitution vests the district courts of Oklahoma with "unlimited original jurisdiction of all justiciable matters," the federal government has pre-empted the field as it relates to major crimes committed by or against Indians in Indian country.

case remanded to the District Court of McClain County with instructions to dismiss the case.⁵

DECISION

¶16 The **JUDGMENTS and SENTENCES are REVERSED AND REMANDED with instructions to Dismiss.** The **MANDATE** is not to be issued until **twenty (20) days** from the delivery and filing of this decision.⁶

AN APPEAL FROM THE DISTRICT COURT OF McCLAIN COUNTY
THE HONORABLE CHARLES N. GRAY,
ASSOCIATE DISTRICT JUDGE

APPEARANCES IN DISTRICT COURT

ELTON JENKINS
OKLA. INDIGENT DEFENSE
115 SOUTH PETERS, STE. 6
NORMAN, OK 73069
COUNSEL FOR DEFENDANT

NICOLLETTE BRANDT
ARIEL PARRY
OKLA. INDIGENT DEFENSE
P.O. BOX 926
NORMAN, OK 73070
COUNSEL FOR DEFENDANT

APPEARANCES ON APPEAL

NICOLLETTE BRANDT
ARIEL PARRY
OKLA. INDIGENT DEFENSE
P.O. BOX 926
NORMAN, OK 73070
COUNSEL FOR APPELLANT

JOHN M. O'CONNER
ATTORNEY GENERAL
OF OKLAHOMA
JULIE PITTMAN
ASST. ATTORNEY GENERAL
313 N.E. 21ST ST.
OKLAHOMA CITY, OK 73105
COUNSEL FOR THE STATE

⁵ This resolution renders the other four (4) propositions of error raised in Appellant's brief moot.

⁶ By withholding the issuance of the mandate for 20 days, the State's request for time to determine further prosecution is rendered moot.

GREG MASHBURN
DISTRICT ATTORNEY
LESLEY MARCH
ASST. DISTRICT ATTORNEY
121 N. 2ND, RM. 212
PURCELL, OK 73080

JOHN O'CONNER
ATTORNEY GENERAL OF
OKLAHOMA
JULIE PITTMAN
ASST. ATTORNEY GENERAL
313 N.E. 21ST ST.
OKLAHOMA CITY, OK 73105
COUNSEL FOR THE STATE

JACOB KEYES
COUNSEL FOR THE CHOCTAW
NATION
DURANT, OK

OPINION BY: LUMPKIN, J.
ROWLAND, P.J.: Specially Concur
HUDSON, V.P.J.: Specially Concur
LEWIS, J.: Concur in Results

ROWLAND, PRESIDING JUDGE, SPECIALLY CONCURRING:

¶1 I concur fully with the majority's analysis and outcome. I write separately to clarify my belief that the Major Crimes Act does not implicate the subject matter jurisdiction of Oklahoma's state courts. Rather, it is an act of Congress which, when properly raised and proved, preempts state territorial jurisdiction in certain cases.

¶2 "Subject matter jurisdiction defines the court's authority to hear a given type of case." *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009) (quoting *United States v. Morton*, 467 U.S. 822, 828 (1984)). Our cases recognize three components to jurisdiction: "(1) jurisdiction over the subject matter—the subject matter in this connection was the criminal offense of murder, (2) jurisdiction over the person, and (3) the authority under law to pronounce the particular judgment and sentence herein rendered." *Petition of Dare*, 1962 OK CR 35, ¶ 5, 370 P.2d 846, 850–51. The subject matter jurisdiction of Oklahoma courts is established by Article 7 of the Oklahoma Constitution and Title 20 of our statutes, which grant general criminal jurisdiction to our district trial courts. Basic rules of federalism dictate that Congress has no power to expand or diminish that jurisdiction except where Congress has created a

federal cause of action and allowed state courts to assume jurisdiction. See *Simard v. Resolution Trust Corp.*, 639 A.2d 540, 545 (D.C. 1994) (noting presumption of concurrent jurisdiction among federal and state courts is rebutted only by a “clear expression by Congress vesting federal courts with exclusive jurisdiction”). Were it otherwise, Congress could legislatively interfere with the authority of state courts to hear any and all types of state crimes or civil causes of action.

