

# NewsOK Q&A: High court's tie in assault affirms tribe's self-determination right

From NewsOK / by [Paula Burkes](#)

Published: June 30, 2016

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G. Calvin Sharpe has 30 of years of experience in Oklahoma courtrooms, representing a diverse list of business clients in matters relating to medical malpractice, medical devices, products liability, insurance and

commercial  
litigation.

**Q: Generally speaking, what was the Dollar General case about, originally?**

A: In the original case, there was a Dollar General store operating within the Reservation of the Mississippi Band of Choctaw Indians. A 13-year-old boy, a tribal member, was working at the store as a part of a youth opportunity program. In 2005, a suit was brought by the boy's parents that alleged that the boy was sexually assaulted by the store's nontribal manager in the summer of 2003. In the binding contract with the tribe to operate on tribal land, Dollar General agreed to tribal court civil jurisdiction, so the case went to a tribal court. The Choctaw courts denied a motion to dismiss the case due to lack of jurisdiction citing a 1981 Supreme Court Case, *Montana v. United States*, which held that a "tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members." Dollar General subsequently sued in federal court to clarify the terminology, "other means." (*Dollar General Corp. v. Mississippi Band of Choctaw Indians*)

**Q: The Supreme Court decision was tied, 4-to-4, which means that the lower court decision of the U.S. Court of Appeals for the Fifth Circuit is upheld. What was that Fifth Circuit's upheld decision?**

A: At the heart of this decision is the question of whether tribal courts have the right to exercise civil authority over people who are operating within tribe's jurisdiction, but who aren't tribal members. In the federal case subsequent to the tribal rulings in Choctaw courts, Dollar General petitioned for certiorari, which means they asked a higher court to review the determination of a lower court. In the judgment of the U.S. Court of Appeals for the Fifth Circuit, Indian tribal

courts have jurisdiction to adjudicate civil tort claims against nonmembers, including as a means of regulating the conduct of nonmembers who enter into consensual relationships with a tribe or its members.

**Q: How has this Supreme Court ruling, essentially allowing the lower court decision to stay, changed the nature of tribal jurisdictional authority?**

A: In the decision of the appeal to the Supreme Court of the United States of America, the high court was deadlocked, which allows the decision of the U.S. Court of the Appeals for the Fifth Circuit to stand. The judgment is affirmed by an equally divided court, (which) allows the case to proceed to resolution in tribal court without further appeals regarding authority. However, there's the likelihood that, in a similar case, the Supreme Court would grant another certiorari when the Senate confirms a replacement for Justice Scalia.

**Q: Why is this viewed as a success for tribal sovereignty and tribal governmental authority?**

A: Thursday's Supreme Court ruling served as a significant win in the fight for native tribal court authority. The Supreme Court tie affirms native groups' right to self-determination. This allows federally recognized tribes to continue developing their own governmental bodies.