

**In the Supreme Court of the United States**



STATE OF OKLAHOMA,

*Petitioner,*

v.

JEFFERY ARCH JONES,

*Respondent.*

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

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**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. F-2017-1245

*Jeffery Arch Jones*, Appellant v.  
*The State of Oklahoma*, Appellee

Date of Final Opinion: April 8, 2021

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Oklahoma District Court (Tulsa County)

No. CF-2017-973

*State of Oklahoma*, Plaintiff v.  
*Jeffery Arch Jones*, Defendant

Date of Judgment and Sentence: November 27, 2017

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**OPINIONS BELOW**

The opinion of the Oklahoma Court of Criminal Appeals, dated April 8, 2021, is included in the Appendix at App.1a-11a. The order of the Oklahoma Court of Criminal Appeals, dated August 21, 2020, remanding the case for an evidentiary hearing is included below at App.23a-27a. The Findings of Fact and Conclusions of Law of the District Court in and for Tulsa County, State of Oklahoma, dated November 12, 2020, is included below at App.12a-17a. These opinions and orders were not designated for publication.



## **JURISDICTION**

The judgment of the Oklahoma Court of Criminal Appeals was entered on April 8, 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 in many other pending petitions before this Court, this case presents the question whether *McGirt* should be overruled. *See, e.g., Oklahoma v. Williams*, No. 21-265; *Oklahoma v. Mitchell*, No. 21-254. Review is warranted to examine that question. 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 question is granted.

1. Respondent, his wife, Crystal Jones, and Ms. Jones’ daughters, K.B. and C.B., lived together in a home in Broken Arrow, Oklahoma. Tr. III 325, 357.\* At trial, K.B., then nine years old, testified that when she was in the second grade, respondent touched her “front no-no spot” (vagina) and “back no-no spot” (buttocks) multiple times with “the part on a boy that his pee comes out” (his penis). Tr. III 322, 325-30. The abuse happened in multiple locations within the trailer home and respondent’s truck. Tr. III 328-29. Respondent’s penis “[k]ind of” went inside K.B.’s

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\* All fact citations are to respondent’s trial transcripts (Tr.) and the State’s trial exhibits (State’s Ex.), which are available below. *See* Sup. Ct. R. 12.7.

body when he touched her vagina and buttocks, and “[i]t hurt.” Tr. III 332.

Respondent also tried multiple times to force K.B. to perform oral sex, and to touch his penis with her hand. Tr. III 330-31. K.B. did not tell her mother about the abuse because she was concerned “it would make her [mother] sad,” and respondent would be mad at her. Tr. III 332. Respondent also grabbed the chest of K.B.’s older sister, C.B., a number of times over the course of a year or two. Tr. III 342-44.

Respondent began his abuse when K.B. was seven years old and in the first grade. State’s Ex. 1 at 30:39-30:47. All of K.B.’s efforts to resist were thwarted by her adult step-father. State’s Ex. 1 at 28:46-28:56, 33:15-34:27, 35:30-36:19. K.B. demonstrated how respondent would try to pry her mouth open with his hands so he could put his penis in her mouth. State’s Ex. 1 at 37:11-37:31. K.B. became visibly distraught at times during her forensic interview, sometimes crying so hard she could barely speak, and at one point stating, “I want my mama.” State’s Ex. 1 at 14:58-15:19, 19:35-19:46, 20:05-20:27, 20:43-21:12, 22:07-22:19, 23:05-24:03.

Respondent was convicted of five counts of child sexual abuse and was sentenced to forty years imprisonment for three counts, thirty years imprisonment for one count, and twenty-five years imprisonment for the remaining count. Respondent appealed his convictions 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 remand, the court accepted the parties’ stipulations and found

that respondent is an Indian, as an enrolled member of the Cherokee Nation with 29/64 Indian blood. App.13a-15a. The court further concluded, based on *McGirt*, that the crimes occurred on the reservation of the Creek Nation. App.15a-16a.

The Court of Criminal Appeals reversed the convictions “[p]ursuant to *McGirt*[.]” App.5a. The opinion’s author, Judge Hudson, reiterated in a footnote 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.5a.

Two judges wrote separate opinions. Judge Lumpkin concurred in the result. App.8a-10a. 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.8a.

Judge Lewis also concurred in the result based on his previous concurrences in *Bosse* and *Hogner* in which he—in relevant part—explained that *McGirt* required reversal. App.11a; see *Hogner v. State*, 2021 OK CR 4, ¶¶ 1-5, \_\_\_ P.3d \_\_\_ (Lewis, J., concurring in results); *Bosse v. State*, 484 P.3d 286, 299 (Okla. Crim. App. 2021) (Lewis, J., specially concurring).



## 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 has explained, reconsideration of *McGirt* is the only realistic avenue for ending the ongoing chaos affecting every corner of daily life in Oklahoma. *See, e.g.*, Pet. at 21-32, *Oklahoma v. Bosse*, No. 21-186. This case presents yet another opportunity to end the damage caused by *McGirt*. This petition should either be granted or, if a petition presenting the same question is granted, held pending a decision in the granted case and then disposed of as is appropriate.

*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.

The question presented in this case is materially identical to those presented in other petitions already pending before this Court. *See supra* at 3. 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 question common to all of them. Alternatively, this Court should hold this petition pending the resolution of that question 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 question 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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SEPTEMBER 3, 2021