

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

ETS-HOKIN CORPORATION, a California  
corporation,  
  
Plaintiff,

Civil Action  
No. 6458

vs.

LOONEY SHEET METAL CONSTRUCTION  
COMPANY, INCORPORATED, an Oklahoma  
corporation, et al.,  
  
Defendants.

**FILED**

AUG - 1 1969

M. M. EWING, CLERK  
U. S. DISTRICT COURT

ORDER DISMISSING ACTION,  
AMENDED COMPLAINT, AND  
AMENDED COUNTERCLAIM  
WITH PREJUDICE.

40

Now, on this 1 day of <sup>August</sup>~~July~~, 1969, upon the joint Stipulation of  
the parties, the Order of the Referee in Bankruptcy for Looney Sheet Metal  
Construction Company, Incorporated, an Oklahoma corporation, a bankrupt,  
permitting Disclaimer by the Trustee in Bankruptcy of any interest in the  
bankrupt's Amended Conterclaim herein, and the Disclaimer by said Trustee  
in Bankruptcy:

IT IS BY THE COURT ORDERED that the plaintiff's Amended Com-  
plaint, action and claim for relief and the Amended Complaint, action and  
claim for relief of defendant Looney Sheet Metal Construction Company, In-  
corporated, an Oklahoma corporation, each be and are hereby dismissed  
with prejudice, with costs to be borne by the respective parties. Costs shall  
not be taxed against any party hereto.

70

Dated this 1 day of <sup>August</sup>~~July~~, 1969.

(S) Fred Daughterty  
Fred Daughterty  
United States District Judge

LAW OFFICES  
UNGERMAN,  
GRABEL,  
UNGERMAN  
& LEITER  
  
SIXTH FLOOR  
WRIGHT BUILDING  
TULSA, OKLAHOMA

APPROVED:

FELDMAN, WALDMAN & KLINE

By *[Handwritten Signature]*

DYER, POWERS & MARSH

By *[Handwritten Signature]*

Attorneys for Plaintiff

KNIGHT, WILBURN & WAGNER

By *[Handwritten Signature]*

Attorneys for Defendant  
Tri-State Insurance Company

UNGERMAN, GRABEL, UNGERMAN & LEITER

By *[Handwritten Signature]*

Attorneys for Defendant  
Looney Sheet Metal Construction Company,  
Incorporated, an Oklahoma corporation and  
for Defendants other than Tri-State  
Insurance Company.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA  
TULSA DIVISION

MRS. MARIE MILLER JAY,  
Individually and as Tutrix of  
her minor children, Florence  
Marie Jay, James McCoy Jay,  
Jr., and Carl Randolph Jay

MRS. VIRGINIA ROTHSCHILD,  
Individually and as Tutrix of her  
minor children, Arthur Louis  
Rothschild, III, David Allen  
Rothschild, and Karen Ann  
Rothschild

BUFFORD G. YOUNG

MRS. ORA JEAN TAYLOR,  
Individually and as Tutrix of her  
minor children, Paul L. Taylor  
and Lise Taylor

MRS. DONNIE FAYE RICHARDSON,  
Individually and as Tutrix of her  
minor children, Leslie Gaye  
Richardson, Cynthia Louise  
Richardson, and Stephanie Gail  
Richardson

MRS. FLORENCE JANE SMITH,  
Individually and as Tutrix of her  
minor children, James Lynn Smith,  
and Barbara Jean Smith; and  
HUBERT RICHARD SMITH and  
HAZEL MARIE SMITH

VS.

KIRBY CRENSHAW, W. T. CRAVENS,  
WATT McBRIER, STANLEY D.  
BREITWEISER, IKE SCROGGINS,  
and ED HESTON

**FILED**

AUG - 1 1969

M. M. EWING, CLERK  
U. S. DISTRICT COURT.

CIVIL ACTION NO. 68-C-188

MOTION TO DISMISS

NOW INTO COURT, through undersigned attorneys, come all  
complainants in the above-numbered and entitled cause, and upon repres-  
entation to the Court that all of the issues and disputes involved in this suit

have been resolved by amicable accord and compromise settlement,

MOVE THE COURT to dismiss the same with prejudice and at plaintiffs' costs; and for all orders and decrees necessary in these premises.

Lake Charles, Louisiana, July 23, 1969.

By their attorneys,

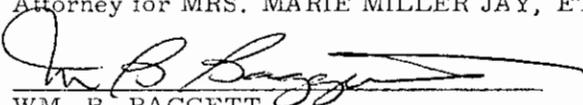
  
EDGAR F. BARNETT

Hall, Raggio, Farrar & Barnett  
Magnolia Life Building

P. O. Box 820

Lake Charles, Louisiana

Attorney for MRS. MARIE MILLER JAY, ETC

  
WM. B. BAGGETT

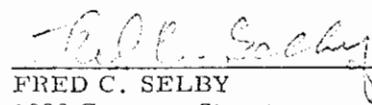
Baggett, Hawsey & McClain

1130 Pithon Street

P. O. Box 1645

Lake Charles, Louisiana

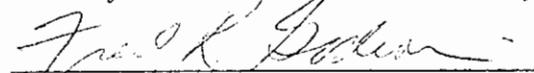
Attorney for MRS. VIRGINIA ROTHSCHILD,  
ETC. and BUFFORD G. YOUNG

  
FRED C. SELBY

1039 Common Street

Lake Charles, Louisiana

Attorney for MRS. ORA JEAN TAYLOR, ETC.

  
FRED R. GODWIN

Hunt, Godwin, Painter & Roddy

203 West Clarence Street

P. O. Box 1743

Lake Charles, Louisiana

Attorney for MRS. DONNIE FAYE

RICHARDSON, ETC

  
EVERETT R. SCOTT, JR.

Kaufman, Anderson, Leithead, Scott & Boudrea

117 West Broad Street

P. O. Box 1299

Lake Charles, Louisiana

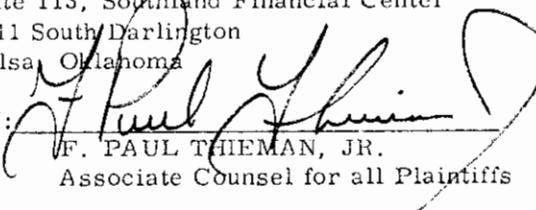
Attorney for MRS. FLORENCE JANE SMITH,  
ETC.

CROWE & THIEMAN

Suite 113, Southland Financial Center

4111 South Darlington

Tulsa, Oklahoma

BY: 

F. PAUL THIEMAN, JR.

Associate Counsel for all Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA  
TULSA DIVISION

MRS. MARIE MILLER JAY,  
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and HAZEL MARIE SMITH

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Richardson, and Stephanie Gail  
Richardson

MRS. ORA JEAN TAYLOR,  
Individually and as Tutrix of her  
minor children, Paul L. Taylor  
and Lise Taylor

BUFFORD G. YOUNG

CIVIL ACTION NO. 68-C-188

VS.

KIRBY CRENSHAW, W. T. CRAVENS, WATT McBRIER,  
STANLEY D. BREITWEISER, IKE SCROGGINS,  
AND ED HESTON

**FILED**

AUG - 1 1969

M. M. EWING, CLERK  
U. S. DISTRICT COURT

ORDER OF DISMISSAL

The foregoing Motion to Dismiss by all complainants dated July  
24, 1969 having been considered, and upon the representation therein  
made,

IT IS HEREBY ORDERED, that the above-numbered and entitled  
cause be, and the same is hereby dismissed, with prejudice, and at plaintiffs'  
costs.

THUS DONE, ORDERED AND SIGNED at Tulsa, Tulsa County,  
Oklahoma, this 1<sup>st</sup> day of August, A. D. 1969.

W. Allen E. Barrett  
DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA  
TULSA DIVISION

ARCH B. KENNEDY, JR. :  
: :  
VS. : CIVIL ACTION NO. 68-C-191  
: :  
KIRBY CRENSHAW, W. T. :  
CRAVENS, WATT McBRIER, :  
STANLEY D. BREITWEISER, :  
IKE SCROGGINS and ED HESTON :

**FILED**

AUG - 1 1969

MOTION TO DISMISS

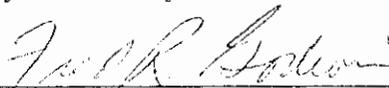
M. M. EWING, CLERK  
U. S. DISTRICT COURT

NOW INTO COURT, through undersigned attorneys, comes complainant in the above-numbered and entitled cause, and upon representation to the Court that all of the issues and disputes involved in this suit have been resolved by amicable accord and compromise settlement,

MOVE THE COURT to dismiss the same with prejudice and at plaintiff's costs; and for all orders and decrees necessary in the premises.

