

In the Supreme Court of the United States



STATE OF OKLAHOMA,

Petitioner,

v.

DAKOTA SHAY FOX,

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-19-196

Dakota Shay Fox, Appellant v.

The State of Oklahoma, Appellee

Date of Final Opinion: April 29, 2021

Oklahoma District Court (McCurtain County)

No. CF-2018-7

State of Oklahoma, Plaintiff v.

Dakota Shay Fox, Defendant

Date of Judgment and Sentence: March 4, 2019

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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-16a. 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.20a-24a. The Findings of Fact and Conclusions of Law of the District Court in and for McCurtain County, State of Oklahoma, dated October 15, 2020, is included below at App.17a-19a. 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. § 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 either be granted or, in the alternative, held if the petition in *Castro-Huerta* is granted.

1. Shortly after 6:00 p.m. on January 4, 2018, respondent shot and killed Jarrin Boyles near the intersection of Southeast Adams Street and Southeast Avenue G in Idabel, Oklahoma. Tr. I 184.* Jarrin had worked for Deanna Young off and on for twelve to thirteen years selling cleaning products. Tr. I 117-18. He had substance abuse issues and would usually stop working for her when he started using again. Tr. I 118. Jarrin started working for Young again in December 2017, and she sent him and another employee to Idabel from Texas on January 3, 2018, to sell cleaning products in the area. Tr. I 118, 123.

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

Jarrin was due to return to Texas on the day he was killed. Tr. I 119-20. When Young spoke to Jarrin on the morning of the day he died, he was talkative and seemed agitated. Tr. I 119-20.

Jarrin happened upon respondent and a friend, who were out walking, and told them he was looking for drugs. Tr. I 132-33; Tr. II 294. Respondent either made a call or acted like he made a call and told Jarrin he could get drugs for him. Tr. I 133. The three men walked together until respondent suddenly shot Jarrin twice from close range, once in the face and once in the back of the neck. Tr. I 134-38; Tr. II 274-77. When his body was found, Jarrin's pants pockets were both turned inside out, with a single dollar bill left wadded in the lining of one pocket. Tr. I 179-80, 182.

Respondent was convicted of first-degree murder and sentenced to life without the possibility of parole. He then appealed to the Oklahoma 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 Choctaw Nation with 1/4 Indian blood. App.18a. The court further concluded that the crime occurred on the reservation of the Choctaw Nation. App.18a.

The Court of Criminal Appeals reversed the conviction based on its conclusion that the district court "appropriately applied *McGirt*." App.7a. The opinion's author, Judge Hudson, wrote in a footnote that he maintains his "previously expressed views on the sig-

nificance of *McGirt*, its far-reaching impact on the criminal justice system in Oklahoma and the need for a practical solution by Congress.” App.7a.

Three judges wrote separate opinions. Presiding Judge Kuehn concurred in the result to express disagreement with some aspects of the majority’s opinion, but agreed that the “case must be dismissed.” App.11a-12a.

Judge Lumpkin concurred in the result. App.13a-15a. 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.13a.

Judge Lewis also concurred in the result based on previous concurrences in which he—in relevant part—explained that *McGirt* required reversal. App.16a; 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*. 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.

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 grant review in this case or hold the petition pending the resolution of the second question presented 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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