

AFFIDAVIT OF ROGER WILEY

Roger Wiley, being first duly sworn upon oath, alleges and states:

- ¶ 1. I am of legal age and have personal knowledge of the facts set forth herein.
- ¶ 2. I served as Attorney General of the Muscogee (Creek) Nation from 2005 to 2010 and from 2012 to 2016. I resumed service as the Nation's Attorney General in 2020.
- ¶ 3. For the time period July 9, 2019, through July 8, 2020, the Muscogee (Creek) Nation Office of the Attorney General ("OAG") presented to the Muscogee (Creek) Nation District Court the following cases for filing:

Criminal Felonies: 42
Criminal Misdemeanors: 31
Domestic Violence Felonies: 4*
Domestic Violence Misdemeanors: 6*

* Domestic violence cases are included in the felony and misdemeanor totals.

- ¶ 4. Following the United States Supreme Court's decision in *McGirt v. Oklahoma* on July 9, 2020, the following cases were presented by the OAG to the District Court for filing through September 30, 2021:

Criminal Felonies: 1,614
Criminal Misdemeanors: 1,157
Traffic Cases: 577
Juvenile Deprived: 19
Juvenile Delinquent: 59
Domestic Violence Felonies: 233*
Domestic Violence Misdemeanors: 244*

* Domestic violence cases are included in the felony and misdemeanor totals.

- ¶ 5. For the period January 1, 2021, through September 30, 2021, the OAG presented to the District Court the following cases for filing:

Criminal Felonies: 1,128
Criminal Misdemeanors: 720
Domestic Violence Felonies: 179*
Domestic Violence Misdemeanors: 176*

* Domestic violence cases are included in the felony and misdemeanor totals.


- ¶ 6. A substantial number of the cases we are prosecuting originated in referrals from the City of Tulsa Police Department. We prosecute the vast majority of the cases that are referred to us by the Tulsa Police Department. The Nation declines to prosecute Tulsa referrals where the referred case does not involve crimes committed in the Muscogee (Creek) Reservation, the case involves a non-Indian offender whose crimes fall within the jurisdiction of the United States, and/or the offender has been charged by federal prosecutors.

- ¶ 7. Since the United States Supreme Court’s *McGirt* decision, the Nation has thus far filed charges in 78 felony domestic violence cases and 55 misdemeanor domestic violence cases referred to the Nation by the Tulsa Police Department. In 14 of those cases, the defendant has been convicted. Another 61 have upcoming court dates.
- ¶ 8. I am aware of a statement in the amicus brief filed in the United States Supreme Court by the Cities of Tulsa and Owasso in *Oklahoma v. Castro-Huerta* asserting that search and arrest warrants are only available from the Nation during working hours. That is not correct. The Nation has a prosecutor and judge on-call 24 hours a day, 7 days a week, including holidays, to assist law enforcement with the warrant process and to issue warrants.
- ¶ 9. I am aware of statements in the amicus briefs filed by the Cities of Tulsa and Owasso and by the Oklahoma District Attorneys Association in the *Castro-Huerta* matter asserting that the Nation releases defendants from custody on low bond amounts while awaiting trial to avoid detention costs. Those statements are incorrect. Detention decisions are made by a district court judge, and any suggestion that budgetary considerations factor into judicial decisions with respect to bail amounts or release decisions is entirely without basis.
- ¶ 10. The Nation has budgeted considerable sums of money for detention purposes. The Nation has spent more than \$540,000 per month on pre-trial detention costs since *McGirt*. To the extent that bond amounts set by the Nation’s courts are lower than those set by the State—and I am not aware that they are—it is because the offenders are often poor and do not need a high bond amount to be incentivized to return to court.
- ¶ 11. With regard to the Johnny Little Cook case that is cited by the Cities of Tulsa and Owasso, while it is factually correct that Mr. Cook’s arrest warrant bond was set at \$20,000, that fact is only part of the picture. The Nation charged Mr. Cook with homicide and issued an arrest warrant on March 1, 2021, for the purpose of holding Mr. Cook until the federal government had an opportunity to file charges. When Mr. Cook was arrested on March 3, he was booked on the Nation’s warrant, but he also had an FBI hold placed upon him—that is, he was held without bond. The federal government filed a complaint in the Northern District of Oklahoma on March 3, 2021, a magistrate judge issued a warrant that same day, and the magistrate judge issued an order of detention on March 4, 2021. *See United States v. Cook*, 4:21-mj-00142. Mr. Cook has since been convicted of second-degree murder in federal court. *See United States v. Cook*, 4:21-cr-00106. On August 10, 2021, he was sentenced to 20 years’ imprisonment. *Id.*
- ¶ 12. I am aware of statements in the amicus briefs filed by the Cities of Tulsa and Owasso and by the District Attorneys Association alleging that the Nation must not be prosecuting cases because it has not subpoenaed Tulsa police officers to testify at trial. However, as in the federal and state court systems, the vast majority of the Nation’s criminal cases plead out and do not go to trial. As a result, subpoenas have not been necessary in many cases where we have obtained convictions since *McGirt*.
- ¶ 13. Following the decision in *McGirt*, the Nation has hired 6 new prosecutors and 7 new administrative staff.