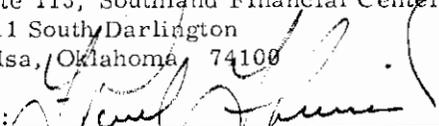
Lake Charles, Louisiana, July 24, 1969.

By his attorneys,



FRED R. GODWIN  
Hunt, Godwin, Painter & Roddy  
P. O. Box 1743  
Lake Charles, Louisiana 70601  
Attorney for Arch B. Kennedy, Jr.

CROWE & THIEMAN  
Suite 113, Southland Financial Center  
4111 South Darlington  
Tulsa, Oklahoma 74100

BY:   
F. PAUL THIEMAN, JR.  
Associate Counsel for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA  
TULSA DIVISION

ARCH B. KENNEDY, JR. :  
: VS. : CIVIL ACTION NO. 68-C-191  
: KIRBY CRENSHAW, W. T. :  
: CRAVENS, WATT McBRIER, :  
: STANLEY D. BREITWEISER, :  
: IKE SCROGGINS and ED HESTON :

**FILED**

AUG - 1 1969

M. M. EWING, CLERK  
U. S. DISTRICT COURT

ORDER OF DISMISSAL

The foregoing Motion to Dismiss by complainant dated July 27<sup>th</sup>,  
1969 having been considered and upon representation therein made,

IT IS HEREBY ORDERED, that the above-numbered and entitled  
cause be, and the same is hereby dismissed with prejudice and at plaintiff's  
costs.

THUS DONE, ORDERED AND SIGNED at Tulsa, Tulsa County,  
Oklahoma, this 27<sup>th</sup> day of August, A. D. 1969.

W. Edgar C. Johnson  
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

INTERSTATE COMMERCE COMMISSION,

Plaintiff,

vs.

BIXBY COOPERATIVE, INC., a  
Corporation, and WAYNE L. MOLES,

Defendants.

CIVIL ACTION NO. 68-C-89

**FILED**

AUG - 4 1969

M. M. EWING, CLERK  
U. S. DISTRICT COURT

JUDGMENT

This cause coming on for consideration and the plaintiff being present by and through its counsel, <sup>Harry F. Voss</sup> ~~J. P. Walker~~, and the defendants being present by and through their counsel, Frank Carter of Enid, of the law firm of Otjen & Carter and Stephen Jones of counsel, and the Court having considered the pleadings and being fully advised in the premises, renders the following findings, conclusions, and orders.

That the Court has jurisdiction of the parties herein and the subject matter of this cause under the provisions of Part II of the Interstate Commerce Act, particularly 49 U. S. Code 322(b)(1) and under the general laws and rules relating to suits in equity arising under the Constitution and laws of the United States.

That the defendant, Bixby Cooperative, Inc. is a corporation organized as an agricultural cooperative association under the laws of the State of Oklahoma and the corporation's business and transportation activities are conducted from Bixby, Oklahoma, within the jurisdiction of this Court. That the defendant, Wayne L. Moles, is one of the directors, the president, and the general manager of the defendant, Bixby Cooperative, Inc., and is a resident and inhabitant of Bixby, Oklahoma, within the jurisdiction of this Court.

That in addition to its function of marketing the agricultural products of its members, one of the business activities of Bixby Cooperative, Inc. has been and is private carriage for itself and for-hire transportation of property by motor vehicle for members and for nonmembers of the cooperative. The said defendant cooperative is also engaged in for-hire transportation of agricultural commodities, the transportation of which is exempt from regulation under 49 U. S. Code 303(b)(6) and not the subject of this action.

The Court finds that, subsequent to the preliminary injunction herein dated May 13, 1968, for-hire transportation engaged in by said defendant cooperative by motor vehicle in interstate or foreign commerce included the movement of agricultural commodities, exempt from regulation under 49 U. S. Code 303(b)(6), performed on behalf of members and nonmembers of defendant cooperative.

That the defendant, Bixby Cooperative, Inc., although it has no certificate, permit or other form of authority issued by the Interstate Commerce Commission for the performance of the for-hire transportation of nonexempt property by motor vehicle in interstate or foreign commerce, has also engaged in the transportation for hire of certain commodities not exempt under Section 303(b)(6).

The Court finds, however, that the transportation revenue for nonmembers of the defendant cooperative in interstate or foreign commerce by motor vehicle as a for-hire common or contract carrier has at times been in excess of its revenue derived from its private and membership transportation, contrary to the restrictions imposed by 49 U. S. Code 303(b)(5) and 12 U. S. Code 1141(j) and thereby in violation of 49 U. S. Code 303(c), 306(a) or 309(a).

NOW, THEREFORE, it is hereby -

ORDERED that the defendant, Bixby Cooperative, Inc., a corporation, and Wayne L. Moles, their agents, employees, representatives, and all persons acting by or under the direction and authority of defendants or in active concert or participation with said defendants be, and they are hereby, permanently enjoined and restrained

from transporting commodities, other than those exempt from regulation under 49 U. S. Code 303(b)(6), in interstate or foreign commerce over and upon public highways as a for-hire carrier by motor vehicle unless and until such time as the membership revenue of the defendant cooperative shall equal or exceed the said cooperative's nonmembership revenue; or unless and until the defendant, Bixby Cooperative, Inc., shall obtain appropriate authority from the Interstate Commerce Commission authorizing it to engage in such operations and transportation.

FURTHER ORDERED that the defendants, or either of them, may apply to this Court for the vacation of this injunction at any time they can show to the satisfaction of this Court that Bixby Cooperative, Inc. has been in substantial compliance with the requirements of the Interstate Commerce Act and the regulations of the Interstate Commerce Commission for a reasonable period of time.

Done and ordered this 4 day of Aug., 1969.

*Robert Johnson*  
United States District Judge

APPROVED AND CONSENTED TO:

OTJEN & CARTER

By *F. Frank Carter*  
Attorney for Defendants

*Mary A. Cook*  
Attorney for Plaintiff

BIXBY COOPERATIVE, INC.

By \_\_\_\_\_  
Defendant

Wayne L. Moles

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

M. BURFORD PENN,

Plaintiff,

vs.

FREDERICK CHUSID AND COMPANY,  
an Illinois Corporation,

Defendant.

)  
)  
) 68-C-172  
)  
)  
)  
)  
)  
)  
)  
)

**FILED**

AUG - 4 1969

ORDER

M. M. EWING, CLERK  
U. S. DISTRICT COURT

The Court has for consideration the motions of the defendant for a more definite statement, motion to dismiss for lack of jurisdiction, and motion to dismiss for lack of jurisdiction over the person, and, being fully advised in the premises finds:

That this is an action for rescission of a contract and for damages.

It appears from the pleadings that the plaintiff and defendant entered into a contract in Dallas, Texas, on December 18, 1967, in which defendant, Career Consultants, agreed, for a fee, to provide professional consulting services to plaintiff (as a client). It further appears from the pleadings that these services were to be provided by plaintiff going to Dallas, Texas, taking certain tests, receiving various types of counseling. It should be noted that the contract in the instant case specifically provides that plaintiff is not an agent.

It further is alleged, and appears, from the pleadings, that the plaintiff learned of defendant's service on November 30, 1967, through an ad in the Wall Street Journal, which listed a telephone number in Tulsa, Oklahoma, and Oklahoma City, Oklahoma, among other cities. Plaintiff alleges he called the Tulsa number, but received no answer. Plaintiff has further attached, in the pleadings a copy of a page from a Tulsa telephone directory, showing the defendant company's telephone number, being the same number as that indicated in the advertisement relied on.

The defendant alleges that said telephone number was the number of an answering service, which service was discontinued on September 16, 1967.

Ab initio the Court will consider the motion to dismiss for lack of jurisdiction over the person, because the determination of this motion would be dispositive of this litigation.

Plaintiff seeks jurisdiction in personam against defendant by service under the Oklahoma "long arm statute", i.e. 12 O.S.A. §187, which provides, among other things, jurisdiction over a defendant who transacts any business within the State; or the commission of any act within this State.

