

FILED
CHOCTAW NATION OF OKLAHOMA
CONSTITUTIONAL COURT CLERK
AUG 15 2023

By Chad Schumacher Deputy
COURT CLERK

IN THE CONSTITUTIONAL COURT OF THE
CHOCTAW NATION OF OKLAHOMA

CHOCTAW NATION OF OKLAHOMA)

Plaintiff/Appellee/Petitioner,)

vs.)

KALEN LEE PELTS,)

Defendant/Appellant/Respondent.)

Case No. CC-23-01

**ORDER GRANTING PETITION FOR CERTIORARI
AND REVERSING COURT OF APPEALS' ORDER**

This case comes to the Constitutional Court as a Petition for Certiorari. The issue presented to this Court is whether the statute of limitations set forth in the Choctaw Nation of Oklahoma Criminal Procedure Code ("CNCPC") prohibits the prosecution of Respondent. The prosecution of this matter commenced on April 1, 2021. It is not clear from the records submitted exactly when the alleged crime was committed or discovered, for the purposes of the order of this Court the date is not important.

The statute of limitations governing these proceedings can be found in CNCPC, Section 152, which states:

- A. Prosecutions for criminal violations of any Choctaw Nation laws shall be commenced within three (3) years after the commission of such violations or the discovery of the violation.
- B. The discovery of the violation is the date which a reasonable person knew or should have known that an offense had been committed. ¹

¹ CNO Tribal Council amended this code provision to provide that prosecution for a crime committed against a child victim shall be commenced by the child's 45th birthday, effective as of February 18, 2022.

The statute of limitations defense was originally raised prior to Respondent Kalen Lee Pelts' ("Respondents") trial. The Trial Court in this matter considered the statute of limitations defense presented and issued an order setting forth a bright line approach. The Trial Court stated the statute of limitations begins to run when the crime is reported to law enforcement. The Trial Court held that discovery of a criminal violation did not occur until the authorities had been notified. After a trial and conviction on all counts, Respondent exercised his right to appeal and elevated the issue to the Court of Appeals, who reversed the Trial Court's decision. The Court of Appeals held that, "discovery of a crime does not occur when a police officer interviews the victim.... but when any person including the victim has knowledge of both the act and its criminal nature." Mar. 21, 2023, CNO COA Opinion at p. 6. The Court of Appeals remanded the matter with the instruction the Trial Court was to determine when "discovery" for the purposes of the statute of limitations has occurred. *Id.* at pp. 8-9. Petitioner, Choctaw Nation of Oklahoma, by and through the Tribal Prosecutor, appealed that decision to this Court.

This Court grants Petitioner's request, grants certiorari, and reviews the ruling of the Court of Appeals.

I. SUMMARY OF OPINION

- The Petition for Certiorari is granted to review the opinion of the Court of Appeals.
- The analysis to determine if a statute of limitation defense is valid requires the Trial Court to make a multiple step analysis. First, the Trial Court must determine the date the crime was committed. If the prosecution commenced within the time period prescribed by the CNCPC, no further analysis is necessary.
- If the Choctaw Nation of Oklahoma alleges the time in which to file charges is extended because the criminal violation was not immediately discovered, then the Trial Court must

determine when the criminal violation was discovered and by whom. In reviewing that information, the Trial Court must look at the discovering individual to assure they are a "reasonable person," as set forth in the CNCPC.

II. OPINION ON STATUTE OF LIMITATIONS

Upon consideration of the Petition for Certiorari, and pursuant to Rule 6 (a)(1) of the Rules of the Choctaw Nation Constitutional Court, this Court grants certiorari to review the decision of the Court of Appeals as an issue of substance, not previously decided by this Court.

This Court vacates the Court of Appeals opinion in its entirety and remands this case to the Trial Court to proceed pursuant to the instructions set forth in this order.

To properly determine if the prosecution has filed their charge within the time limit set forth in CNCPC Section 152, the Trial Court must make the inquiry set forth below. First, the Trial Court must determine the date of the alleged violation and whether the prosecution filed charges within the time set forth in CNCPC Section 152. If yes, no further inquiry is necessary, and the accused will not succeed with a statute of limitations defense. If charges were not filed within the time set forth in the Section 152 (A) the Trial Court must determine when the offense was "discovered" as set forth in CNCPC Section 152 (B).

