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IN THE OKLAHOMA COURT OF CRIMINAL APPEALS



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| MARVIN KEITH STITT, | ) | |
| | ) | |
| Appellant, | ) | |
| | ) | Case No. M-2022-984 |
| v. | ) | |
| | ) | Tulsa Municipal Court No. 7569655 |
| CITY OF TULSA, | ) | |
| | ) | |
| Respondent. | ) | |
| | ) | |

## NOTICE OF SUPPLEMENTAL AUTHORITY

The *Amici* Cherokee Nation, Chickasaw Nation, and Choctaw Nation of Oklahoma ("Nations") submit as supplemental authority the entry of final judgment in *Hooper v. City of Tulsa*, which bars Tulsa from relitigating its jurisdictional claim under Section 14 of the Curtis Act here, and *State ex rel. Ballard v. Crosson*, 2023 OK CR 18, 540 P.3d 16, which confirms that if *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980) were applicable here, a particularized inquiry into the state, federal, and tribal interests at stake would first have to be conducted in the trial court.[1]

1. On December 15, 2023, the District Court held in *Hooper* that, "[a]s a matter of Tenth Circuit law, Section 14 of the Curtis Act no longer applies to Tulsa and therefore Tulsa no longer has jurisdiction over municipal violations committed by its Indian inhabitants," *Hooper v. City of*

[1] The Nations earlier addressed the effect of *Hooper* and the inapplicability of *Bracker* in this case. *See* Suppl. Br. of *Amici Curiae* Cherokee Nation et al. (Oct. 19, 2023) ("Nations' Suppl. Br."). We hold to those positions, and to our showing that, in any event, settled principles of federal law reject state jurisdiction under the *Bracker* framework, *see* Nations' Suppl. Br. at 17-19, and address the effect of *Crosson* assuming, only *arguendo*, that *Bracker* applied to require particularized inquiry into the balance of interests in Appellant's conduct.

*Tulsa*, No. 21-CV-00165-WPJ-JFJ, slip op. at 2 (N.D. Okla. Dec. 15, 2023), ECF No. 52 ("Order"), and on December 18, 2023, the District Court entered final judgment accordingly, ECF No. 53. Tulsa did not appeal. *See* Fed. R. App. P. 4(a)(1)(A) (showing Tulsa had thirty days to appeal). The prior federal court judgment in *Hooper* precludes Tulsa from rearguing its jurisdictional claim under Section 14 of the Curtis Act in this case.

"Federal law governs both the preclusive and res judicata effect of [a] prior federal-court judgment[.]" *Veiser v. Armstrong*, 1984 OK 61, ¶ 7, 688 P.2d 796, 799; *see also Heck v. Humphrey*, 512 U.S. 477, 488 n.9 (1994); *Orjias v. Stevenson*, 31 F.3d 995, 1010 (10th Cir. 1994). The Tenth Circuit's four-part standard for collateral estoppel requires that:

> (1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party, or in privity with a party, to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.

*Harrison v. Eddy Potash, Inc.*, 248 F.3d 1014, 1022 (10th Cir. 2001). All elements are met here.

First, this case and *Hooper* raise the same issue. As described by Appellant, the "entire issue herein" is whether "Congress expressly conferred criminal subject matter jurisdiction to the Appellee under the Act of June 28, 1898, § 14 . . . [that] still exists to date such that the Appellee has state criminal jurisdiction to prosecute crimes." Appellant's Br. at 3 (Apr. 13, 2023); *cf. Hooper v. City of Tulsa*, 71 F.4th 1270, 1288 (10th Cir. 2023) ("[B]y its plain text, Section 14 of the Curtis Act no longer applies to Tulsa."). On remand, the District Court in *Hooper* held that "Tulsa no longer has jurisdiction over municipal violations committed by its Indian inhabitants." Order at 2. Tulsa now seeks to relitigate that issue here. Appellee City of Tulsa's Suppl. Br'g 1 (Oct. 19, 2023) ("The City has jurisdiction over Indian municipal offenders under the Curtis Act as the Tenth Circuit's *Hooper* decision was incorrectly decided.").