The Court finds that the very cases relied on by the plaintiff to sustain jurisdiction over the person of the defendant, in fact sustain the position of the defendant that in personam jurisdiction cannot be obtained under 12 O.S.A. §187. Crescent Corporation vs. Martin, Judge, et al. 29 Oklahoma Bar Journal, Page 1128; Marathon Battery Company v. Kilpatrick (1965) Okl., 418 P.2d 900, distinguishable because in that case the defendant's goods were sold in the State of Oklahoma; Winnick et al. v. Jackson (1966), 268 N.Y.S.2d 768, holding that the employment of a New York attorney by a non-resident to represent the latter's interests in a probate proceeding pending in a New York court was held not to be doing business within the state.

The Court, therefore, finds that the motion to dismiss because of lack of personal jurisdiction over defendant should be sustained for the following reasons:

1. The defendant transacted no business in the State of Oklahoma.
2. The defendant had no agent in the State of Oklahoma.
3. All contacts between the parties apparently occurred in the State of Texas.
4. The contract in issue was entered into in the State of Texas.
5. Plaintiff was not an employee of the defendant, but was only a client.

IT IS, THEREFORE, ORDERED that the motion to dismiss for lack of jurisdiction over the person be and the same is hereby sustained and this cause of action is dismissed for lack of jurisdiction over the person.

IT IS FURTHER ORDERED that since the motion to dismiss for lack of jurisdiction over the person has been sustained, the other motions filed by the defendant are now moot.

ENTERED this 4th day of August, 1969.

A handwritten signature in cursive script, appearing to read "Alan F. Barron", is written over a horizontal line.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

Carl William Wolf, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 United States of America, )  
 )  
 Respondent. )

NO. 68-C-236

**FILED**

AUG - 4 1969 *RS*

M. M. EWING, CLERK  
U. S. DISTRICT COURT.

O R D E R

This matter coming on before me, the undersigned Judge, this 22nd day of July, 1969, upon motion made pursuant to Title 28, U.S.C. 2255 to vacate sentence filed herein by Carl William Wolf and the court having carefully considered said motion and the files and records in this case, as well as Criminal Case No. 68-CR-3, United States of America vs. Carl William Wolf and Lester Don Abernathy, in this court and being fully advised in the premises finds:

On or about May 15, 1968, petitioner was sentenced by the Federal District Court, Tulsa, Oklahoma, to a term of ten (10) years imprisonment on a plea of guilty for violation of Title 18, U.S.C. Section 2113(a) and (d). Thereafter, on October 29, 1968, petitioner filed a motion pursuant to Title 28, U.S.C., Section 2255, in which he alleged that at the time of his plea of guilty he was an insane and incompetent person without mental competency to understand the charges against him or to assist his counsel in preparing a defense to the charges. He further alleged that because of his mental incompetency he was incapable of entering a guilty plea in a knowledgeable and understanding manner and that such plea was not made intelligently. In his motion he bases this contention on the fact that he had a long history of mental illness prior to the time of the commission of the crime and the date of his conviction.

From a review of the records herein and the criminal case above cited, as well as all other proceedings, the court further finds that upon the filing of this motion, Loyd Larkin, the court appointed attorney for the petitioner herein, made a motion to have the petitioner examined to determine whether or not he was mentally competent at the time of the

commission of the crimes of which he was ultimately convicted by a plea of guilty and whether or not he was able to assist in his defense or of competently or understandingly entering a plea of guilty to the offense of which he was ultimately convicted.

The court further finds that under the provisions of Title 18, U.S.C. 2244, the court granted petitioner's motion for mental examination as evidenced by the court order filed herein on December 18, 1968, wherein the court ordered the Marshal for the Northern District of Oklahoma to make the petitioner available for examination by Dr. Edward K. Norfleet, Psychiatrist, 3102 South Harvard, Tulsa, Oklahoma, for the purpose of determining, (1) the status of petitioner's mental competency at the time the crime was committed; (2) his ability to aid in his own defense and to understand the nature of the proceedings against him and (3) the status of petitioner's competency at the time of the commission of the crime. Pursuant to that order the petitioner was examined by Dr. Norfleet and the results of that examination were presented to the court by Dr. Norfleet by report dated January 6, 1969. From a review of the report of Dr. Norfleet evaluating the examination of the petitioner it appears that the petitioner refused to cooperate with Dr. Norfleet in order that a proper evaluation could be made to make a determination by the court as above stated. The report reflects, however, that even though there was a great lack of cooperation by the petitioner with the Doctor in order to make the proper evaluation, the court found from a review of the past mental history of the petitioner sufficient findings to make somewhat, although not complete, determinations with regard to the mental competency of petitioner. However, the court found that because of the uncooperative attitude petitioner had with the Psychiatrist examining him a proper determination of his mental competency could not be determined locally.

Thereafter, by order of the court, petitioner was transported and committed to the United States Medical Center, Springfield, Missouri, where a mental examination was ordered conducted by the Psychiatrists and Doctors of that institution to make the determinations previously stated and it was further ordered that the findings were to be reported to the court within ninety (90) days.

The court further finds that by its order the motion of petitioner herein was set for evidentiary hearing on June 26, 1969. At the request of petitioner the evidentiary hearing was reset for July 1, 1969. On July 1, 1969, an evidentiary hearing was held and the petitioner was represented by his court appointed counsel, Mr. Loyd Larkin. The court heard the sworn testimony of H. Wayne Clotfelty, M.D., Chief, Psychiatric Service, United States Medical Center, Springfield, Missouri. The court finds from the sworn testimony of Dr. Clotfelty, who incidentally was the only witness to testify at the evidentiary hearing, although petitioner had ample opportunity to subpoena witnesses in his own behalf, that it was his professional opinion, based upon a ninety-day examination of the petitioner at Springfield, Missouri, that the petitioner was mentally competent at the time of the commission of the crime on January 5, 1968, in that he knowingly and understandingly realized his acts and the consequences thereof. Further, that petitioner was mentally able to aid and assist himself and his counsel in his own defense and to understand the nature of the proceedings against him. That on January 30, 1968, the date petitioner entered his plea to the criminal charge, he knowingly and understandingly realized the nature of the charges against him and was knowingly and understandingly competent at the time he entered a plea of guilty to those charges.

The court further finds from a review of the testimony at the evidentiary hearing that petitioner was furnished with copy of the medical records of the observations of the petitioner at Springfield, Missouri, as well as any and all other medical records of the petitioner in possession of the government. The court further finds that there was nothing in these medical records that would tend to disprove the sworn testimony of Dr. Clotfelty previously stated. The court finds that the petitioner himself, as well as his counsel, was invited to present any sworn testimony which might tend to prove the allegations in his 2255 motion and disprove or contradict the testimony of Dr. Clotfelty.

The court further finds that it allowed the evidentiary hearing to be recessed to allow petitioner and his counsel ample opportunity to subpoena and call witnesses to testify in behalf of petitioner relating to the allegations in his 2255 motion.

The court further finds that although two resettings were allowed for petitioner to have such testimony available, at neither instance did petitioner bring in any evidence before the court to prove any of the allegations in his 2255 motion.

It therefore appears and the court finds in the above cited criminal case, as well as the case herein, that petitioner appeared before this court, was represented by counsel and entered a plea of guilty of his own free will and accord, knowingly, intelligently, understandingly and wholly competent to understand the nature of the charges against him and that for all of the foregoing reasons petitioner's motion should be overruled and denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the motion to vacate judgment and sentence pursuant to Title 28 U.S.C., Section 2255 of Carl William Wolf be and is hereby overruled and denied.

DATED this 4<sup>th</sup> day of August, 1969.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

STATE FARM MUTUAL AUTOMOBILE )  
INSURANCE COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
EDITH BITNER, Individually, )  
and EDITH BITNER, Administra- )  
trix of the Estate of ARTHUR )  
SCOTT BITNER, Deceased, )  
 )  
Defendants )  
 )  
LOUIS F. TUCKER, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DANIEL LYNN PRATER and EDITH )  
BITNER, as Administratrix of )  
the Estate of ARTHUR S. BITNER, )  
Deceased, )  
 )  
Defendants. )

No. 68-C-259

**FILED**  
AUG - 4 1969  
M. M. EWING, CLERK  
U. S. DISTRICT COURT

No. 68-C-182

(Consolidated)

ORDER OVERRULING MOTION FOR NEW TRIAL OF BETTY RUTH GURLEY, DOYLE D. GURLEY, INDIVIDUALLY, AND DOYLE D. GURLEY, AS GUARDIAN AD-LITEM FOR MARY LYNN GURLEY AND LOUIS F. TUCKER.

