

In the Supreme Court of the United States



STATE OF OKLAHOMA,

Petitioner,

v.

WILLIAM CLAYTON BROWN,

Respondent.

**On Petition for a Writ of Certiorari to the
Oklahoma Court of Criminal Appeals**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), should be overruled.

LIST OF PROCEEDINGS

Oklahoma Court of Criminal Appeals

No. C-2018-1118

William Clayton Brown, Petitioner v.
The State of Oklahoma, Respondent

Date of Final Order: March 18, 2021

Oklahoma District Court (McIntosh County)

No. CF-2017-257

State of Oklahoma, Plaintiff v.
William Clayton Brown, Defendant

Date of Sentence and Judgment: March 28, 2019

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PROCEEDINGS.....	ii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION.....	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE PETITION.....	6
CONCLUSION.....	8

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

Opinion of the Court of Criminal Appeals,
State of Oklahoma (March 18, 2021) 1a

District Court of McIntosh County, State of Okla-
homa, Journal Entry of Facts and Conclusions of
Law in Accordance with Order Remanding for
Evidentiary Hearing (October 2, 2020)..... 10a

 Supplemental Stipulation
 (September 29, 2020)..... 13a

Order of the Court of Criminal Appeals, State of
Oklahoma, Remanding for Evidentiary Hearing
(August 19, 2020) 18a

TABLE OF AUTHORITIES

Page

CASES

<i>McGirt v. Oklahoma</i> , 140 S. Ct. 2452 (2020)	passim
<i>Oklahoma v. Bosse</i> , Petition for Writ of Certiorari, No. 21-186 (U.S.)	passim

STATUTES

18 U.S.C. § 1151	2
18 U.S.C. § 1153(a)	2
28 U.S.C. § 1257(a)	2

JUDICIAL RULES

Sup. Ct. Rule 12.7	3
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OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals, dated March 18, 2021 is included in the Appendix at App.1a-9a. The order of the Oklahoma Court of Criminal Appeals, dated August 19, 2020, remanding the case for an evidentiary hearing is included below at App.18a-22a. The Entry of Facts and Conclusions of Law in Accordance with the remand order, dated October 2, 2020, is included below at App.10a-12a. These opinions and orders were not designated for publication.



JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on March 18, 2021. App.1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).



STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1151 (in relevant part) Indian Country Defined

[T]he term ‘Indian country’, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.

18 U.S.C. § 1153(a) Offenses Committed Within Indian Country

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section

661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.



STATEMENT OF THE CASE

Thousands of state criminal prosecutions have been called into question by this Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). Like the pending petition in *Oklahoma v. Bosse*, No. 21-186, this case presents the question whether *McGirt* should be overruled. For the same reasons given in the *Bosse* petition, review is warranted here to examine that question. The petition for a writ of certiorari in this case should either be granted or, if the petition in *Bosse* is granted, held pending a decision in *Bosse* and then disposed of as is appropriate.

1. On September 15, 2017, respondent William Clayton Brown stabbed to death his friend, twenty-one-year-old Damion Martin (P.H. Tr. 9, 11-15; State's Ex. 1; O.R. 108¹). On that day, Damion was visiting respondent at the house shared by respondent and respondent's sister, Lacie Watson (P.H. Tr. 8-10). Damion, who had previously been intimate with Lacie and maintained a friendly relationship with her, joined her in the bathroom as she bathed (P.H. Tr. 13-14, 28). Lacie wrapped the shower curtain around her body so

¹ Citations are to the record developed at respondent's preliminary hearing (P.H. Tr.) and the factual summary included in his eventual guilty plea (O.R.). *See* Sup. Ct. Rule 12.7.

that she could hug Damion (P.H. Tr. 13). As Damion and Lacie hugged, respondent burst into the bathroom and used a knife to stab Damion in the back and head (P.H. Tr. 13-15; State's Ex. 1). Damion fell to the floor (P.H. Tr. 18, 45). Lacie tried to hold Damion's wounds to prevent the bleeding, but respondent said she "couldn't save him" because respondent had "stabbed him in the brain" (P.H. Tr. 15).