- ¶ 14. Two prosecutors in the Muscogee (Creek) Nation Office of the Attorney General previously worked for the Tulsa County District Attorney's Office. Both have committed to the Tulsa County District Attorney's Office to serve as points of contact for that office, and we have repeatedly offered to provide case updates to that office, the Tulsa Police Department, and other district attorney, police, and sheriffs' offices upon request. The Tulsa County District Attorney's Office, Tulsa Police Department, and other district attorney, police, and sheriffs' offices rarely take us up on this offer. We heard the claims made in the Cities and District Attorneys' amicus briefs for the first time while reading those briefs, and could have provided accurate prosecution information regarding those cases had we been asked.
- ¶ 15. On July 1, 2021, the Nation received a case referral file from the Tulsa Police Department for an indecent exposure incident that occurred on May 31, 2021, which is the incident discussed on pages 8–9 of the Cities of Tulsa and Owasso amicus brief. The file includes Tulsa Police Department Incident Report, No. 2021-031068 (May 31, 2021), Tulsa Police Department Incident Report, No. 2021-031029 (May 31, 2021), and Tulsa Police Department Supplemental Offense Report, No. 2021-031068 (June 15, 2021), the three reports referenced in the Cities of Tulsa and Owasso amicus brief at page 9 note 5.
- ¶ 16. While the brief asserts that our office took no action in response to the referral, on July 28, 2021, the Nation charged Anthony Jerome Dillard, the offender in that incident, with two felony counts of indecent exposure. It is my understanding that no one from the City of Tulsa has ever contacted the Nation to inquire about the status of this case.
- ¶ 17. On October 26, 2021, the Nation received a case referral file from the Tulsa Police Department for a domestic violence incident that occurred on October 2, 2021, which is the second incident discussed on page 10 of the Cities of Tulsa and Owasso amicus brief. The file includes Tulsa Police Department Incident Report, No. 2021-050965 (Oct. 2, 2021), the report referenced in the Cities of Tulsa and Owasso amicus brief at page 10 note 8.
- ¶ 18. On October 28, 2021, the Nation charged Angel Watashe, the offender in that incident, with one count of domestic abuse by strangulation. It is my understanding that no one from the City of Tulsa has ever contacted the Nation to inquire about the status of this case.
- ¶ 19. I am aware of claims made in the amicus brief filed by the Oklahoma District Attorneys Association that various listed crimes have not been prosecuted by federal or Tribal governments. The brief does not include any citations, dates, names, or other identifying information for the crimes in question, which has made it impossible for the Nation to determine the status of any of these offenses, including whether any fall within the Nation's jurisdiction. I take exception to unsupported assertions of this sort, which fall far short of the standard we set in this office for proper substantiation of all claims.
- ¶ 20. I can attest that the Nation is diligently and comprehensively investigating cases, prosecuting crimes where supported, collaborating with local governments, and making all efforts to help further justice not only for victims, but also for all members of the community. The case numbers provided in paragraphs 4 and 5 of this affidavit

evidence the substantial resources and time that the Nation, through our office, is devoting to maintaining and enhancing public safety within the Nation.

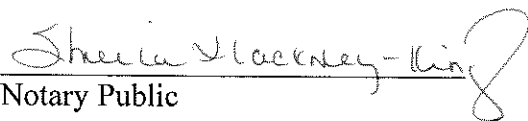
Further Affiant Sayeth Not.



Roger Wiley

Subscribed and sworn to before me this 16th day of November, 2021.





Notary Public