Now on this 4th day of August, 1969, there came on for hearing pursuant to regular setting on the motion docket, the Motion for New Trial of Betty Ruth Gurley, Doyle D. Gurley, Individually, and Doyle D. Gurley, as guardian ad-litem for Mary Lynn Gurley and Louis F. Tucker; appearing by and through their attorney of record, Robert Woolsey and Edith Bitner, Individually, and Edith Bitner, Administratrix of the Estate of Arthur Scott Bitner, deceased, appearing by and through her attorney, Robert L. Shepherd; and the Court, having heard argument of counsel, and being fully advised in the premises finds that said Motion for New Trial should be overruled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the motion of Betty Ruth Gurley, Doyle D. Gurley, Individually, and Doyle D. Gurley, as guardian ad-litem for Mary Lynn Gurley and Louis F. Tucker for a new trial be, and the same is hereby overruled.

JUDGE.

APPROVED:

Attorney for Edith Bitner, Individually,  
and Edith Bitner, Administratrix of the  
Estate of Arthur Scott Bitner, Deceased.

Attorney for Betty Ruth Gurley, Doyle D.  
Gurley, Individually, and Doyle D. Gurley,  
as guardian ad-litem for Mary Lynn Gurley  
and Louis F. Tucker.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Bonnie Robertia Hobbs, now Bedwell, )  
individually, and by her, her minor )  
children, et al., )  
Plaintiffs, )  
vs. )  
L. E. Rader, Director, Department of )  
Institutions, Social and Rehabilitive )  
Services, et al., )  
Defendants. )

Civil Action No.  
69-C-84

**FILED**

AUG 5 1969

M. M. EWING, CLERK  
U. S. DISTRICT COURT

ORDER OF DISMISSAL

The above styled and numbered cause of action comes on for hearing, pursuant to notice heretofore given, and the Court being fully advised finds as follows: That the plaintiffs and the defendants, by and through their attorneys of record, have filed herein a stipulation, in which they have stipulated and agreed that the above styled and numbered cause of action is now moot, and should be dismissed.

IT IS, THEREFORE, ORDERED that the above styled and numbered cause of action is dismissed.

ENTERED this 1st day of August, 1969.

*Delmas C. Hill*  
\_\_\_\_\_  
Delmas C. Hill, Judge  
United States Court of Appeals,  
Tenth Circuit

*Luther Bohanon*  
\_\_\_\_\_  
Luther Bohanon, Judge  
United States District Court

*Allen E. Barrow*  
\_\_\_\_\_  
Allen E. Barrow, Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

NATIONAL DIVIDEND CLUB, INC., et al.,

Plaintiffs,

vs.

No. 87-C-177

SHAMIN 'O' THE GREEN, INC., et al.,

Defendants.

**FILED**

AUG 7 1969

M. M. EWING, CLERK

ORDER OVERRULING MOTION FOR NEW TRIAL  
UNDER RULE 59

On this 4th day of August, 1969, the motion for new trial under Rule 59 of the plaintiffs was regularly set for hearing. The plaintiffs appeared through their counsel of record, William S. Dorman, and the defendants appeared through their counsel of record, Thomas R. Brett, and announced ready to proceed with the hearing. After hearing argument of counsel and considering the matter, the court concluded the plaintiffs' motion for new trial under Rule 59 is hereby overruled.

*Richard Bohannon*

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF MAILING

A copy of the foregoing Order Overruling Motion for New Trial under Rule 59 was this 4th day of August, 1969, mailed to William S. Dorman, National Bank of Tulsa Building, Tulsa, Oklahoma 74103, attorney for plaintiffs.

*Thomas R. Brett*  
Thomas R. Brett

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM F. STICKER,  
Plaintiff,  
v  
UNITED STATES OF AMERICA,  
Defendant.)

CIVIL ACTION NO. 65-C-207

**FILED**

AUG 7 1969

M. M. EWING, CLERK  
U. S. DISTRICT COURT

DISMISSAL WITH PREJUDICE

COURT now the Plaintiff and dismisses with prejudice  
its cause of action in the above styled and numbered case. It  
is hereby stipulated and agreed that the above entitled action  
be dismissed with prejudice, each party to bear its own costs.

WILLIAM F. STICKER

by Paul R. Hodgson  
Paul R. Hodgson

Attorney for Plaintiff

CONSENT TO DISMISSAL

COURT now the Defendant and consents to the dismissal  
with prejudice by the Plaintiff of the above styled and numbered  
case.

UNITED STATES OF AMERICA

by Paul R. Lee  
Ass't. United States Attorney

Attorney for Defendant

O R D E R

On motion of the Plaintiff, and with the consent of the  
defendant, it is hereby ORDERED that the above styled and numbered  
case is dismissed with prejudice to the refiling by the Plaintiff.

William F. Sticker  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,

Plaintiff,

vs.

Jerry Michael Hunter,

Defendant.

69-C-198

Civil No. \_\_\_\_\_

FILED  
IN OPEN COURT

AUG 7 1969

M. M. EWING  
CLERK, U. S. DISTRICT COURT

ORDER

This day came on for consideration the petition of the United States in this cause; and it appearing to the Court that the patient, after having been fully advised of his rights as set forth in Title 42 U.S.C. Section 3411, et seq. (Title III, Section 301, et seq. Public Law 89-793), has in open Court waived all such rights and has again expressed his desire to obtain treatment for his addiction; and the Court having determined that there is reasonable cause to believe that the patient is a narcotic addict, and that there are not any appropriate State or other facilities available for his treatment pursuant to said law, it is hereby

ORDERED that the patient be committed to the custody of the Surgeon General for examination under Title 42 U.S.C. Section 3413 (Title III, Section 303, Public Law 89-793), to determine whether or not he is a narcotic addict who is likely to be rehabilitated. The written report required of each examining physician shall be filed with the Court and copies thereof furnished to the patient, not later than twenty (20) days after the patient is received at the facility hereinafter designated, and the patient shall be detained for an additional period of ten (10) days at the institution, pending further order of the Court. Provided, however, in the event both examining physicians conclude in their respective written reports that the patient is a narcotic addict who is likely to be rehabilitated through treatment, and, if the patient by written instrument filed with the Court along with, and at the same time as, the reports of the examining physicians, waives any right he may have to notice and hearing on the issue as to whether or not he is a narcotic addict who is likely to be rehabilitated through treatment, and requests that he be forthwith committed to the care and custody of the Surgeon General for treatment in a hospital of the Service, rather than be returned to this Court for further proceedings, he shall be detained at said institution for a reasonable time after the expiration of thirty (30) days from the date he is received at said facility, pending further order of the Court.

It is further ORDERED that the patient shall be transported to the National Institute Mental Health Clinical Research Center, 3150 Horton Road, Fort Worth, Texas 76119, by the United States Marshal, within such time as the U. S. Marshal may be able to transport said patient.

Signed the 7th day of August 19 69.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
HUBERT H. BRYANT

Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

RICHARD FRANK NUTILE,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

NO. 69-C-169 ✓

**FILED**

AUG 8 1969

M. M. EWING, CLERK  
U. S. DISTRICT COURT

O R D E R

The Court has before it an instrument captioned by petitioner, Richard Frank Nutile, "Motion Pursuant to Title 28 U.S.C. Section 2255 Petition for Writ of Habeas Corpus Issue Forthwith." Therein, the petitioner alleges:

a. That he is a federal prisoner by virtue of conviction and sentence in the United States District Court for the Northern District of Oklahoma, Cases No. 67-CR-37 and 67-CR-86, and that he has never been in a federal penitentiary; and, that petitioner on April 3, 1969, was a prisoner in the Massachusetts Correctional Institution at Walpole, Massachusetts.

b. That on April 2, 1968, the State of Massachusetts imposed an illegal sentence on petitioner by changing jurisdiction from federal to state which was a denial of equal protection of the law and due process of law guaranteed by the Constitution of the United States.

