

IN THE DISTRICT COURT OF THE MUSCOGEE (CREEK) NATION
OKMULGEE DISTRICT

SUPREME COURT
FILED

SEP 15 2023

MUSCOGEE (CREEK) NATION,)
)
Appellant,)
)
v.)
)
ZACHARY PADDLETY,)
)
Respondent.)

CONNIE DEARMAN
MUSCOGEE (CREEK) NATION
COURT CLERK

Case No. SC-2023-09

Dist. Ct. Case No. CF-2022-1333

APPELLANT'S BRIEF

The Nation, by and through its Prosecutor, Matthew J. Hall, hereby submits this brief in support of their request for relief on the issue of whether the *immunity* provisions of Oklahoma Statute 1289.25(D) apply to the Office of the Attorney General.

ISSUE FOR APPEAL

The Nation seeks relief from an Order granting dismissal of the case against Respondent, Zachary Paddlety, on the grounds that Oklahoma Statute 1289.25(D) is applicable as a bar to prosecution in this case. Respondent argued the relevant State statute should be applied through Article II Section 2 of the Muscogee (Creek) Nation Constitution. Article II Section 2 states, "This Constitution shall not abridge the rights and privileges of individual citizens of the Muscogee (Creek) Nation enjoyed as citizens of the State of Oklahoma and of the United States of America. The District Court agreed and dismissed the case. The Nation seeks the instant appeal.

ARGUMENT

The Nation recognizes that Article II, Section II, of the Constitution of the Muscogee

(Creek) Nation contains language that ensures citizens of the Nation, keep their individual rights and privileges guaranteed under both Constitutions of the United States and the State of Oklahoma. The Nation is unsure if those rights extend to citizens of other Tribe's residing within our reservation but believes pursuant to the Indian Civil Rights, the protections afforded under those respective Constitutions should apply to citizen's of *all* Nations within our boundaries.

The Nation further appreciates the State of Oklahoma has long recognized various affirmative defenses, to include the *Castle Doctrine* and the so-called "Stand Your Ground" defenses. The root of these affirmative defenses originates through centuries of common law practice and can be found in numerous cases, both Federal and State.

Likewise, the Nation recognizes various affirmative defenses as codified in MCNA Title 14-2-1001, et al. Specifically relevant to the instant case, as set forth by Respondent's Motion to Dismiss, is Title 14-2-1005 (D), Habitation. The defense of habitation is a defense when the defendant is lawfully present in a dwelling and uses force of a degree which the defendant reasonably believes is immediately necessary to use against another person who has made an unlawful entry into that dwelling, and the defendant has a reasonable belief that such other person will use physical force, no matter how slight, against any occupant of the dwelling.

However, no such immunity law exists within the code of the Muscogee (Creek) Nation and the District Court should not have applied Oklahoma Statute 1289.25(D) in this case. Under *Ade v. Muscogee (Creek) Nation*, 3 Mvs L Rep 152, "The Muscogee (Creek) Nation Courts are not authorized to apply any statutes of the State of Oklahoma

unless expressly made applicable by law of the Muscogee (Creek) Nation duly enacted by the National Council. NCA 01-109.”

The District Court, in its *Order* dismissing the case, paragraph 1, stated that “Defendant, although a Caddo Tribal member is subject to the criminal jurisdiction of the Muscogee (Creek) Nation. He is afforded the rights and *immunities* (emphasis added) of any Indian subject to the jurisdiction of the Muscogee (Creek) Nation as conveyed to him through the Indian Civil Rights Act (specifically considering the *Duro fix*); the Constitution of the Muscogee (Creek) Nation, Article 2. Section 2 and application of the laws of the State of Oklahoma, particularly 21 Okla. Stat. [Section] 1289.25(D) commonly known as the “Stand Your Ground” law in this instance.” Here, the Court makes specific reference to incorporating a State statute through the Constitution and not through formal legislation adopted by the National Council. This appears to be in opposition to the position of the Supreme Court expressed in *Ade*.

Therefore the Nation requests this Court find that the immunity provision contained within Oklahoma State Statute 1289.25(D) does not apply to the Nation through Article II Section 2 of the Muscogee (Creek) Nation Constitution and remand the case to the District Court for further proceedings.

Respectfully submitted:



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Certificate of Mailing Notice

I hereby certify that on this 15th day of September, 2023, a true and correct copy of the above and foregoing instrument was mailed postage prepaid to the following:

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