

CAPITAL CASE
No. 05-10787

IN THE SUPREME COURT OF THE UNITED STATES

PATRICK DWAYNE MURPHY,

Petitioner,

v.

The STATE OF OKLAHOMA

Respondent.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE OKLAHOMA COURT OF CRIMINAL APPEALS*

REPLY BRIEF FOR THE PETITIONER

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REPLY BRIEF FOR THE PETITIONER

Patrick Dwayne Murphy respectfully submits this brief in reply to the Respondent's Opposition to Mr. Murphy's Petition for a Writ of Certiorari.

I. It Is Not Reasonable to Apply "Minimum Contacts" Analysis to Federal Criminal Jurisdiction under 18 U.S.C. § 1151(c)

Respondent claims that the Oklahoma Court of Criminal Appeals's [OCCA] minimum contacts analysis was reasonable. Opp. at 7. That assertion defies credulity. Federal criminal jurisdiction over Indian country is controlled by 18 U.S.C. § 1151, not by minimum contacts. Were this Court to sanction a minimum contacts analysis, every tribe in the Nation would be stripped of

its sovereign rights and subject to the jurisdiction of the state in which the tribe resides. The OCCA's decision was wrong. It is necessary for this Court to grant certiorari to correct this error in interpretation of federal law and to reaffirm that the scope of section 1151(c) jurisdiction is clear and its meaning plain and unambiguous. Under section 1151(c), land remains Indian until all Indian title is gone. To suggest otherwise would violate the plain language of the statute.

Although Respondent suggests that correcting the OCCA's error would wreck havoc on criminal jurisdiction in Oklahoma, Respondent does not contest the facts as stated in the Petition. Oklahoma State officials and Creek Nation Lighthorsemen are cross deputized. *See Opp.* at 5. Policing of this checkerboard area of allotment and non-allotment land proceeds smoothly, with all law enforcement agencies understanding that it is incumbent on them to ascertain land ownership before asserting jurisdiction over a crime. They simply did not do so in this case – in part due to the State's mislocation of the crime scene at the time of trial.

Presumably to deflect responsibility from the State for its failure to correctly locate this crime, Respondent suggests that the Petitioner incorrectly asserted that the State of Oklahoma mislocated the crime. *Opp.* at 5. Respondent's claim is belied both by Respondent's own brief in Opposition as well as by the record. Respondent ultimately concedes, as it must, that the State's witness at trial "inaccurate[ly]" located the crime. *Opp.* at 11 n.1. The trial judge before whom the evidentiary hearing was conducted stated "Agent Dalley's trial testimony that the crime scene was located approximately one mile south of Highway 9 on Vernon Road was a misstatement." *Evid. Hearing Order*, at 4, ¶ 14, *State v. Murphy* (D. Ct. McIntosh County, Oklahoma, Dec. 9, 2004). Agent Dalley was forced to concede at the evidentiary hearing that she had mislocated the crime at trial. Compare II Tr. 421, State's Trial Ex. 13. with *Evid. Hr. Tr.* (Nov. 18, 2004), at 50 ("Q. And was that testimony accurate? A. No, sir, that was not.").

Ultimately, there are no relevant facts in dispute. The criminalist who processed the crime scene and who was responsible for ascertaining the location of the crime, Agent Dalley, mislocated the crime. The true and correct location of the crime was proved at the evidentiary hearing and Respondent does not contest the ownership of the tract on which the crime occurred. The crime occurred on land that has restricted mineral interests which are owned by the descendants of the original Creek allottee.

Finally, Respondent argues that the OCCA's decision "prevents a deluge of uncertainty in law enforcement." Opp. at 12. But nothing could be further from the truth. If allowed to stand, the OCCA's decision expands state jurisdiction over lands traditionally treated as Indian country. Countless Indian tribes in Oklahoma will now be subject to the uncertainty of potential criminal liability for operating casinos and other similar enterprises on land held as Indian country by restricted mineral interests. As discussed in the Petition – those interests are not hypothetical. Tribes in Oklahoma are now operating casinos on land held as Indian by mineral interests. Reversal would reaffirm the settled rights of tribe in Oklahoma and prevent a result that runs counter to the plain language of Section 1151(c). This issue is of critical importance to Mr. Murphy and presents an important question which requires resolution by this Court.

II. Whether the Muscogee (Creek) Nation Has Been Disestablished Is a Question Properly Before this Court and Is an Important Question of Law That Requires This Court's Resolution

Respondent suggests that this case is "not the proper vehicle" for determining the disestablishment of the Muscogee (Creek) Nation. Opp. at 13. One wonders what better vehicle there could be. Mr. Murphy's life depends on the outcome of Indian country jurisdiction. The issue was fairly and fully presented to the courts below and those courts chose to ignore the question, saying only that if federal courts had not yet reached the issue, they would not step in and do so in

this case. These courts should not be able to deprive Mr. Murphy of his right, as a Creek citizen, to be tried in federal court, simply because they choose to look the other way.

Moreover, Respondent has no answer to settled case law which show that certiorari is warranted in Indian cases where the decision has a “significant impact on the relationship between Indian tribes and the Government.” *United States Department of the Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 7 (2001). See also *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 141 (1972) (granting certiorari “because of the importance of the issues for [certain] Indians”); *Choctaw Nation of Indians v. United States*, 318 U.S. 423, 424 (1943) (“We granted certiorari because the case was thought to raise important questions concerning the relations between the two tribes and the United States.”); *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 230 (1985) (granting certiorari because of “the importance of the Court of Appeals’ decision not only for the Oneidas, but potentially for many eastern Indian land claims”).

Finally, Respondent has no response on the merits of the question of disestablishment except to misquote the law – apparently not grasping the concept that allotment of lands does not cause the disestablishment of a reservation, unless accompanied by other affirmative acts or language of cession. See, e.g., *Ellis v. Page*, 351 F.2d 250, 252 (10th Cir. 1965) (“[A]llotment of lands in severalty or the conveyance of land to non-Indians d[oes] not operate to disestablish the reservation or create a state jurisdictional enclave within the limits of the reservation.”). Moreover, Respondent confuses the issue of federal jurisdiction under 18 U.S.C. § 1151(a), which was presented in the Petition, with federal jurisdiction under 18 U.S.C. § 1151(b), an issue not presented to this Court.¹

¹Confusingly, in response to Petition, Reasons for Granting the Writ, Part II, Respondent addresses that part of the OCCA’s decision on Dependant Indian Community. See Opp. at 14. The issue of Indian country jurisdiction based on 18 U.S.C. § 1151(b) was not raised by Petitioner and is not before this Court.

The resolution of the disestablishment of the Muscogee (Creek) Nation will control whether Mr. Murphy is subject to the penalty of death. It is an important question affecting the rights of the Muscogee (Creek) Nation as well as members of the other Civilized Tribes. These represent substantial reasons for this Court to grant certiorari.

CONCLUSION

For the foregoing reasons, as well as those set out in the petition, certiorari should be granted.

Respectfully submitted, this 1st day of June, 2006,

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