

**ORIGINAL**



**2025 OK CR 5  
IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA**

**MARVIN KEITH STITT,** )  
 )  
 ) **Appellant,** )  
 )  
 ) **v.** )  
 )  
 ) **THE CITY OF TULSA,** )  
 )  
 ) **Appellee.** )

**FOR PUBLICATION**

**Case No. M-2022-984**

**FILED**  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

**MAR - 6 2025**

**JOHN D. HADDEN  
CLERK**

**SUMMARY OPINION**

**ROWLAND, JUDGE:**

¶1 Appellant, Marvin Keith Stitt, was convicted of Aggravated Speeding (Tulsa, Okla., Rev. Ordinances Title 37, § 617(C) (2021)) following a non-jury trial before the Honorable Mitchell McCune, Municipal Judge, and fined \$250.00 in City of Tulsa Municipal Court Citation/Case No. 7569655.

**ANALYSIS**

¶2 Mr. Stitt was issued City of Tulsa (Tulsa) Municipal Citation/Case No. 7569655 on February 3, 2021, alleging he was driving 16-20 miles per hour over the posted speed limit. On June 16, 2022, Tulsa was allowed to file an amended citation alleging Mr.

Stitt was guilty of aggravated speeding for driving more than twenty miles per hour over the posted speed limit (78 miles per hour where the speed limit was 50 miles per hour). (Tulsa, Okla., Rev. Ordinances Title 37, § 617(C) (2021)). Prior to his conviction, Mr. Stitt filed multiple motions to dismiss the charge, arguing Tulsa lacked criminal jurisdiction because he was an enrolled citizen of the federally recognized Cherokee Nation tribe and the alleged crime occurred within the boundaries of the Muscogee (Creek) Nation. See *McGirt v. Oklahoma*, 591 U.S. 894 (2020). Tulsa argued that it retained pre-statehood jurisdiction over Indians pursuant to the Curtis Act of 1898. Curtis Act, ch. 517, § 14, 30 Stat. 495, 499-500 (1898)(“Curtis Act”).

¶3 The trial court held multiple hearings on Mr. Stitt’s motions to dismiss, and on June 15, 2022, Judge McCune denied Mr. Stitt’s motions. Tulsa’s argument in this case before Judge McCune centered on the United States District Court for the Northern District of Oklahoma’s April 13, 2022 order in *Hooper v. City of Tulsa*, No. 21-cv-165-WPJ-JFJ, 2022 WL 1105674 (N.D. Okla. Apr. 13, 2022). Judge McCune relied on the Northern District’s April 13, 2022 order in *Hooper* adopting Tulsa’s identical argument that it retained pre-

statehood jurisdiction over Indians pursuant to the Curtis Act. *Id.* at 5. Following a non-jury trial, Mr. Stitt was convicted on October 20, 2022, by Judge McCune and fined \$250.00. Mr. Stitt announced his intent to appeal.

¶4 Mr. Stitt filed his appeal brief with this Court on April 13, 2023, arguing in two propositions (Proposition A and B) that Section 14 of the Curtis Act did not allow Tulsa jurisdiction over his traffic violation and attacking the federal district court's order in *Hooper*. Tulsa filed its brief on June 12, 2023, repeating its Section 14 argument and relying on the April 13, 2022 *Hooper* order.

¶5 On June 28, 2023, the Tenth Circuit reversed the lower court in *Hooper* after finding that Tulsa's Curtis Act claims were without merit. *Hooper v. City of Tulsa*, 71 F.4th 1270, 1285-88 (10th Cir. 2023). The parties in *Hooper* made the same arguments before the Tenth Circuit regarding Section 14 of the Curtis Act and whether it provides Tulsa with criminal jurisdiction over Indian defendants. *Id.* at 1273. The Tenth Circuit ruled that it was dispositive that what powers Tulsa possessed pursuant to Section 14 of the Curtis Act were lost 1) upon statehood and 2) when Tulsa incorporated under the laws of the State of Oklahoma. *Id.* at 1285-87.