Respondent stuffed Damion's body in a plastic storage tote and dumped the tote in a remote country location (P.H. Tr. 49, 53-54; State's Ex. 1). Damion's partially decomposed body was not found until two weeks later (State's Ex. 1).

Respondent entered a guilty plea to first-degree manslaughter and was sentenced to life imprisonment. He subsequently moved to withdraw his guilty plea and, after that motion was denied, appealed to the Court of Criminal Appeals.

2. After this Court issued its decision in *McGirt*, the Court of Criminal Appeals remanded the case to the trial court for an evidentiary hearing on respondent's claim that the State lacked prosecutorial authority in his case because he is Indian and his crime occurred in Indian country. On remand, the parties stipulated that respondent had 9/128 Indian blood, that he was a member of the federally recognized Choctaw Nation at the time of the crime, and that his crime occurred within the Muscogee (Creek) reservation recognized by *McGirt*. App.13a-17a.

The Court of Criminal Appeals vacated the conviction, adopting the trial court's conclusions and holding that the federal government had exclusive authority

to prosecute respondent for the crime at issue. App.1a-3a.

Two judges wrote separate opinions. Judge Lumpkin concurred in the result. App.6a-8a. He expressed his view that the Court's opinion in *McGirt* "contravened * * * the history leading to the disestablishment of the Indian reservations in Oklahoma," but concluded that he was bound to follow it. App.6a.

Judge Hudson also concurred in the result. App. 9a. Like Judge Lumpkin, he concurred "as a matter of *stare decisis*," but he observed that *McGirt* had "far-reaching impact on the criminal justice system in Oklahoma," citing to his previous concurrence in *Bosse*. App.9a.



REASONS FOR GRANTING THE PETITION

In the decision below, the Oklahoma Court of Criminal Appeals applied *McGirt* to free yet another criminal from state custody, exacerbating the crisis in the criminal-justice system in Oklahoma. As the State of Oklahoma explains in its petition in *Bosse*, reconsideration of *McGirt* is the only realistic avenue for ending the ongoing chaos affecting every corner of daily life in Oklahoma. This case presents yet another opportunity to end the damage caused by *McGirt*. For the same reasons offered in *Bosse*, this petition should either be granted or, if the petition in *Bosse* is granted, held pending a decision in *Bosse* and then disposed of as is appropriate.

As explained more fully in *Bosse*, *McGirt* was wrongly decided, and the Court's review is urgently needed because no recent decision has had a more immediate and disruptive effect on life in an American State. *McGirt* contravened longstanding precedent on the disestablishment of Indian reservations. 140 S. Ct. at 2485 (Roberts, C.J., dissenting). It did so by wrongly reasoning that historical materials showing the original public meaning of statutes may be considered in the disestablishment inquiry "only" to "clear up" statutory ambiguity. *See id.* at 2467-2468, 2469-2470 (majority opinion). But consideration of history is necessary precisely because it is unclear whether Congress's alienation of Indian lands at the turn of the century changed the Indian country status of the land. *See id.* at 2488 (Roberts, C.J., dissenting). Under the correct framework prescribed by this Court's precedent, it is clear that Congress disestablished the Creek territory

in Oklahoma, as well as the territories of the four other Oklahoma tribes. And with that conclusion, it is clear that the decision below is incorrect and warrants reversal.

Overruling *McGirt* and restoring the state jurisdiction it stripped is not only important for this case and the victims of the terrible crime at issue. As the Chief Justice correctly predicted, the “burdens” of the *McGirt* decision on the State of Oklahoma have been “extraordinary.” 140 S. Ct. at 2500. The challenges from that seismic shift in jurisdiction have rippled through every aspect of life in Oklahoma. Most immediately, *McGirt* has jeopardized the state’s jurisdiction over thousands of criminal cases—this case being just one of them.

The question presented in this case is materially identical to the third question presented in *Bosse*. For the compelling reasons explained in the petition in *Bosse*, review should be granted in that case. The Court should then either grant review in this case or hold the petition pending the resolution of the third question presented in *Bosse*.



CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, if the petition in *Oklahoma v. Bosse*, No. 21-186, is granted, the petition in this case should be held pending a decision there and then disposed of as is appropriate.

Respectfully submitted,

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AUGUST 16, 2021