

IN THE SUPREME COURT OF THE CHEROKEE NATION

KIMBERLIE GILLILAND,
Appellant,

v.

CHEROKEE NATION,
Appellee.

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CASE NO.: SC-17-08

2016 AUG 13 PM 2:59
CHEROKEE NATION
SUPREME COURT
GENERAL BIRD COURT CLERK

FILED

Appeal from District Court Case of the Cherokee Nation
Case No. CRM-16-54
Honorable T. Luke Barteaux, Trial Judge

Affirmed

Appellant:

Chad Smith for Kimberlie Gilliland
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Tahlequah, Ok 74464
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chad@chadsmith.com

Appellee:

Diane Hammons for Cherokee Nation
P.O. Box 141
Tahlequah, Ok 74465
adianehammons@gmail.com

Before:

John C. Garrett, Chief Justice
James G. Wilcoxon, Justice
Angela Jones, Justice
Lynn Burris, Justice
Mark L. Dobbins, Justice

Opinion by:

James G. Wilcoxon, Justice

Article VII §6 further provides that District Court jurisdiction is general:

The District Courts of the Cherokee Nation shall be courts of general jurisdiction and shall be vested with original jurisdiction, not otherwise reserved to the Supreme Court, to hear and resolve disputes arising under the laws or Constitution of the Cherokee Nation in both law and equity, whether criminal or civil in nature.

Reading these two constitutional provisions together, there does not appear to be any acknowledgment of a self-imposed limitation on jurisdiction. Title 20, Sections 24 and 25, likewise do not purport to limit the jurisdiction allowed under the Cherokee Constitution.

Clearly, each case must be approached on its facts and Cherokee jurisdiction is not unlimited. Notwithstanding, the District Court does have jurisdiction over crimes of this nature which violate Cherokee law committed by Cherokee citizens within the historical boundaries of the Tribe. *Murphy v. Royal*, 866 F.3d., 1164 (10th Cir. 2017); *Duro v. Reina*, 494 U.S. 676 (1990).

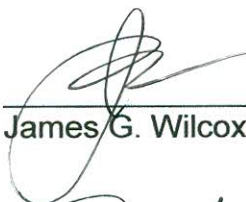
In this case, Gilliland as a tribal member and employee of the Foundation subjected herself to Cherokee criminal law. The board members of the Foundation are appointed by the Chief and approved by the council. The Foundation receives substantial funding from the Tribe. Its activities are located within the historical boundaries of the Tribe and in this case its headquarters is located in Tahlequah, the traditional capital of the Cherokee Nation. All of this speaks to the fact that this conduct if true can arguably be said to have affected the Tribe's right to govern itself thereby subjecting Gilliland to tribal jurisdiction. The Cherokee Nation can prosecute the criminal conduct of its voluntary membership for crimes occurring within the boundaries of its undiminished territory. *Duro v. Reina*, 494 U.S. 676 (1990). Personal jurisdiction over

the criminal conduct of a tribe's members may extend even to areas outside of Indian country. *Kelsey v. Pope*, 809 F.3d 849 (6th Cir. 2015). Because Gilliland is a member and her alleged conduct can arguably be said to undermine tribal self-government or internal relations, the District Court has jurisdiction here.

Finally, Gilliland complains that she is unconstitutionally being subjected retroactive prosecution. To the contrary, the tribal statutes and constitution were in effect long before her alleged conduct took place. She would be hard pressed to prevail on an argument that as a member she did not know that she might be subject to the laws of by the Cherokee Nation.

THEREFORE, IT IS HEREBY ORDERED that the Opinion of the District Court is affirmed.

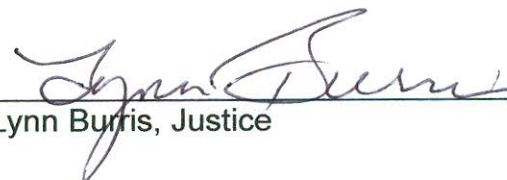
Dated this 15 day of August, 2018.

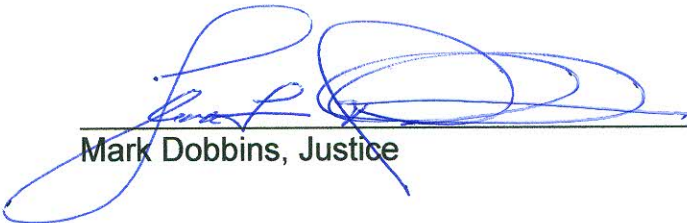

James G. Wilcoxon, Justice

Concurring:


John C. Garrett, Chief Justice

Angela Jones, Justice


Lynn Burris, Justice



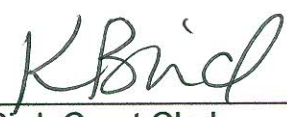
Mark Dobbins, Justice

Certificate of Mailing

I, Kendall Bird, certify that on the 13th day of August, 2018, I mailed, emailed and/or faxed a true copy of the above and foregoing to the following:

Chad Smith, chad@chadsmith.com
Diane Hammons, adianehammons@gmail.com

Judge Barteaux, via email
Kristi Moncooyea, via email



Kendall Bird, Court Clerk