

In the Supreme Court of the United States

STATE OF OKLAHOMA,

Petitioner,

v.

FLOYD JOSEPH BALL,

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-2020-54

Floyd Joseph Ball, Jr., Appellant v.
The State of Oklahoma, Appellee

Date of Final Opinion: June 3, 2021

Oklahoma District Court (McClain County)

No. CF-2018-157

The State of Oklahoma, Plaintiff v.
Floyd Joseph Ball, Defendant

Date of Judgment and Sentence: January 13, 2020

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OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals, dated June 3, 2021, is included in the Appendix at App.1a-11a. The order of the Oklahoma Court of Criminal Appeals, dated February 26, 2021, remanding the case for an evidentiary hearing is included below at App.15a-22a. The Order of the District Court in and for McClain County, State of Oklahoma, dated March 26, 2021, is included below at App.12a-14a. These opinions and orders were not designated for publication.



JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on June 3, 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. 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 for a writ of certiorari in this case should be held pending consideration of the *Castro-Huerta* petition or, in the alternative, granted.

1. In spring of 2018, J.H. ended a seven-year relationship with respondent Floyd Joseph Ball, the father of her two young children. Tr. II 106-08.¹ Unwilling to accept the breakup, respondent began stalking and harassing her, in person and online. Tr. II 108-09. On April 21, 2018, respondent kidnapped J.H. from a Sonic drive-in as she ate her lunch. Tr. II 117-18. After forcing her into his car, he hit her repeatedly and told her “if he couldn’t have [her], then nobody could have [her].” Tr. II 118. Respondent released J.H. only after she had sex with him and said they would get back together. Tr. II 119-20. J.H. reported these crimes to the police and a warrant issued for respondent’s

¹ All fact citations are to the transcript of respondent’s trial (Tr.), which is available below. See Sup. Ct. R. 12.7.

arrest; however, authorities were not able to locate him before he victimized J.H. again. Tr. II 8-9.

The night of May 4, 2018, J.H. was alone, closing down the Subway store where she worked, when respondent entered the store, with bleached hair, dressed in all black, and wielding a knife. Tr. II 111-12. Respondent intercepted J.H. before she could reach the store's security panic button, physically assaulted her, and then forced her from the store and into his car. Tr. II 112-17, 120-23. Once in the car, respondent hit J.H. with such force that it broke her nose, cheekbone, jaw, and glasses and blackened both eyes. Tr. II 123-24, 137-39. He then forced her to undress. Tr. II 123-24. Respondent drove J.H. to his grandmother's home more than two hours away. Tr. II 126. Respondent told J.H. that if she made any noise there "would be a bloody mess." Tr. II 127. He held her captive for several hours and raped her before law enforcement arrived at the house, rescued her, and arrested respondent. Tr. II 128-34.

Respondent was convicted of kidnapping, assault and battery with a dangerous weapon, aggravated assault and battery, and disrupt/prevent/interrupt an emergency telephone call in the District Court in and for McClain County, Oklahoma.² He was sentenced to a total of thirty years in prison. Respondent then appealed to the Court of Criminal Appeals.

² Related to these events, respondent pled guilty and was convicted of rape and kidnapping in the District Court in and for McIntosh County, Oklahoma. He ultimately received relief from the Court of Criminal Appeals on those convictions pursuant to *McGirt*. The State's certiorari appeal challenging that decision is pending before this Court in case number 21-327.

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 a member of the federally recognized Choctaw Nation with 1/8 Indian blood quantum and the crimes occurred within the reservation of the Chickasaw Nation. App.14a.

The Court of Criminal Appeals reversed the convictions, holding that the district court's findings were supported by the record and that, "pursuant to *McGirt*," "the State of Oklahoma did not have jurisdiction to prosecute Appellant in this matter." App.5a-6a. The opinion's author, Judge Hudson, wrote in a footnote that he maintains 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.6a.

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 Lewis also concurred in the result based on previous concurrences in which he—in relevant part—explained that *McGirt* required reversal. App.12a; 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), *withdrawn by Bosse v. State*, 2021 OK CR 23, ___ P.3d ___.



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, or 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 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 the second question presented in *Castro-Huerta*. For the compelling reasons explained in the petition in *Castro-Huerta*, review on this question is warranted. Accordingly, the Court should either hold the petition pending the resolution of the second question presented in *Castro-Huerta* or grant review in this case.



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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