Second, that issue was fully adjudicated on the merits in *Hooper*, the "prior action."[2] *Brady v. UBS Fin. Servs., Inc.*, 538 F.3d 1319, 1327 (10th Cir. 2008) ("To be granted preclusive effect, the judgment must be final and not subject to reconsideration or amendment." (citations omitted)). After the Tenth Circuit ruled that "Section 14 of the Curtis Act no longer applies to Tulsa," 71 F.4th at 1288, and the Supreme Court denied Tulsa's stay application, *see City of Tulsa v. Hooper*, 143 S. Ct. 2556 (2023), Tulsa sought no further review, though it could have, *see* 17 Wright & Miller, *Federal Practice and Procedure* § 4036 (3d ed., Apr. 2023 update) ("the Supreme Court may grant certiorari to review interlocutory or procedural rulings" of courts of appeals).[3] Nor did it appeal the District Court's subsequent entry of final judgment, *see supra* at 1-2, from which its time to do so has since expired, *see* Fed. R. App. P. 4(a)(1)(A). The prior action therefore finally adjudicated the issue presented here.

The third element is met as Tulsa was a party in *Hooper* and is a party here. And as Tulsa had a full and fair opportunity to litigate the validity of Section 14 of the Curtis Act in the prior action—which it twice declined to appeal—the fourth element is also met. The inquiry into whether a party had a full and fair opportunity to litigate an issue "[o]ften . . . will focus on whether there were significant procedural limitations in the prior proceeding, whether the party had the incentive to litigate fully the issue, or whether effective litigation was limited by the nature or relationship of the parties." *SIL-FLO, Inc. v. SFHC, Inc.*, 917 F.2d 1507, 1521 (10th Cir. 1990) (citation omitted). Tulsa encountered no procedural limitations in litigating the merits of its

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[2] *See In re Sprint Nextel Derivative Litig.*, 437 F. Supp. 3d 927, 938 (D. Kan. 2020) (quoting Restatement (Second) of Judgments § 14).

[3] *See* 28 U.S.C. § 1254 ("Cases in the courts of appeals may be reviewed by the Supreme Court . . . [b]y writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.").

Section 14 claim in *Hooper*, and its briefing of the merits of its Section 14 claim in the Municipal Court, District Court, Court of Appeals, and Supreme Court demonstrates its incentive to fully litigate the issue. And the City's relationship to Hooper presented no bar to effective litigation.

Tulsa is therefore collaterally estopped from re-litigating whether Section 14 is still in effect. The Court must refuse to hear Tulsa's Section 14 argument and reverse the decision below.

2. This Court's November 16, 2023 decision in *Crosson* confirms that if *Bracker* were applicable here, and its application were to require a particularized factual inquiry, that inquiry must be conducted in the trial court first. *See* Nations' Suppl. Br. at 19-20.[4] In *Crosson*, this Court held that the question whether the State could exercise criminal jurisdiction over Indians in Indian country under *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022), should be litigated first in the court below, explaining that "[w]hile these arguments will undoubtedly play out in the trial court, it is our holding that they should be resolved by our adversarial system," and issuing mandamus relief in part "to allow for the full litigation of the parties' jurisdictional dispute." 2023 OK CR 18, ¶¶ 7-8, 540 P.3d at 17-18. So too here. As in *Crosson*, there has been no development of the factual record on any tribal, state, and federal interests—the City eschewed the chance to develop facts beyond Appellant's driving speed. *See* Nations' Suppl. Br. at 20 (citing Oct. 20, 2022 Trial Tr. at 10:21-25:23, 40:23-43:23).

[4] The Nations there explained that when *Bracker* "require[s] a particularized inquiry into the tribal, state, and federal interests in the Appellant's conduct," that inquiry "would require a factual record," which has not been developed on those questions in this case. *Id.*

## CONCLUSION

*Hooper* prevents the City from relitigating its Section 14 claim here, and *Crosson* requires the trial court to first develop any factual record that may be necessary to resolve jurisdictional questions.

Dated: February 5, 2024.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of February 2024, I caused a true and correct copy of this Supplemental Brief of *Amici Curiae* Cherokee Nation, Chickasaw Nation, and Choctaw Nation of Oklahoma to be served via first class mail to each of the following:

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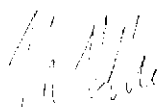

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