c. That petitioner has a petition for Writ of Habeas Corpus pending in the United States District Court, Boston, Massachusetts, and hearing thereon was set for June 9, 1969, and rescheduled to June 23, 1969, to determine the legality of the State of Massachusetts sentence, and also to determine whether the United States Attorney General is entitled to any further jurisdiction of petitioner having relinquished jurisdiction by allowing petitioner to serve the illegal State of Massachusetts sentence.

d. That on May 21, 1969, petitioner was moved to the State of New York, on a signed agreement, for a speedy trial. On June 12, 1969, in Queens County Court, New York, petitioner pled guilty to

all charges in an indictment for a misdemeanor in the State of New York. That when he was removed from Massachusetts to New York, the New York authorities new of the pending Habeas Corpus hearing in Boston, Massachusetts; and, a final disposition of the New York indictment, after his guilty plea, would have enabled the petitioner to return to Massachusetts for his scheduled habeas corpus hearing. Therefore, the petitioner alleges that the State of New York acted with prejudice, and was more interested in preventing the petitioner from having his "day in court" in Boston on his habeas corpus hearing than in disposing of the issues before them. That for purposes of appearing in the New York Court, the petitioner was confined in the New Queens County House of Detention for Men at Que Gardens, New York, and that since his jurisdiction is subject to change from day to day, a violation of petitioner's Constitutional rights to fair and equal treatment under the law and due process of law, petitioner prays this Court in the Northern District of Oklahoma to command the party holding petitioner to produce his body in Oklahoma, apparently for the purpose of settling the question of federal and state jurisdiction.

1. The Court finds that the petition herein was filed in forma pauperous and that this Court ordered that said request be granted and the proceeding so prosecuted.

2. The Court finds that petitioner is a federal prisoner by virtue of conviction and sentence of this Court as follows: In Cause of Action No. 67-CR-37, Richard Frank Nutile, on May 23, 1967, was found guilty of violating T. 18 U.S.C. § 2314, causing a knowingly, falsely made and forged security to be transported in interstate commerce, and that petitioner was sentenced therefor on August 24, 1967, to six years imprisonment. In Cause of Action No. 67-CR-86, Richard Frank Nutile, was found guilty of violating T. 18 U.S.C. § 3150, willfully failing to appear at scheduled court appearance after release while awaiting sentence on a felony conviction, and that petitioner was sentenced therefor to 40 months imprisonment to run consecutively to the six year sentence imposed in 67-CR-37.

Further, there was transferred to this Court for imposition of sentence under Rule 20, invoked by the petitioner, Richard Frank Nutile, Cause of Action No. 68-CR-62, Oregon Cause CR 68-101; Cause of Action No. 68-CR-63, Massachusetts Cause No. 5660 which was first transferred to the District of Oregon and then to the Northern District of Oklahoma; and Cause of Action No. 68-CR-65, Connecticut Cause No. 12,136. Petitioner, Richard Frank Nutile, filed on January 22, 1968, a Rule 35 Motion to Modify Sentence in Cases No. 67-CR-37 and No. 67-CR-86, and the Motion was granted and sentence modified. The Court finds that the final sentence, as modified, of this Court, in Causes No. 67-CR-37, 67-CR-86, 68-CR-82, 68-CR-63 and 68-CR-65, is that the petitioner, Richard Frank Nutile, be imprisoned for 40 months, and on this 40 months prison time the prisoner to receive credit for all pre-trial and post-trial confinement in municipal, state, or federal institutions; and further, this 40 months imprisonment to run concurrently with the sentence imposed against the defendant in the State of Massachusetts; and commencing at the expiration of the 40 months incarceration, the defendant is to be placed on probation for a period of two years.

3. The Court finds that under T. 18 U.S.C. § 4082 (a) and (b) a person convicted of an offense against the United States shall be committed, for such term of imprisonment as the court shall direct, to the custody of the Attorney General of the United States, who shall designate the place of confinement where the sentence shall be served. The Attorney General may designate as a place of confinement any available, suitable, and appropriate institution or facility, whether maintained by the Federal Government or otherwise, and whether within or without the judicial district in which the person was convicted, and may at any time transfer a person from one place of confinement to another. Therefore, the Court finds that although the prisoner has never been in a federal penitentiary, Richard Frank Nutile has been and is serving the federal sentence imposed by this Court under the proper and lawful designation of the United States Attorney General as authorized by the Statutes of the United States.

4. The Court finds that the petitioner is challenging the legality of a sentence imposed by the State of Massachusetts as a breach of petitioner's rights to equal protection and due process of law as guaranteed by the Constitution of the United States, and petitioner also is challenging the proceeding in the Queens County Court of the State of New York and alleges that his right to a speedy trial as guaranteed by the Constitution is abridged. The Court finds that the petitioner is not incarcerated within the territorial jurisdiction of the Northern District of Oklahoma and that this Court does not have jurisdiction over the petitioner's alleged offenses by the authorities of the states of Massachusetts and New York, nor has this Court any power to compel action by the authorities of either of those states; therefore, the petitioner's remedies for any illegality of trial or sentence that may have been imposed by the states of Massachusetts or New York lie not in this District in Oklahoma, but rather can and should be challenged by appropriate pleading, habeas corpus, or Section 2255 proceeding in the state and federal courts of Massachusetts and New York. *Howard v. District Attorney*, 246 F. Supp 68 (1965); *Little v. Swenson*, 282 F. Supp. 333 (1968).

5. The Court further finds that petitioner asserts that the United States lost jurisdiction to enforce sentence by permitting petitioner to be imprisoned in a Massachusetts State Prison, and to be transported to New York and there held in the New Queens County House of Detention for Men for a state proceeding. This contention is without merit under T. 18 U.S.C. § 4082, set out above. Further, jurisdiction and custody over a person convicted of independent crimes in state and federal court is a matter of comity between the two governments and the prisoner has no personal rights that affect the jurisdiction of the sovereigns. As long as the prisoner owes a sentence to both sovereigns involved, the sovereign alone may raise objections to interference with its right to possession of the prisoner, and the prisoner may not complain. *Mitchell v. Boen*, 10th Cir., 194 F. 2d 405 (1952); *Jones v. Taylor*, 10th Cir., 327 F. 2d 493 (1964); *United States v. State of Illinois*, 385 F. 2d 689 (1968); *Yant v. Blackwell*, 5th Cir., 396 F. 2d 808 (1968); *Gregory v. Page*, E.D.Okla., 289 F.Supp 317 (1968).

6. The Court further finds that petitioner, Richard Frank Nutile, makes no allegation in his petition, filed in this Court, which gives this Court jurisdiction to produce the prisoner in Oklahoma. A proceeding under Section 2255 is an independent and collateral inquiry into the validity of the conviction, and the Court finds that the petitioner herein makes no allegation that the conviction and sentence imposed by this Court is in violation of the Constitution or laws of the United States, makes no allegation that this Court was without jurisdiction to impose sentence upon the prisoner, makes no allegation that the sentence imposed by this Court is in excess of the maximum authorized by law, or that said sentence is in any way subject to collateral attack. That although the sentencing court has proper jurisdiction and power to require production of the prisoner in an appropriate case, the existence of that power does not mean that the prisoner should be automatically produced in every Section 2255 proceeding. United States v. Hayman, 342 U.S. 205.

7. Considering the essence of petitioner's instrument filed herein without controlling reference to label or title of his pleading, the Court finds that the petitioner's petition cannot be considered as a Motion for Correction or Reduction of Sentence because the 120 days' time limitation, as delineated in Rule 35 of the Federal Rules of Criminal Procedure, has expired.

8. The Court finds that the petition herein under T. 28 U.S.C. § 2255 should be denied because this Court, under the facts as presented and in their most liberal interpretation, is without jurisdiction to enforce any relief sought in the states of Massachusetts and New York; and, on the issues properly before this Court, the petition is without merit as set out in the findings herein.

IT IS, THEREFORE, ORDERED that the Petition under T. 28 U.S.C.A. § 2255 be and the same is hereby denied.

Dated this 8th day of August, 1969, at Tulsa, Oklahoma.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

AUG 11 1969

Trinity Universal Insurance Company,	)	
	)	
Plaintiff,	)	M. M. EWING, CLERK
	)	U. S. DISTRICT COURT
vs.	)	
	)	No. 69-Civ-16 (Daugherty)
Robert F. Vance,	)	
	)	
Defendant.	)	

DEFAULT JUDGMENT

On August 5, 1969 this case came regularly on for hearing at Tulsa, Oklahoma on plaintiff's motion for default judgment. The defendant failed to appear. The Court finds that the defendant was duly served with summons, that he failed to file any pleading or answer, and that he had due and proper notice that said motion would be presented on said date. The Court finds that the allegations in plaintiff's Complaint are true; that defendant made, executed and delivered to plaintiff his promissory note on or about March 11, 1966, as alleged; that he failed to pay anything whatever thereon; that said note has not acquired a taxable situs in Oklahoma under the Oklahoma Intangible Personal Property Tax Law; and that plaintiff is entitled to judgment against the defendant as hereinafter stated.