¶3 What Congress can do and has done is exercise its own territorial jurisdiction over Indians in Indian Country by virtue of its plenary power to regulate affairs with Indian tribes. “Congress possesses plenary power over Indian affairs, including the power to modify or eliminate tribal rights.” *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 343 (1998). Federal criminal authority over so-called “federal enclaves” is found at 18 U.S.C. § 7, which begins with the words, “The term ‘special maritime and **territorial jurisdiction** of the United States’, as used in this title, includes . . .” (emphasis added). The Indian Country Crimes Act, 18 U.S.C. § 1152, with exceptions, “extends the general criminal laws of federal maritime and enclave jurisdiction to Indian country” *Negonsott v.*

Samuels, 507 U.S. 99, 102 (1993). Thus, a plain reading of *Negonsott* in tandem with Section 7 makes clear that it is territorial jurisdiction, not subject matter jurisdiction, which is extended into Indian Country by these federal criminal statutes and which preempts corresponding state authority in such instances. *See also United States v. Smith*, 925 F.3d 410, 415-16 (9th Cir.), *cert. denied*, 140 S.Ct. 407 (2019) (finding Indian Country is a federal enclave for purposes of 18 U.S.C. § 7). In *United States v. Langford*, 641 F.3d 1195, 1197 n.1 (10th Cir. 2011), the Tenth Circuit stated explicitly that the federal jurisdiction under these statutes is not subject matter jurisdiction:

When we speak of jurisdiction, **we mean sovereign authority, not subject matter jurisdiction.** *Cf.* [*United States v.*] *Prentiss*, 256 F.3d [971,] 982 (disclaiming the application of subject matter jurisdiction analysis to cases involving an inquiry under the ICCA). This is consistent with use of the term in *United States v. McBratney*, 104 U.S. 621, 623-4, 26 L.Ed. 869 (1881).

(Emphasis added).

¶4 This is an important distinction, because the lack of subject matter jurisdiction cannot be waived or forfeited and may be raised at any point in the litigation. Conversely, territorial jurisdiction is subject to waiver. *See Application of Poston*, 1955 OK CR 39, ¶ 35,

281 P.2d 776, 785 (request for relief on ground that district court did not have territorial jurisdiction was denied; claim was deemed waived because it was not raised below). *See also State v. Randle*, 2002 WI App 116, ¶ 14, 252 Wis. 2d 743, 751, 647 N.W.2d 324, 329 (concluding territorial jurisdiction subject to waiver in some instances); *Porter v. Commonwealth*, 276 Va. 203, 229, 661 S.E.2d 415, 427 (2008) (territorial jurisdiction is waived if not properly and timely raised); *In re Teagan K.-O.*, 335 Conn. 745, 765 n. 22, 242 A.3d 59, 73 n. 22 (2020) (territorial jurisdiction may be subject to waiver). *But see State v. Dudley*, 364 S.C. 578, 582, 614 S.E.2d 623, 625-26 (2005) (“Although territorial jurisdiction is not a component of subject matter jurisdiction, we hold that it is a fundamental issue that may be raised by a party or by a court at any point in the proceeding. The exercise of extraterritorial jurisdiction implicates the state’s sovereignty, a question so elemental that we hold it cannot be waived by conduct or by consent.” (citation and footnote omitted)).

¶5 Characterizing Sections 1152 and 1153 as implicating subject matter jurisdiction, as many courts have, allows a defendant, knowing he is Indian and that his crimes fall within the Major Crimes Act, to forum shop by rolling the dice at a state trial and then wiping

that slate clean by asserting his Indian status if he receives an unsatisfactory verdict in state court. Viewing it as territorial jurisdiction avoids this absurdity and allows the possibility that procedural bars, laches, etc. might preclude some *McGirt* claims.¹ It also better explains our holding in *State ex rel. Matloff v. Wallace*, 2021 OK CR 21, __ P.3d __, that *McGirt* claims which likely would have been viable at the time of trial, had they been raised, may no longer be pursued in post-conviction proceedings.

¹ The *McGirt* opinion tacitly acknowledges potential procedural bars, noting the State of Oklahoma had “put aside whatever procedural defenses it might have.” *McGirt*, 140 S.Ct. at 2460. Those defenses would not be relevant if subject matter jurisdiction, which is non-waivable, were concerned.

HUDSON, VICE PRESIDING JUDGE: SPECIALLY CONCURS

¶1 Today's decision dismisses convictions for rape by instrumentation, lewd acts with a child under 16 and pattern of criminal offenses from the District Court of McClain County based on the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). This decision is unquestionably correct as a matter of *stare decisis*. The record shows Appellant had some Indian blood and was recognized as an Indian by a tribe and/or the federal government at the time of the crimes. The record further shows the crimes in this case took place within the historic boundaries of the Chickasaw Reservation. Under *McGirt*, the State has no jurisdiction to prosecute Appellant for the crimes in this case. Instead, Appellant must be prosecuted in federal court where the exclusive jurisdiction for these crimes lies. See *Roth v. State*, 2021 OK CR 27, __P.3d__. I therefore as a matter of *stare decisis* fully concur in today's decision.

