

In the Supreme Court of the United States



STATE OF OKLAHOMA,

Petitioner,

v.

SHAWN THOMAS JONES,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

JOHN M. O'CONNOR

ATTORNEY GENERAL

MITHUN MANSINGHANI

SOLICITOR GENERAL

COUNSEL OF RECORD

CAROLINE HUNT

JENNIFER CRABB

ASSISTANT ATTORNEYS GENERAL

BRYAN CLEVELAND

RANDALL YATES

ASSISTANT SOLICITORS GENERAL

OFFICE OF THE OKLAHOMA

ATTORNEY GENERAL

313 N.E. TWENTY-FIRST STREET

OKLAHOMA CITY, OK 73105

(405) 522-4392

MITHUN.MANSINGHANI@OAG.OK.GOV

QUESTIONS PRESENTED

1. Whether a State has authority to prosecute non-Indians who commit crimes against Indians in Indian country.

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

LIST OF PROCEEDINGS

Oklahoma Court of Criminal Appeals

No. F-2017-1309

Shawn Thomas Jones, Appellant v.

State of Oklahoma, Appellee

Date of Final Opinion: April 22, 2021

Oklahoma District Court (Pontotoc County)

No. CF-2016-591

The State of Oklahoma, Plaintiff v.

Shawn Thomas Jones, Defendant

Date of Judgment and Sentence: December 22, 2017

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OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals, dated April 22, 2021, is included in the Appendix at App.1a-9a. The order of the Oklahoma Court of Criminal Appeals, dated August 24, 2020, remanding the case for an evidentiary hearing is included below at App.20a-24a. The Findings of Fact and Conclusions of Law of the District Court in and for Pontotoc County, State of Oklahoma, dated November 18, 2020, is included below at App.10a-19a. These opinions and orders were not designated for publication.



JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on April 22, 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. § 1152 (in relevant part) **Law governing (Indian country)**

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.



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 in other pending petitions before this Court, this case presents the question whether *McGirt* should be overruled and, even if not, whether the State has authority to prosecute non-Indians who commit crimes against Indians in Indian country. *See, e.g., Oklahoma v. Mize*, No. 21-274; *Oklahoma v. Williams*, No. 21-265. For the same reasons given in the petition in *Oklahoma v. Castro-Huerta* filed concurrently herewith, review is warranted to examine those questions. The petition for a writ of certiorari in this case should either be granted or, in the alternative, held if the petition in any other case presenting the same questions is granted.

1. A little before 4:30 a.m. on Sunday, September 25, 2016, Jauquetta Trotter and her children, thirty-four-year-old Brooke Trotter and twenty-nine-year-old Becky Trotter, were traveling east on Highway 3E outside of Ada, Oklahoma. Tr. I, 140-42, 143, 154; Tr. II, 240-41.¹ Brooke was driving Jauquetta's yellow Jeep Renegade. Tr. I, 141, 153. Jauquetta was in the front passenger seat, and Becky was asleep in the backseat. Tr. I, 143. Jauquetta had her eyes closed, but was not asleep, when she heard Brooke say, "Mom, we're fixing to get hit head on." Tr. I, 143-44. Jauquetta opened her eyes and saw headlights. Tr. I,

¹ All fact citations are to the transcript of respondent's trial (Tr.) and the State's trial exhibits (St. Ex.), which are available below. *See* Sup. Ct. R. 12.7.

144, 155. She felt their vehicle swerve to the right before a black Hummer traveling west hit them. Tr. I, 144, 156, 187. The Jeep started going backwards at a high rate of speed and went off into a ditch before finally coming to a stop. Tr. I, 144, 156. Brooke was hanging out of the car with a large cut across her leg and was not breathing. Tr. I, 144. There was no door left on the car. Tr. I, 144. Jauquetta, a registered nurse, called 911 and tried to check Becky to see if she had a pulse. Tr. I, 145. Because Jauquetta's left arm was broken in the accident, she had trouble reaching Becky in the backseat, but she could not feel a pulse. Tr. I, 145. Jauquetta then watched her daughter take three final gasps and pass away. Tr. I, 145.

Brooke died from multiple blunt force injuries, including a skull fracture, multiple rib fractures, upper extremity fractures, and a suspected cervical spine fracture. Tr. II, 240-41. Becky died from blunt force trauma to the head with a large laceration or avulsion of her scalp, which caused blood to drain from her ear canals and allowed air into her cranial cavity. Tr. II, 240-41. Neither Brooke nor Becky had alcohol in their blood, and Jauquetta was not under the influence of alcohol. Tr. I, 142, 241-42. Jauquetta suffered a broken arm, fractured sternum, broken toes, and contusions to her knee, abdomen, and across her chest. Tr. I, 145.

Respondent, who was the driver of the Hummer, had a blood alcohol level of .141, well over the legal limit of .08. Tr. I, 159, 166, 177-78; Tr. II, 205, 230, 268-69, 312, 329. He crossed the center line, causing the crash. Tr. II, 331; St. Exs. 1-4, 6-15, 21-32, 35-39.

Respondent was convicted of two counts of second-degree murder and sentenced to life imprisonment for

each count. He then 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. At the hearing, the State made a record that

the convicted murderer had due process. The Indian victims had due process. And based on the fact that the convicted murderer is not a Native American by any legal definition, the surviving witness/victim to the convicted murderer's crime is in the courtroom today. Her name is Jauquetta Trotter. She is the mother of Brooke and Becky. She would waive any jurisdictional defect and ask that his conviction stand.