IT IS CONSIDERED, ORDERED AND ADJUDGED that Trinity Universal Insurance Company have and recover of and from Robert F. Vance the sum of Thirty-Six Thousand Two Hundred Ninety-Eight Dollars (\$36,298) with interest thereon at the rate of ten percent (10%) per annum from February 5, 1969 until paid, an attorney's fee of Three Thousand Six Hundred Twenty-Nine Dollars (\$3,629), and the costs of this action.

Upon application of James L. Edgar, and for good cause shown, he and his law firm, Edgar, East, Manipella, Williams & Winslow, are authorized to withdraw as attorneys of record for the defendant, their withdrawal is recognized, and they are relieved of further obligations to the defendant in this case.

Dated this 11 day of August, 1969.

*Fred Daugherty*  
FRED DAUGHERTY  
Judge

OK  
*Felix Bowman*  
Felix, Bowman, McIntyre & McDivitt  
Attorneys for Plaintiff  
1116 Liberty Bank Building  
Oklahoma City, Oklahoma 73102

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MICHAEL LEE GASAWAY, #75114,

Petitioner,

vs.

RAY H. PAGE, Warden and  
THE STATE OF OKLAHOMA,

Respondents.

No. 69-C-26 Civil

**FILED**

AUG 11 1969

M. M. EWING, CLERK  
U. S. DISTRICT COURT

O R D E R

Petitioner seeks his release from Oklahoma state custody by way of Habeas Corpus. 28 U.S.C. 2254. He was convicted, after jury trial, of the crime of manslaughter in the Tulsa County District Court and sentenced to imprisonment in the State Penitentiary for a term of twenty-five years. He alleges as grounds for his release that (1) he was not taken before the nearest magistrate without undue delay, (2) he was prosecuted by information rather than by grand jury indictment, and (3) a confession or incriminating statements made by him were illegally obtained by an officer of the Tulsa Police Department and used against him at his trial. The Respondents have submitted various documents relating to the trial of the Petitioner, and request this Court to rule herein on the basis of the submitted records. 28 U.S.C. 2254(d).

It appears that the grounds presented herein by the Petitioner have been presented and determined adversely to him by the Oklahoma Court of Criminal Appeals. Gasaway v. Page, 448 P.2d 284 (Okla. Cr. 1968). The Court, therefore, concludes that Petitioner has exhausted his state remedies with respect to the grounds raised herein as set out above.

With respect to Petitioner's first ground, there was a delay of one day in taking Petitioner before a magistrate. So much is alleged by the Petitioner. However, he makes no allegation that this delay in any way prejudiced him. The State has an obligation to take one accused of crime before a magistrate without unnecessary delay. 22 Okl.St. Ann. § 181. Nevertheless, in addition to showing delay, it is necessary to show prejudice by reason of the delay. Brown v. State, 384 P.2d 54 (Okl. Cr. 1963). Petitioner has not alleged any prejudice by reason of the delay and none appears from the files and records of the case. Petitioner's first ground is, therefore, without merit as being legally insufficient to warrant attention. Martinez v. United States, 344 F.2d 325 (Tenth Cir. 1965).

With respect to Petitioner's second ground, there is no federal constitutional requirement that a person accused of crime by a state must be indicted by a grand jury rather than be proceeded against by an information. Prosecution on the basis of an information does not violate any provision of the United States Constitution. Hampton v. State, 368 F.2d 9 (Tenth Cir. 1966); Orcutt v. Wyoming, 308 F.2d 61 (Tenth Cir. 1962).

With respect to the Petitioner's third ground, relating to the use of a confession or incriminating statements of the Petitioner at his trial, the Court attempted without success to elicit from Petitioner the details concerning this allegation. The Petitioner responded to the Court's Order for details in this respect in the following manner:

"During the course of the trial, of the petitioner, to the Charge of Murder, a Police Officer, of the Tulsa, Oklahoma Police Department, testified for the state, against the (defendant) petitioner, to an alleged conversation the officer had

with the petitioner at the time of the petitioner's arrest. This testimony was allowed before the jury and was the main 'link in the chain of evidence' against the petitioner."

During the pendency of this Petition in this Court, the Tulsa County District Court ordered the preparation of a partial transcript containing all the testimony of all police officers who testified at Petitioner's trial.<sup>1/</sup> This transcript has been submitted to the Court by the Respondents and the Court has read it in its entirety.

The transcript contains only two references to statements of the Petitioner. They are set out in the note below.<sup>2/</sup> Petitioner

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1/ The order was entered after a hearing on Petitioner's application for a casemade at which hearing the District Court found that the Petitioner did not complain about the statements of any witness other than police officers.

2/ Testimony of Officer Don Payton, Traffic Investigator:

"Q. At approximately 7:58 A.M. in the morning on the 3rd day of October did anything unusual happen, officer:

"A. Yes, it did.

. . .

"Q. All right. What first did you observe with regard to this unusual incident?

"A. I observed a car coming up behind me in my rear view mirror.

. . .

"Q. Was this vehicle traveling the same, faster or slower than you were, sir?

"A. Faster.

"Q. Could you estimate to this jury approximately how much faster?

attempts to invoke the Miranda ruling (Miranda v. Arizona, 384 U.S.

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2/ (Continued)

"A. I would say about 50.

. . . .

"Q. All right. Thank you. What happened next, Officer?

"A. I observed him change lanes. He was in the curb lane, the same as I was, he changed lanes to the center lane, came up alongside me and went like this (indicating) give me a motion.

"Q. All right.

"A. So I slacked off and he pulled in front of me. . . .

"Q. Now, let me ask a question. Did his vehicle stop?

"A. Yes.

"Q. And your vehicle stopped?

"A. Yes.

. . . .

"Q. What happened then?

"A. Then he jumped out of his car and I got out of mine; he come back to my car and he was all excited, he said, ' I just shot my wife, the gun is in the front seat'.

"Q. All right. Now, Officer, are those this man's words?

"A. Yes, sir.

. . . .

(Cross examination)

"Q. At the time that Mr. Gasaway, Don, advised you that he had just shot his wife, you did make some response at that time prior to the time he said the gun was on the front seat, didn't you?

"A. It was more or less spontaneous, when he said this I looked at him, wondered if he just shot his wife, you know,

436, 16 L.Ed.2d 694, 86 S.Ct. 1602, 10 A.L.R.3d 974 (1966)) to claim that these statements were illegally obtained from him. But in that case the Supreme Court excepted this type of situation, where the confession or incriminating statement is blurted out, stating:

"Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. . . . There is no requirement that police stop a person who enters a police station and states that he wishes to confess a crime, or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today." 384 U.S. at p. 478, 16 L.Ed.2d at p. 726.

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2/ (Continued)

I guess what went through my mind was, where was the gun, and he said, 'The gun is in the front seat'. So I went to the car and looked and the gun was in the front seat, so then I went back to the car.

"Q. You haven't had this experience very often, have you, Officer?

"A. No, in traffic you don't run into it too often.

"Q. And didn't you respond by -- when he said I just shot my wife -- 'You did?' or something of that nature?

"A. Yes, you did.

"Q. And do you recall whether or not Mr. Gasaway was crying or sobbing at the time?

"A. He was sobbing, yes.

"Q. And didn't he ask you to get an ambulance and send it to the pebbles Bar?

"A. Yes.

It is obvious from the State Court record that the only statements of Petitioner to which the Tulsa Police Officer testified were volunteered by the Petitioner. He sought out the police by pursuing and flagging down a marked traffic patrol car. The police were not seeking him. Before the officer knew what was troubling the Petitioner, the Petitioner blurted out, "I just shot my wife, the gun is in the front seat." The officer never had any reason nor opportunity to give the Miranda warnings to Petitioner. The Petitioner was not in the custody of the officer. There was no bar, in this case, to the testimony of the police officer concerning this statement. Davidson v. United States, 371 F.2d 994 (Tenth Cir. 1966). Moreover, Petitioner in his complaint alleged, "that certain statements made by the Petitioner at the time of his arrest were not voluntarily made, and that these statements were later used against him at his trial before a jury." The Court deemed this allegation to be a bald conclusion and ordered the Petitioner to supply in complete detail the confession or any incriminating statements made by him in factual support of his conclusion.