¶2 Further, I maintain my previously expressed views on the significance of *McGirt*, its far-reaching impact on the criminal justice system in Oklahoma and the need for a practical solution by Congress. See, e.g., *State v. Lawhorn*, 2021 OK CR 37, __P.3d__

(Hudson, V.P.J., Specially Concurs); *Sizemore v. State*, 2021 OK CR 6, 485 P.3d 867 (Hudson, J., Concur in Results).

INDIAN COUNTRY CRIMINAL JURISDICTIONAL CHART

for crimes committed within Indian Country as defined by 18 U.S.C. § 1151(a), (b) & (c) -

- (a) **formal** [recognized reservation boundaries] & **informal** [tribal trust lands] **reservations** (including rights-of-way/roads),
 (b) **dependent Indian communities**, & (c) **Indian allotments held in trust or restricted status** (including rights-of-way/roads).
(where no congressional grant of jurisdiction to the state/municipal government over the Indian country involved exists)

INDIAN OFFENDER :

1. VICTIM CRIMES: FOR OFFENSES AGAINST A PERSON OR A PERSON'S PROPERTY (not a tribal govt.)

WHO IS THE VICTIM?	WHAT WAS THE CRIME?	JURISDICTION
INDIAN (enrolled or recognized as an Indian by a federally recognized tribe or the federal government <u>and</u> possessing some degree of Indian blood)	Major Crimes Act Crimes (18 U.S.C. §1153): murder; manslaughter; kidnapping; maiming; sexual abuse/assault under Ch. 109-A; <u>incest</u> ; assault with intent to commit murder or in violation of 18 U.S.C. § 2241 or §2242; assault with intent to commit any felony; assault with a dangerous weapon with intent to do bodily harm; assault resulting in serious bodily injury as defined in 18 U.S.C. § 1365; assault resulting in substantial bodily injury of a spouse, intimate partner or dating partner; assault on a person under 16 years old; assault of a spouse, intimate partner or dating partner by strangulation; <u>felony child abuse</u> or neglect; arson; <u>burglary</u> ; robbery; felony theft under 18 U.S.C. § 661. (Elements: Individual Federal Statute in Title 18, U.S. Code) (assimilated state offense where underlined)	FEDERAL #
	All remaining crimes contained in tribal code: (Authority: tribal code or 25 CFR Pt. 11, if a CFR Court of Indian Offenses)	TRIBAL *
NON-INDIAN	Major Crimes Act Crimes (18 U.S.C. §1153): murder; manslaughter; kidnapping; maiming; sexual abuse/assault under Ch. 109-A; <u>incest</u> ; assault with intent to commit murder or in violation of 18 U.S.C. § 2241 or §2242; assault with intent to commit any felony; assault with a dangerous weapon; assault resulting in serious bodily injury; assault resulting in substantial bodily injury of a spouse, intimate partner or dating partner; assault on a person under 16 years old; assault of a spouse, intimate partner or dating partner by strangulation; <u>felony child abuse</u> or neglect; arson; <u>burglary</u> ; robbery; felony theft under 18 U.S.C. § 661. (Elements: Major Crimes Act - 18 U.S.C. § 1153) (state offense where underlined)	FEDERAL #
	Other federal crimes (unless the tribe has punished the Indian defendant), including crimes contained in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act: (Authority: General Crimes Act - 18 U.S.C. §§ 1152 and 13) All remaining crimes contained in tribal code: (Authority: tribal code or 25 CFR Pt. 11, if a CFR Court of Indian Offenses)	FEDERAL # TRIBAL *

2. VICTIMLESS CRIMES: NO PERSON OR PERSON'S PROPERTY INVOLVED IN CRIME

(e.g., traffic violations w/ no injury/damage to a person or their property, disorderly conduct, prostitution, violation of court order, etc.)

a. Crimes in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act. (Authority: 18 U.S.C. §§ 1152 and 13)	FEDERAL #
b. Crimes in tribal code. (Authority: tribal code or 25 CFR Pt. 11, if CFR Court)	TRIBAL *

3. SPECIAL CRIMES APPLICABLE TO INDIAN COUNTRY (Indian or Non-Indian)

FEDERAL #

(Federal prosecution based on crime committed in Indian country)

(e.g., Habitual Domestic Violence, 18 U.S.C. § 117; Failure to Register as Sex Offender, 18 U.S.C. § 2250; Unauthorized Hunting/Fishing, 18 U.S.C. § 1165 [tribal trust land and allotments only])

4. FEDERAL CRIMES GENERALLY APPLICABLE TO ANY PERSON NATIONWIDE (Indian or Non-Indian) (Crime Affecting Interstate Commerce or a Federal Interest)

FEDERAL #

(Federal prosecution NOT based on territorial jurisdiction over location of crime)

(e.g., drug possession/trafficking, firearm possession by prohibited person, mail fraud, embezzlement or theft from tribe or federal government, theft from casino, failure to report child abuse, etc.) (Authority: individual federal statute)

