

In the Supreme Court of the United States



STATE OF OKLAHOMA,

Petitioner,

v.

JOSES RIC-E BECK,

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-2019-115

Joses Ric-E Beck, Appellant v.

The State of Oklahoma, Appellee

Date of Final Opinion: April 8, 2021

Oklahoma District Court (Johnston County)

No. CF-2017-23

State of Oklahoma, Plaintiff v.

Joses Ric-E Beck, Defendant

Date of Judgment and Sentence: February 7, 2019

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 (April 8, 2021)	1a
District Court of Pontotoc County, State of Oklahoma, Findings of Fact and Conclusions of Law (Signed November 18, 2020, Filed November 19, 2020)	13a
Court of Criminal Appeals, State of Oklahoma, Order Remanding for Evidentiary Hearing (August 19, 2020)	19a

TABLE OF AUTHORITIES

Page

CASES

<i>Bosse v. State</i> , 484 P.3d 286 (Okla. Crim. App. 2021)	5
<i>Hogner v. State</i> , ___ P.3d ___ (2021 OK CR 4)	5
<i>McGirt v. Oklahoma</i> , 140 S. Ct. 2452 (2020)	passim
<i>Oklahoma v. Bosse</i> , Petition for Writ of Certiorari, No. 21-186 (U.S.)	6

STATUTES

18 U.S.C. § 1151	2
18 U.S.C. § 1153(a)	2
28 U.S.C. § 1257(a)	2

JUDICIAL RULES

Sup. Ct. R. 12.7	3
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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-15a. The order of the Oklahoma Court of Criminal Appeals, dated August 19, 2020, remanding the case for an evidentiary hearing is included below at App.19a-23a. The Findings of Fact and Conclusions of Law of the District Court in and for Johnston County, State of Oklahoma, dated November 19, 2020, is included below at App.16a-18a. 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. Brittney Valero was in a relationship with both respondent and a man named Shadow Rider. Tr. I 90, 93-94, 114-16, 120-21.* During the afternoon of March 25, 2017, Shadow went to Brittney’s apartment to drop off cigarettes. Tr. I 128. As he made his way out of his car with the crutch he used because he has cerebral palsy, respondent appeared and yelled out, “I told you I’d kill you if you ever showed up over here again.” Tr. I 125, 129-30, 149-50. Respondent ran up to Shadow and punched him in the nose. Tr. I 130. Shadow fell to the ground, and respondent

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

repeatedly hit and kicked him in the head and on the chest. Tr. I 130-31. Shadow was eventually able to leave and called the police. Tr. I 132.

At the same time, Brittney was getting ready to go out to eat with Shadow for his birthday. Tr. I 105-06, 118. Respondent kicked in the back door, grabbed her by her wrists, and dragged her down the hallway. Tr. I 106-07, 116-17, 119, 121-22. He told her “you’re going to see what I just done to him.” Tr. I 107-08. Brittney then saw Shadow’s car pulling away. Tr. I 108.

Brittney made it across the street and asked a neighbor to call police. Tr. I 137-41. The neighbor saw respondent inside of Brittney’s apartment, pointing a knife across the street at the neighbor. Tr. I 139-41. When police arrived, respondent charged them, saying he was not going back to prison. Tr. I 164-65, 224. He was holding the knife to his throat and began advancing towards officers, telling them to “[J]ust f***** shoot me.” Tr. I 164-65, 224. Respondent ignored repeated commands to drop the knife, advancing on the officers until they had backed up 108 feet and could go no further. Tr. I 164-225. When respondent made a quick move with the knife, one of the officers shot him. Tr. I 172-233.

Respondent was convicted of first-degree burglary, aggravated assault and battery, and three counts of assault with a dangerous weapon. He also had prior felony convictions for lewd or indecent proposal to a minor under 16, failure to register as a sex offender, and using drugs with a minor. Tr. II 327-28; S.E. 41-43. The trial court sentenced respondent, in accordance with the jury’s verdicts, to thirty years imprisonment for first degree burglary, life imprisonment for aggravated assault and battery, and thirty-five years

imprisonment for each count of assault with a dangerous weapon. 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 that respondent has some Indian blood and is a member of the Chickasaw Nation. App.17a. The court further concluded, based on *McGirt*, that the crimes occurred on the reservation of the Chickasaw Nation. App.17a-18a.

The Court of Criminal Appeals vacated the convictions: "Under the analysis in *McGirt*, we hold the District Court of Johnston County did not have jurisdiction to prosecute Beck." App.7a.

Three judges wrote separate opinions. Judge Lumpkin concurred in the result. App.10a-12a. 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.10a.

Judge Lewis specially concurred based on his previous concurrences in *Bosse* and *Hogner* in which he—in relevant part—explained that *McGirt* required reversal. App.13a; 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).

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.14a.



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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