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2/ (Continued)

"Q. You did do that?

"A. Uh-huh.

"Q. He didn't refuse in any manner to answer any questions that you put to him, did he?

"A. No, I didn't have to ask him questions, he just told me everything."

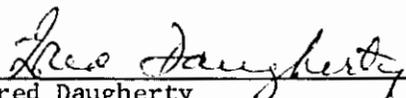
Transcript pp. 3-9.

Petitioner responded to this Order with a further bald conclusion, as previously set out herein. In order to ascertain what may have been used against the Petitioner in the way of an incriminating statement or confession, the aforementioned trial transcript was obtained through the assistance of the State trial Judge. As the matter stands before the Court, the state trial record shows that the only statements of Petitioner to a police officer which were testified to at the trial were volunteered and clearly admissible in evidence. Even though requested to do so, the Petitioner has made no allegations herein of factual claims which might form the basis of illegally obtained incriminating statements having been used against him at his trial. As stated in Martinez v. United States, 344 F.2d 325 (Tenth Cir. 1965), a petition for habeas corpus, "which states bald conclusions unsupported by allegation of fact is legally insufficient and may be denied without a hearing.

The Court, therefore, finds and concludes that, as to the first and second grounds urged by Petitioner, his claims do not constitute violations of his federal constitutional rights, and as to the third ground, Petitioner not only fails to allege facts which would constitute violations of his federal constitutional rights, but also there is nothing in the state court record of his case, as the same has been presented to this Court, to support his claim relating to the use of an illegally obtained confession or incriminating statement by a police officer at his trial.

For the reasons hereinabove set out, the Petition for Writ of Habeas Corpus is dismissed.

It is so ordered this 11 day of August, 1969.

  
Fred Daugherty  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

EULA B. SLANKARD,

Plaintiff,

vs.

JOHN W. GARDNER, Secretary of  
Health, Education and Welfare,

Defendant.

CIVIL ACTION NO. 6632

**FILED**

AUG 13 1969

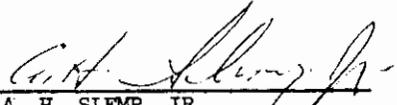
M. M. EWING, CLERK  
U. S. DISTRICT COURT

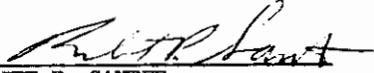
STIPULATION FOR DISMISSAL

COME NOW the plaintiff, Eula B. Slankard, by and through her attorney, A. H. Slemp, Jr., and the defendant, John W. Gardner, Secretary of Health, Education and Welfare, by and through his attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby stipulate and agree as follows:

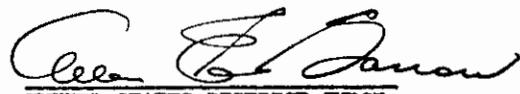
By Order of October 25, 1967, this case was remanded to the Secretary of Health, Education and Welfare for further proceedings in accordance with Findings of Fact and Conclusions of Law filed by this Court on October 25, 1967. It now appearing that the plaintiff's claim in the above-entitled suit was allowed and paid, <sup>and is being paid and will be paid as long as she is eligible,</sup> the parties hereby stipulate that this action may be dismissed accordingly.

Dated this 7th day of August, 1969.

  
A. H. SLEMP, JR.  
Attorney for Plaintiff,  
Eula B. Slankard

  
ROBERT P. SANTEE  
Attorney for Defendant, John W.  
Gardner, Secretary of Health,  
Education and Welfare

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that this action, based on the foregoing stipulation, is dismissed.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 21 1969

M.J. LEE CONSTRUCTION COMPANY,  
an Oklahoma Corporation,

Plaintiff,

-vs-

FREETO CONSTRUCTION COMPANY,  
INC., a Kansas Corporation,

Defendant.

M. M. EWING, CLERK  
U. S. DISTRICT COURT

CIVIL ACTION  
NO. 69-C-159

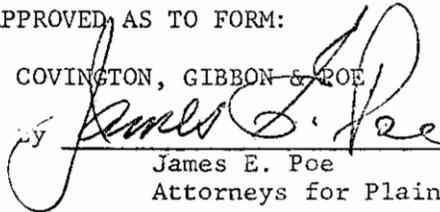
ORDER OF DISMISSAL

NOW, on this 21 day of August, 1969, upon joint application and stipulation of the parties and by virtue of a settlement entered into between the parties, the Court finds that the above-styled case and cause of action should be and is hereby dismissed with prejudice to further action.

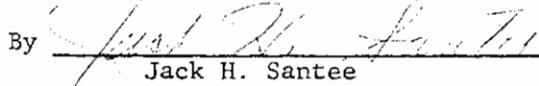
  
\_\_\_\_\_  
Judge

APPROVED, AS TO FORM:

COVINGTON, GIBBON & POE

By   
\_\_\_\_\_  
James E. Poe  
Attorneys for Plaintiff

MARTIN, LOGAN, MOYERS, MARTIN & CONWAY

By   
\_\_\_\_\_  
Jack H. Santee  
Attorneys for Defendant

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

THE GAMMA TAU ALUMNI CHAPTER )  
OF PI KAPPA ALPHA FRATERNITY )  
a Corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
THE HANOVER INSURANCE COMPANY, )  
a Corporation, )  
 )  
Defendant. )

NO. 69-C-60

FILED  
AUG 27 1969  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

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O  
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The above matter coming on to be heard this 27<sup>th</sup> day of August, 1969, upon the written application of the parties for a dismissal of said action with prejudice, the Court having examined said application finds that said parties have entered into a compromise settlement covering all claims involved in the action and have requested the Court to dismiss said action with prejudice to any future action, and the Court being fully advised in the premises, finds that said action should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Action of Plaintiff filed herein against the defendant be and the same is hereby dismissed with prejudice to any future action.

Luther Bohannon  
JUDGE OF THE DISTRICT COURT OF THE  
UNITED STATES, NORTHERN DISTRICT OF  
OKLAHOMA

APPROVALS:

Edwin W. Ash, Attorney for Plaintiff

Richard D. Wagner, Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA

PUBLIC SERVICE COMPANY OF OKLAHOMA, )  
an Oklahoma corporation, )  
 )  
Plaintiff, )

-vs-

NO. 69-C-101

A 100-foot wide easement and right-of- )  
way for electric power transmission )  
line purposes to be located upon, over )  
and across certain tracts of land in )  
Tulsa County, State of Oklahoma; )

AND

THE UNITED STATES OF AMERICA as a matter )  
affecting the title to certain Cherokee )  
Indian lands previously allotted in fee )  
with certain restraints on alienation )  
and presently owned in part by restricted )  
Cherokee Indians; )

AND

MINNIE TYNER, Cherokee Roll No. 10377, )  
 )  
Defendants. )

FILED

AUG 27 1969

W. M. EWING, CLERK  
U. S. DISTRICT COURT

FINAL DECREE AUTHORIZING  
TAKING IN CONDEMNATION

Now on this 27 day of August, 1969, this cause comes on regularly to be heard, Plaintiff appearing by its attorney, Everett L. Cunningham, and Defendant United States of America, as Trustee, appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of the State of Oklahoma, all parties having announced ready for trial, the attention of the Court is directed to each and every of the following pleadings heretofore filed in this proceeding, to-wit:

The Complaint and application for order directing manner of service, verified under oath; the Order of this Court directing the manner of service of Notice; Notice by Plaintiff to the Attorney General of the United States of America, in Washington, D.C., and Lawrence A. McSoud, United States Attorney for the Northern District of Oklahoma; Notice by the Clerk of this Court to the Area Director, Muskogee Area Office, Bureau of Indian Affairs, Department of the Interior, Muskogee, Oklahoma, on behalf of the United States of America, for Minnie Tyner, Cherokee Roll No. 10377; Affidavits of Mailing and Delivery of Notices executed under oath by Everett L. Cunningham, attorney, and Alton McKnight, service agent for Plaintiff; Order Appointing Commissioners; Oath of Commissioners; Report of Commissioners; Order Fixing Commissioners Fees; Exceptions to Report of Commissioners and Demand for Jury Trial by Defendant; all as filed herein;

Whereupon, Plaintiff, by and through its attorney, in open Court, waives its right to trial by jury, and Defendants, by and through said Assistant United States Attorney, in open Court, withdraw their Exceptions to Report of Commissioners and Demand for Jury Trial, and waive their right to trial by jury, and thus being fully advised in the premises, all parties submit the issue of damages to the Court for determination.