10/19/2020 Evidentiary Hearing Transcript 7-8.

After the hearing, the court issued a written order in which it accepted the parties' stipulations and found that Brooke and Becky Trotter were Indians, as enrolled members of the Chickasaw Nation with 7/32 Indian blood. App.11a-12a. The court further concluded, based on *McGirt*, that the crimes occurred on the reservation of the Chickasaw Nation. App.12a-18a.

The Court of Criminal Appeals reversed the convictions, finding the case "controlled by our recent decision in *Bosse v. State*, 2021 OK CR 3, ___ P.3d ___ (crime occurring within the boundaries of the Chickasaw

Nation Reservation against citizens of the Chickasaw Nation).”² App.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, reiterating his “previously expressed views on the significance of *McGirt*, its far-reaching impact on the criminal justice system in Oklahoma and the need for a practical solution by Congress.” App.9a.

² The opinion in *Bosse* was subsequently withdrawn. *Bosse v. State*, 2021 OK CR 23, ___ P.3d ___. However, its holding that the State lacks jurisdiction over non-Indians who commit crimes against Indians in Indian country was adopted in *Castro-Huerta v. State*, No. F-2017-1203 (Okla. Crim. App. Apr. 29, 2021) (unpublished). The State is filing a petition for writ of certiorari in *Castro-Huerta* simultaneously with this petition.



REASONS FOR GRANTING THE PETITION

In the decision below, the Oklahoma Court of Criminal Appeals applied *McGirt* to free yet another criminal—this time a non-Indian—from state custody, exacerbating the crisis in the criminal-justice system in Oklahoma. As the State of Oklahoma explains in its petition in *Castro-Huerta*, submitted concurrently herewith, reconsideration of *McGirt* is the only realistic avenue for ending the ongoing chaos affecting every corner of daily life in Oklahoma. At a minimum, the impact of *McGirt* can be partially mitigated by affirming the State’s jurisdiction over non-Indians who commit crimes against Indians on a reservation. This case thus presents still one more opportunity to end or limit the damage caused by *McGirt*. This petition should either be granted or, if a petition presenting the same questions is granted, held pending a decision in the granted case and then disposed of as is appropriate.

As explained more fully in *Castro-Huerta*, *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 the decision below is incorrect and warrants reversal.

Overruling *McGirt* and restoring the state jurisdiction it stripped is important not only for this case and the victims of the terrible crimes 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.

Even assuming nearly half of Oklahoma properly constitutes Indian country for purposes of federal criminal jurisdiction, review is also warranted on whether a State has jurisdiction to prosecute a non-Indian, like respondent, for crimes committed against Indians in Indian country. The petition in *Castro-Huerta* sets forth why review of this question is urgent and demonstrates Oklahoma's continued jurisdiction over these crimes is consistent with statute and precedent. As this Court has repeatedly held, "absent a congressional prohibition," a State has the right to "exercise criminal (and implicitly, civil) jurisdiction over non-Indians located on reservation lands." *County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 257-58 (1992); *see also*

United States v. McBratney, 104 U.S. (14 Otto.) 621, 624 (1881). Meanwhile, nothing in the text of the General Crimes Act, nor any other Act of Congress, prohibits States from exercising jurisdiction over crimes committed by non-Indians against Indians. See 18 U.S.C. § 1152.

Thus, this Court in the past has upheld state laws protecting Indians from crimes committed by non-Indians on a reservation. *New York ex rel. Cutler v. Dibble*, 62 U.S. (21 How.) 366, 370-71 (1858). And this Court in *Oklahoma v. Bosse*, No. 20A161, granted a stay presenting this and another question, indicating that these issues involve “extraordinary circumstances” where there is “a reasonable probability that four members of the Court will consider the issue sufficiently meritorious to grant certiorari” and “five Justices are likely to conclude that the case was erroneously decided below.” *Graves v. Barnes*, 405 U.S. 1201, 1203 (1972) (Powell, J., in chambers).

The questions presented in this case are materially identical to those presented in other petitions already pending before this Court, including *Castro-Huerta*. In the event certiorari is more appropriate in this case than in another case, the Court should grant review in this case to answer the questions common to all of them. Alternatively, this Court should hold this petition pending the resolution of those questions in another case.



CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, if the petition in another case presenting the same questions is granted, the petition in this case should be held pending a decision there and then disposed of as is appropriate.

Respectfully submitted,

JOHN M. O'CONNOR

ATTORNEY GENERAL

MITHUN MANSINGHANI

SOLICITOR GENERAL

COUNSEL OF RECORD

CAROLINE HUNT

JENNIFER CRABB

ASSISTANT ATTORNEYS GENERAL

BRYAN CLEVELAND

RANDALL YATES

ASSISTANT SOLICITORS GENERAL

OFFICE OF THE OKLAHOMA

ATTORNEY GENERAL

313 N.E. TWENTY-FIRST STREET

OKLAHOMA CITY, OK 73105

(405) 522-4392

MITHUN.MANSINGHANI@OAG.OK.GOV

COUNSEL FOR PETITIONER

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