Buck v. State, 2023 OK CR 2, ___ P.3d ___ (Jan. 19, 2023)

- **Holding:** The Kickapoo Reservation was disestablished by the Act of September 9, 1891, that contained not only an absolute cession of title but also a payment to each tribal member allottee of "further consideration" for such cession.
- **Summary:** Defendant was convicted in state district court for the crime of lewd or indecent acts to a child under age 16 and sentenced to substantial terms of imprisonment. He raised various claims on appeal, all of which were rejected. Among them was the contention that he was an Indian and that the crime occurred in Indian country—i.e., within the boundaries of the Kickapoo Reservation as established by Congress in 1883—thereby depriving the state court of subject-matter jurisdiction. The district court found that Defendant was an enrolled Seminole Nation member and that the alleged offenses occurred within territory set aside by the 1883 statute. However, it further determined that the Reservation had been disestablished by the Act of September 9, 1891, 27 Stat. 577. The 1891 Act provided in part (1) that the "'Kickapoo Tribe of Indians in the Indian Territory hereby cede, convey, transfer, and relinquish, forever and absolutely, without any reservation whatever, all their claim, title, and interest of every kind and character'" to the lands within the 1883 Reservation; (2) an allotment of 80 acres "'to each and every member, native and adopted,'" of the Tribe; and (3) a payment to each allottee of "a sum of money as 'further consideration to be paid for the cession and relinquishment of title above recited.'" In short, according to the trial court, "'major portion of that reservation was ceded back to the United States for value.'"

  Other than the disestablishment claim, none of Defendants' objections to his conviction implicated Indian law questions. As to the disestablishment issue, the court of criminal appeals observed:

  > While particular words are not required, disestablishment "does require the Congress clearly express its intent to do so, commonly with an explicit reference to cession or other language evidencing the present and total surrender of all tribal interests." ... This Court has noted that "Congress's ratification of a tribe's agreement to 'cede, sell, relinquish, and convey' all of a tribe's 'claim, right, title, and interest in and to all' of its reservation lands previously has been acknowledged to constitute termination of a reservation in language 'precisely suited to this purpose.'" *Martinez v. State*, 2021 OK CR 40, ¶ 19, 502 P.3d 1115, 1119 (quoting *DeCoteau v. District County Court for Tenth Judicial District*, 420 U.S. 425, 445 (1975)).

  But the court added that "[l]est there remain any confusion about the consequences of the language of cession found in the Act of 1891 with regard to the status of the Kickapoo Reservation, the United States Supreme Court's ruling in *United States v. Oklahoma Gas & Electric Co.*, 318 U.S. 206 (1943) puts this doubt to rest." There, the Supreme Court held that under the 1891 Act "'the Kickapoo reservation was obliterated, the tribal lands were no more, and only individual allotments survived. We think it clear that the term "reservation" as used in the statutes in question had no application to such lands.'"
- **Relevant (2022) Deskbook Section:** 3:4 nn.6, 19
- **Comment:** Whether any or all victims possessed Indian status was not addressed in the opinion.