Plaintiff and Defendants then introduced their respective testimony and evidence relative to the damages suffered by the parties in interest in and to the lands herein condemned and which will result from appropriation by the Plaintiff of a perpetual easement and right-of-way for an electric power transmission line, all as hereinafter more particularly set out, and the Court being fully advised in the premises;

THE COURT FINDS that the matters set out in the verified Complaint filed herein by Plaintiff are true and correct, and said Plaintiff, a corporation, organized under the laws of the State of Oklahoma, authorized and qualified to furnish light, heat and power by electricity, engaged in the generation and production of electricity for light, heat and power purposes, and for the distribution and sale thereof throughout eastern and southwestern Oklahoma, characterized by the laws of the State of Oklahoma as a public service corporation, and operating as such, is therefore authorized by the laws of the State of Oklahoma to exercise the right of eminent domain to acquire rights-of-way for electric power transmission and distribution, and it further appearing that the taking and use of an easement and right-of-way for the purposes is a taking and use for a public purpose, and that said Plaintiff should be granted the relief prayed for in its Complaint; that this Court has proper jurisdiction of this cause by reason of the Act of Congress of March 3, 1901, Chapter 832, Section 3, 31 Stat. 1084, 24 USCA, Sec. 357; applicable Oklahoma Statutes are 27 O.S.A., Sec. 7, and 66 O.S.A., Secs. 51-60, inclusive; Rule 71-A(k) of the Federal Rules of Procedure applies; and that notice of this proceeding has been served according to law and the order of this Court upon all of the parties in interest in and to the lands involved herein, including the United States of America, which is an interested party by reason of the fact that this matter affects the title to certain restricted lands previously allotted in fee with certain restraints on alienation and presently owned by a restricted Cherokee Indian. That all necessary parties to this cause are now properly before the Court for final disposition of the proceedings; that all parties hereto have waived their right to trial by jury; and Defendant, United States of America, has joined with Plaintiff in praying that full disposition be made of this proceeding, and the Court make its

finding with respect to damages; that the easement and right-of-way sought to be condemned by Plaintiff herein will not, in any manner, constitute a burden or encumbrance upon the mineral interests in said land involved herein.

THE COURT FURTHER FINDS that the nature of the property and the rights with respect to the lands so to be taken and the uses for which said property is to be taken are:

A perpetual easement and right-of-way 100 feet in width for the purpose of erecting, operating, and maintaining upon, over and along the route and across the lands hereinafter fully described, an electric power transmission line, consisting of steel tower structures, carrying wires and fixtures, operating initially at 138 thousand volts, carrying, for transmission, electric power and energy and telephone and telegraph messages necessary to the operation thereof, together with the right and privilege of ingress and egress for the purpose of constructing, operating, maintaining, removing or reconstructing said electric power transmission line at any time, and including also the right to cut down, trim, remove or chemically treat trees and undergrowth, and to prohibit the placement of or remove other obstacles which may, in Plaintiff's judgment, interfere with or endanger said line, its maintenance or operation, within an area of fifty (50) feet on both sides of the center line thereof, BUT RESERVING, nevertheless, to the landowners, lessees and tenants of said lands, at all times, the right to make any use of said lands, including the 100 foot width of said easement, as is not inconsistent with or dangerous to the operation and maintenance of said electric power transmission line.

THE COURT FURTHER FINDS that the description of the lands upon, over and across which Plaintiff seeks herein to condemn said easement and right-of-way, together with the beneficial owner thereof, Defendant herein, and the reasonable and adequate compensation for the damages occurring to said lands and interest therein as the result of said appropriation of an easement and right-of-way thereover is as follows:

TRACT NO. 1:

The South Half (S/2) of the Southwest Quarter (SW/4) of the Northwest Quarter (NW/4) AND the Northwest Quarter (NW/4) of the Southwest Quarter (SW/4) of the Northwest Quarter (NW/4) of Section Twenty (20), Township Twenty-one North (T21N), Range Thirteen East (R13E), Tulsa County, Oklahoma.

To construct upon, over and across said tract an electric power transmission line carrying initial nominal voltage of 138 KV, having six (6) conductors and two (2) shield wires, all mounted on steel tower structures, upon an easement 100 feet in width, the center line of which is described as follows:

Entering said tract at a point approximately 58 feet South of the Northeast corner of the Northwest Quarter (NW/4) of the Southwest Quarter (SW/4) of the Northwest Quarter (NW/4), thence in a westerly direction in a straight line and leaving said tract at a point approximately 82 feet South of the Northwest corner of said Northwest Quarter (NW/4) of the Southwest Quarter (SW/4) of the Northwest Quarter (NW/4). Traversing said tract a total distance of approximately 41 rods.

Including the location of one (1) steel tangent tower structure.

TO THE OWNER THEREOF:

Minnie Tyner, Cherokee Roll No. 10377

TOTAL DAMAGES AWARDED: . . . . . \$1,240.00

THE COURT FURTHER FINDS that the foregoing damages awarded adequately compensate the beneficial owner of said land for all injury and damage done, either directly or indirectly, to the interest of the beneficial owner in and to said lands, crops, fences and improvements thereon, which may result from the construction, operation and maintenance of said electric power transmission line, and that such award also includes adequate compensation for the right of future ingress and egress to and from said land for future maintenance, operation, reconstruction or removal of said lines, but does not include damages to said line or to crops, fences and improvements thereon which may, in the future, result from unreasonable exercise of said right of entry or such maintenance, operation, reconstruction or removal.

THE COURT FURTHER FINDS that Plaintiff has heretofore, on the 30th day of June, 1969, paid to the Clerk of this Court the sum of \$1,025.00, pursuant to the Report of Commissioners filed herein; and that there remains due and unpaid by the Plaintiff the sum of \$215.00, to make a total payment of \$1,240.00.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that Plaintiff pay to the Clerk of this Court the additional sum of \$215.00;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the entry upon and taking forthwith of said perpetual easement and right-of-way as found and described above herein, upon, over and across said lands as hereinbefore set out by Plaintiff, for the construction, operation, reconstruction or removal of an electric power transmission line, all as prayed for in said Complaint,

is hereby authorized and confirmed in all things, and said Plaintiff, Public Service Company of Oklahoma, is hereby vested with the perpetual right of ingress and egress, all free and clear of any and all claims of Defendant herein, her heirs and assigns, who are hereby perpetually enjoined and barred from hereinafter claiming adversely to Plaintiff's said rights, privileges and estate ordered, decreed, adjudged and granted herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of this Court make payment to the restricted owner the amount due, all as provided by law.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the perpetual easement and right-of-way taken by Plaintiff and described herein in the operation of said electric power transmission line will not, in any way, constitute a burden or encumbrance upon the mineral interests in said land.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the costs of this proceeding be taxed against the Plaintiff.

1st Fred Daugherty  
Fred Daugherty  
Judge, U.S. District Court for the  
Northern District of Oklahoma

APPROVED FOR PLAINTIFF:

Everett L. Cunningham  
Everett L. Cunningham

APPROVED FOR DEFENDANTS:

1st Robert P. Santee  
Robert P. Santee  
Assistant U. S. Attorney  
Northern District of Oklahoma

STATE OF OKLAHOMA, County of Tulsa, ss:

I, the undersigned Clerk of the U. S. District Court for the Northern District of Oklahoma, do hereby certify that on the 29th day of August, 1969, Public Service Company of Oklahoma, Plaintiff in said cause, deposited in my office in said cause for the use and benefit of the party in interest and owner of the tract of land in said Decree described, the full amount of all damages to said party awarded, and has further paid all costs accruing in this office in said action to this date.

Witness my hand and seal of office hereto affixed at the Federal Building in Tulsa, Oklahoma, this 29th day of August, 1969.

M. M. Ewing  
M. M. Ewing, Clerk  
U. S. District Court for the  
Northern District of Oklahoma

By Ben B. Ballinger  
Deputy