The key to determining when the offense was "discovered" lies in the language of Section B of CNCPC, Section 152. Section B states, "The discovery of the violation is the date which a reasonable person knew or should have known that an offense had been committed." *Id.* The language of this CNCPC provision makes it clear that the date the offense was committed is not the end-all be-all when determining whether the prosecution filed charges timely. The bright line test of whether the victim knew a crime had been committed set forth in *State v. Day*, 1994 OK CR 67, 882 P.2d 1096, is not persuasive to this Court as all victims are not the same.

Discovery under CNCP Section 152 requires the court to undertake another level of inquiry.

The court must determine if the discovering party is a "reasonable person".

While this Court is not persuaded by *Day*, it is likewise not persuaded by the reasoning of the Trial Court on this matter which ruled that the only way to, "discover" an offense is for an officer to be notified of the alleged crime.

While the reasoning on this issue by the Court of Civil Appeals would effectively eliminate the discovery rule in criminal cases, the order by the Trial Court would essentially obliterate the protections granted to the alleged by the statute of limitations in general. Under the Trial Court's reasoning, the statute of limitations would have no bearing on when the crime was committed, but rather when the victim or someone else reported the crime to the authorities. This would allow victims to report their crimes many years after they were committed and could substantially limit a defendant's ability to defend themselves, as needed witness testimony and evidence could have deteriorated or disappeared.

This Court believes it is important and necessary to determine when the commission of a crime was discovered. In doing so, the court must determine a date the violation took place and when a "reasonable person" knew or should have known that an illegal act occurred for which the accused could be charged. The key to the analysis must be focused, not solely on the date the violation was discovered or should have been discovered, but rather, the court must go further and make sure the individual who knew or should have known of the violation was a "reasonable person."

In most cases the victim of a crime, especially a crime caused by the physical touching of another, knows about the commission of the violation instantly. But the court must look at the victim or other individual who has discovered the crime and determine if they are indeed a

"reasonable person" as set forth in the code. In determining whether the victim or other individual is a reasonable person, the Trial Court should look at all factors and influences, but specifically at the age of the individual, mental capacity of the individual, social pressures applied to the individual and the physical or emotional threats made against the individual. It would be possible for a victim who is a minor, a person with an emotional disorder, or a person with a developmental disability to know about the commission of a crime, but not have the capacity to either understand the crime or report the crime to authorities. That person could not be considered a reasonable person. No person should be rewarded for picking victims who are not likely to report a crime because of one of the reasons set forth above. Conversely, there could also be a situation where the person discovering a crime was a minor and fully understood the nature of the crime committed against them and the need to report the crime and chose not to report the crime. The Trial Court would need to consider each case and make an inquiry into the party that discovered the violation. While this approach does add considerable burden on the Trial Court, this is the only way this Court sees to make sure the spirit of the statute of limitations code is adhered to.

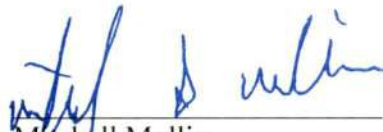
DECISION

Wherefore, the Order of the Court of Appeals is REVERSED and VACATED, and this matter is REMANDED to the Trial Court to determine if the Choctaw Nation of Oklahoma timely initiated the prosecution against Respondent.

IT IS SO ORDERED:



David A. Burrage
CHIEF JUSTICE

Handwritten signature of Mitchell Mullin in blue ink.

Mitchell Mullin
TRIBAL JUDGE

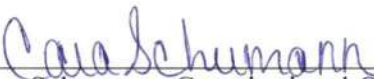
Handwritten signature of Frederick Bobb in blue ink.

Frederick Bobb
TRIBAL JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of August 2023, a true and correct copy of the above and foregoing instrument was mailed, first class mail, postage prepaid, and /or delivered electronically to:

D.M. Haggerty, Attorney for Petitioner
Kara Bacon, Attorney for Petitioner
Peter Hess, Attorney for Respondent
Office of the Public Defender
Via Email.



Cara Schumann, Constitutional Court Clerk
Choctaw Nation Judicial