¶6 On September 19, 2023, this Court entered an order granting Appellee’s motion seeking leave to file a supplemental brief addressing the Tenth Circuit’s final opinion in *Hooper*. We directed both parties, and invited the amicus parties, to address “the impact of the *Hooper* decision on this appeal” and to address “the impact of [*Oklahoma v.*] *Castro-Huerta* [597 U.S. 629 (2022)] on the possible preemption of municipal jurisdiction in this case, and whether under [*White Mountain Apache Tribe v.*] *Bracker* [448 U.S. 136 (1980)] the City of Tulsa has concurrent jurisdiction over its municipal offenses.” See Order Directing Supplemental Briefing at 2, *Stitt v. Tulsa*, No. M-2022-984 (Okla. Cr. September 19, 2023) (not for publication).

¶7 On October 19, 2023, Appellant filed a supplemental brief including a Proposition A arguing this Court should rely on the Tenth Circuit’s holding in *Hooper* and deny Tulsa’s Curtis Act arguments. This Court recently addressed and denied the same *Hooper* arguments made by Appellant in this case in *City of Tulsa v. O’Brien*, 2024 OK CR 31, ¶¶ 36-37, \_\_\_P.3d\_\_\_. *O’Brien* noted that while this Court is not bound by Tenth Circuit precedents, we will follow the guidance of the Tenth Circuit until the United States Supreme Court rules on the issue. *Id.*, 2024 OK CR 31, ¶ 37 (citing *McCauley v. State*,

2024 OK CR 8, ¶¶ 4-5, 548 P.3d 461, 464-65; *Davis v. State*, 2011 OK CR 29, ¶ 119, 268 P.3d 86, 119, as corrected (Feb. 7, 2012)). The Tenth Circuit correctly addressed the identical issues raised by Tulsa in this case in *Hooper*, and the analysis in the Tenth Circuit’s opinion establishes that the entirety of Tulsa’s Curtis Act arguments are without merit. *Hooper*, 71 F.4th at 1285-87. As a result, Appellant’s original Propositions A and B and Supplemental Proposition A are denied.

¶8 Appellant’s supplemental brief also included a Proposition B maintaining *Castro-Huerta* did “not impact this case in any way.” *O’Brien* also addressed and denied virtually the same *Castro-Huerta* arguments made by Appellant in this case. *Id.*, 2024 OK CR 31, ¶¶ 13-35. After determining that state jurisdiction was not preempted as a result of *Bracker* balancing, this Court found that Oklahoma has concurrent criminal jurisdiction in Indian country over non-member Indian defendants accused of committing non-major crimes. *Id.*, 2024 OK CR 31, ¶ 35. We held that the balance of interests under *Bracker* does not preempt the exercise of state (and thus municipal) jurisdiction. *Id.* Pursuant to this Court’s reasoning in *O’Brien*, Tulsa’s exercise of jurisdiction in this case does not unlawfully infringe upon

tribal self-government and Appellant's claims are without merit.  
Proposition B in Appellant's supplemental brief is denied.

**DECISION**

¶9 The Judgment and Sentence of the Municipal Court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2025), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**AN APPEAL FROM THE MUNICIPAL COURT OF THE CITY OF  
TULSA, THE HONORABLE MITCHELL MCCUNE,  
MUNICIPAL JUDGE**

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**OPINION BY: ROWLAND, J.**

LUMPKIN, P.J.: Concur  
MUSSEMAN, V.P.J.: Concur  
LEWIS, J.: Concur in Part and Dissent in Part  
HUDSON, J.: Concur

**LEWIS, J., CONCURRING IN PART AND DISSENTING IN PART:**

¶1 I concur in the Court's holding regarding the Curtis Act and *Hooper v. City of Tulsa*, but respectfully dissent from the remainder of the opinion for reasons stated in my separate opinion in *City of Tulsa v. O'Brien*. The Court should reverse this conviction of an Indian defendant in an Oklahoma municipal court for a crime committed within the Muskogee Creek Reservation. Congress has never conferred criminal jurisdiction on the State or its municipal subdivisions to prosecute Indians for crimes committed in Indian Country.