

In the Supreme Court of the United States



STATE OF OKLAHOMA,

Petitioner,

v.

SHAWN LEE MCDANIEL,

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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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-2017-357

Shawn Lee McDaniel, Appellant v.

The State of Oklahoma, Appellee

Date of Final Opinion: April 29, 2021

Oklahoma District Court (Muskogee County)

No. CF-2015-249

The State of Oklahoma, Plaintiff v.

Shawn Lee McDaniel, Defendant

Date of Judgment and Sentence: April 5, 2017

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OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals, dated April 29, 2021, is included in the Appendix at App.1a-13a. The order of the Court of Criminal Appeals, dated August 19, 2020, remanding the case for an evidentiary hearing is included below at App.30a-34a. The initial Order on remand of the District Court in and for Craig County, State of Oklahoma, dated January 25, 2021, is included below at App.27a-29a. The order of the Court of Criminal Appeals, dated February 24, 2021, directing response or compliance with remand order is included below at App.24a-26a. The amended Order on remand of the District Court, dated March 5, 2021, is included below at App.14a-

23a. These opinions and orders were not designated for publication.



JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on April 29, 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. For the same reasons given in the petition in *Oklahoma v. Castro-Huerta*, No. 21-429, 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 *Castro-Huerta* is granted.

1. On August 18, 2014, Tracy Rucker was “in trouble” with respondent, her boyfriend, because she was doing drugs at the home of Billy Fools. Tr. II 79; Tr. IV 116, 135.* Respondent used a ladder to enter Billy’s home through a window and waited in a bedroom closet. Tr. II 42, 121-23; Tr. IV 141-43; State’s Exhibit 16. When Billy entered the room, respondent shot him twice with a rifle. Tr. II 48, 86-89, 116; Tr. III 123, 127-38; Tr. IV 138-50. Billy died from the gunshot to his abdomen. Tr. III 14.

Respondent was convicted of first-degree murder and sentenced to life imprisonment. He then appealed to the Court of Criminal Appeals.

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

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 Billy Fools was an Indian, as an enrolled member of the Cherokee Nation with 1/4 Indian blood. App.15a-16a. The court further concluded, based on *McGirt*, that the crime occurred on the reservation of the Cherokee Nation. App.16a-24a.

The Court of Criminal Appeals reversed the conviction, holding that “[u]nder the analysis in *McGirt*, * * * the District Court of Muskogee County was without jurisdiction to prosecute” respondent. App.5a. The court also rejected the State’s argument that it has authority to prosecute crimes by non-Indians against Indians in Indian country based on its decision in *Bosse v. State*, 484 P.3d 286 (Okla. Crim. App. 2021).¹ App.5a.

Two judges wrote separate opinions. Judge Lumpkin concurred in the result. App.9a-11a. 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.9a.

Judge Hudson also concurred in the result, reiterating his “previously expressed views on the significance

¹ 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), *cert. filed*, No. 21-186, as well as in *Roth v. State*, 2021 OK CR 27 (Okla. Crim. App. 2021).

of *McGirt*, its far-reaching impact on the criminal justice system in Oklahoma and the need for a practical solution by Congress.” App.12a-13a.



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*, 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 the petition in *Castro-Huerta* is granted, held pending a decision in *Castro-Huerta* 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 victim 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.

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 *Castro-Huerta*.



CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, if the petition in *Castro-Huerta* 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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