NON-INDIAN OFFENDER:

1. VICTIM CRIMES: FOR OFFENSES AGAINST A PERSON OR PERSON'S PROPERTY (not a tribal govt.)

<i>WHO IS THE VICTIM?</i>	<i>WHAT WAS THE CRIME?</i>	<i>JURISDICTION</i>
INDIAN (enrolled or recognized as an Indian by a federally recognized tribe or the federal government <u>and</u> possessing some degree of Indian blood)	<p>Indian Country Crimes Act Crimes: All federal crimes which apply to the "special maritime and territorial jurisdiction of the United States under the U.S. Code." (Authority: General Crimes Act - 18 U.S.C. § 1152)</p> <p>All remaining crimes contained in state code (where there is no federal statute for the category/subject matter of offense) under the Assimilative Crimes Act, 18 U.S.C. § 1152. (Authority: General Crimes Act - 18 U.S.C. § 1152)</p> <p>Domestic Violence, Dating Violence, or Violation of Protection Order offenses [when defendant: 1) resides in Indian country, 2) is employed in Indian country, or 3) is a spouse, intimate partner or dating partner of a member of a participating tribe or is an Indian residing in Indian country of a participating tribe] (<i>Special Domestic Violence Criminal Jurisdiction- "SDVCJ"</i>) (Authority: tribal code pursuant to authority of 25 U.S.C. § 1304)</p>	<p>FEDERAL #</p> <p>FEDERAL #</p> <p>TRIBAL *</p>
NON-INDIAN	<p>All crimes contained in state code. (Authority: <i>United States v. McBratney</i>, 104 U.S. 621 (1881))</p>	STATE

2. VICTIMLESS CRIMES: NO PERSON OR PERSON'S PROPERTY INVOLVED IN CRIME

STATE ONLY

(traffic violations w/no injury/damage to a person or their property, disorderly conduct, prostitution, driving under the influence, drug offenses, failure to register as a sex offender, violation of a court order, illegal gun possession, etc.)

3. SPECIAL CRIMES APPLICABLE TO INDIAN COUNTRY (Indian or Non-Indian)

FEDERAL #

(Federal prosecution based on crime committed in Indian country)

(e.g., Habitual Domestic Violence, 18 U.S.C. § 117; Failure to Register as Sex Offender, 18 U.S.C. § 2250; Unauthorized Hunting/Fishing, 18 U.S.C. § 1165 [tribal trust land and allotments only])

4. FEDERAL CRIMES GENERALLY APPLICABLE TO ANY PERSON NATIONWIDE (Indian or Non-Indian) (Crime Affecting Interstate Commerce or a Federal Interest)

FEDERAL #

(Federal prosecution NOT based on territorial jurisdiction over location of crime)

(e.g., drug offenses, firearms offenses, mail fraud, embezzlement or theft from tribal organization, theft from casino, failure to report child abuse, etc.) (Authority: individual federal statute)

* A tribal court may be a tribal court established under tribal law or a "CFR" Court of Indian Offenses established and operated by the Bureau of Indian Affairs under Title 25, Part 11 of the Code of Federal Regulations for a tribe without it's own court system

includes juvenile defendants (under 18 years of age at time of the incident) prosecuted as juvenile delinquents under 18 U.S.C. § 5032

*created by Arvo Q. Mikkanen, Assistant U.S. Attorney & Tribal Liaison,
U.S. Attorney's Office, Western District of Oklahoma
(may be reproduced with attribution to author)*

July 2021 Version

PLEASE TELL US WHAT YOU WANT



The purpose of the State Judicial Outreach Liaison program administered through the Oklahoma Highway Safety office and the OBA is to increase judiciary knowledge of challenges in adjudication Impaired Driving cases. We do this through peer-to-peer judicial education, technical assistance and links to resources.

We try to review and distribute current research, data and information on

evidence-based sentencing practices, DUI Courts, Ignition Interlocks, caselaw and offender assessment and treatment.

But we can't meet our goal without help from you. Please let us know about interesting issues, facts and arguments you have encountered in your courts. Share your successes and failures and tell us what you want to learn more about.

SJEP Staff:

Judge Rod Ring (Ret.)
Judicial Outreach Liaison
405.246.5023
joloklahoma@gmail.com

Janet Johnson
Project Director
Director of Educational Programs,
Oklahoma Bar Association
405.416.7028
JanetJ@okbar.org

Gary Berger
Layout & Design
Production Specialist,
Oklahoma Bar Association
GaryB@okbar.org



SUBMISSIONS/ COMMENTS

Please send your submissions
or comments to:

Judge Rod Ring, Retired
Judicial Outreach Liaison
Joloklahoma@Gmail.com
405.246.5023

