

In the Supreme Court of the United States



STATE OF OKLAHOMA,

Petitioner,

v.

STEPHEN TANNER VINEYARD,

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. F-2020-245

Stephen Tanner Vineyard, Appellant v.
The State of Oklahoma, Appellee

Date of Final Opinion: September 2, 2021

Oklahoma District Court (Carter County)

No. CF-2018-424

The State of Oklahoma, Plaintiff v.
Stephen Tanner Vineyard, Defendant

Date of Judgment and Sentence: March 18, 2020

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 (September 2, 2021) 1a

District Court of Carter County, State of
Oklahoma, Findings of Fact and Conclusions
of Law on Remand from the Oklahoma Court
of Criminal Appeals (July 1, 2021)..... 10a

Court of Criminal Appeals, State of Oklahoma,
Order Remanding for Evidentiary Hearing
(March 26, 2021) 15a

TABLE OF AUTHORITIES

	Page
CASES	
<i>Bosse v. State</i> , 2021 OK CR 30, ___ P.3d ___	5
<i>Hogner v. State</i> , 2021 OK CR 4, ___ P.3d ___	5
<i>McGirt v. Oklahoma</i> , 140 S.Ct. 2452 (2020)	passim
<i>Oklahoma v. Castro-Huerta</i> , No. 21-429 (Okla. Crim. App. Sept. 21, 2021)	3, 6, 7, 8
STATUTES	
18 U.S.C. § 1151	2
18 U.S.C. § 1152	2
18 U.S.C. § 1153(a)	3
28 U.S.C. § 1257(a)	2
JUDICIAL RULES	
Sup. Ct. R. 12.7	4

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OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals, dated September 2, 2021, is included in the Appendix at App.1a-9a. The order of the Oklahoma Court of Criminal Appeals, dated March 26, 2021, remanding the case for an evidentiary hearing is included below at App.15a-19a. The Findings of Fact and Conclusions of Law of the District Court in and for Carter County, State of Oklahoma, dated July 2, 2021, is included below at App.10a-14a. These opinions and orders were not designated for publication.



JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on September 2, 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.

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. Castro-Huerta*, No. 21-429, this case presents the question whether *McGirt* should be overruled. For the same reasons given in the *Castro-Huerta* petition, review is warranted to examine that question. The petition in *Castro-Huerta* should be granted, and this petition should be held pending a decision there. In the alternative, the petition in this case should be granted.

1. On June 30, 2014, respondent fired multiple shots from a 12-gauge shotgun at the home of a rival

gang member. Tr. II 233-34, 241-50, 284-85.* Respondent shot and killed his rival's grandmother, Ella Loftis, who was sitting on the front porch. Tr. I 204-05; Tr. II 233.

Respondent was convicted of second-degree felony murder and sentenced to twenty-seven years' imprisonment. He then appealed to the Court of Criminal Appeals, claiming the State lacked authority to prosecute him because he was an Indian and he killed Ms. Loftis in Indian country.

2. The Court of Criminal Appeals remanded the case to the state district court for an evidentiary hearing on March 26, 2021. App.15a. On remand, the parties stipulated that respondent was an enrolled member of the Chickasaw Nation and possessed a 1/8 degree of Chickasaw blood at the time of the crime. App.12a. Furthermore, the parties stipulated that respondent's crime occurred within the historical boundaries of the Chickasaw Nation. App.12a. The State, however, stated it "strongly believes that *McGirt* was wrongly decided and therefore, Defendant's Indian Count[r]y jurisdictional claim is without merit." State's Pre-Evidentiary Hearing Br. at 3 (May 20, 2021). The state district court ultimately accepted the parties' stipulations and determined that respondent was an Indian, and that the crime occurred within the boundaries of the Chickasaw Reservation, as that reservation had been recognized by the Oklahoma Court of Criminal Appeals. App.12a-14a.

After the state district court issued its findings of fact and conclusions of law, the case returned to the Oklahoma Court of Criminal Appeals. There, the State

* All fact citations are to the transcripts of respondent's trial (Tr.), which are available below. See Sup. Ct. R. 12.7.

argued, as it had below, that “the State strenuously disagrees with the holdings in *McGirt* and *Bosse*, and preserves the right to ask the Supreme Court to review those holdings.” Supplemental Br. of Appellee After Remand at 2 n.2 (Aug. 3, 2021). The Court of Criminal Appeals reversed the conviction, finding the district court “appropriately applied *McGirt*[.]” App.5a. Judge Lumpkin, who authored the opinion, included a footnote in which he expressed his continued belief that *McGirt* was wrongly decided. App.1a-2a, n.1. Two judges wrote separate opinions.

Judge Hudson specially concurred in the result based on *stare decisis*, but stated 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.8a.

Judge Lewis also concurred in the result based on his previous writings in *Bosse v. State*, 2021 OK CR 3, 484 P.3d 286, *opinion withdrawn by Bosse v. State*, 2021 OK CR 30, ___ P.3d ___, and *Hogner v. State*, 2021 OK CR 4, ___ P.3d ___. 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 *Castro-Huerta*, reconsideration of *McGirt* is the only realistic avenue for ending the ongoing chaos affecting every corner of daily life in Oklahoma. *See* Pet. at 17-29, *Oklahoma v. Castro-Huerta*, No. 21-429. This case presents yet another opportunity to end the damage caused by *McGirt*. If the petition in *Castro-Huerta* is granted, this petition should be held pending a decision in *Castro-Huerta* and then disposed of as is appropriate. In the alternative, this petition should be granted.

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.

The question presented in this case is materially identical to the second question presented in *Castro-Huerta*. For the compelling reasons explained in the petition in *Castro-Huerta*, review on this question is warranted.



CONCLUSION

The petition for a writ of certiorari in *Castro-Huerta* should be granted, and the petition in this case should be held pending a decision there and then disposed of as is appropriate. In the alternative, this petition should be granted.

Respectfully submitted,

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NOVEMBER 24, 2021