

In the Supreme Court of the United States



STATE OF OKLAHOMA,

Petitioner,

v.

DAKOTA JAMES ALLEYN SHRIVER,

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-2017-1279

Dakota James Alleyn Shriver, Appellant v.
The State of Oklahoma, Appellee

Date of Final Opinion: April 29, 2021

Oklahoma District Court (Rogers County)

No. CF-2015-395

The State of Oklahoma, Plaintiff v.
Dakota James Alleyn Shriver, Defendant

Date of Judgment and Sentence: December 8, 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-11a. The order of the Oklahoma Court of Criminal Appeals, dated August 14, 2020, remanding the case for an evidentiary hearing is included below at App.40a-44a. The Findings of Fact and Conclusions of Law of the District Court in and for Rogers County, State of Oklahoma, dated November 12, 2020, is included below at App.12a-39a. 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. In the early morning hours of June 5, 2015, two different pairs of young people—Noelle New and Maranda Talley, less than a month removed from their high school graduations with college scholarships in hand, and brothers Dakota and Gage Shriver (ages 21 and 19, respectively)—separately decided to head to their local QuikTrip. Tr. II 389, 403, 423; Tr.VI 1502.* The young men, who had been drinking beer from the two 30-packs respondent had purchased that evening, left their house in Gage’s pickup and arrived at the QuikTrip at 3:12 a.m. Tr. V 1194; Tr.VI 1501; S.E. 208 at 11:57:50. The young women, who had not been drinking but were suffering from insomnia,

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

decided to walk to QuikTrip to recreate a childhood memory of the good friends doing the same, years before. Tr. II 403-04, 421. Noelle and Maranda even took a picture of themselves as they began their walk, to memorialize this re-creation. S.E. 12.

Had the young women arrived before the Shrivvers left the QuikTrip at 3:30 a.m., Tr. V 1194, the evening might have remained a cherished memory. However, within a half-mile of their destination as they were walking along the roadway, a black pickup swerved directly into them without braking—killing Noelle, who was dragged under the pickup, and seriously injuring Maranda. Tr. II 403, 413, 467-68, 482; Tr. III 537-48; Tr. V 1145-51; S.E. 1, 3-9. Maranda testified that when she regained consciousness, she saw two men “standing by a truck panicking.” Tr. II 408. Maranda lost consciousness again, and when she came to, the truck was gone. Tr. II 420. She saw a light at a house across the street and tried crawling toward it, only managing to move a couple of feet from where the truck had thrown her body. Tr. II 420. Maranda was airlifted to a hospital with severe facial lacerations and a badly injured leg. Tr. III 627-28; 636-40; S.E. 3-9.

When questioned by police after his wallet was found at the scene, respondent attempted to blame Maranda for the events of that morning, saying he spoke with her at the scene and she said she “had to [sic] much to drink” at a nearby party earlier that evening. Tr. III 615-24; Tr. IV 807, 818; Tr. V 1077; S.E. 72-73, 211. Respondent finally admitted that he and Gage were arguing as the truck traveled away from the QuikTrip, that Gage was aggressively beating the steering wheel, and that he hit Gage in the side of

the face, causing the truck to swerve off the road. S.E. 208 at 12:01:35.

Respondent was convicted of second-degree murder, accessory after the fact, and misdemeanor obstructing an officer. He was sentenced to twenty-five years imprisonment, two years imprisonment, and one year in the county jail, respectively, for these crimes. Respondent then appealed 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 and found that respondent is an Indian, as an enrolled member of the Cherokee Nation with 17/128 quantum Cherokee blood. App.12a-13a, 39a. The court further concluded, based on *McGirt*, that the crimes occurred on the reservation of the Cherokee Nation. App.16a-39a.

The Court of Criminal Appeals reversed the convictions, finding "that pursuant to *McGirt*, the State of Oklahoma did not have jurisdiction to prosecute" respondent. App.7a-8a. The opinion's author, Judge Lumpkin, wrote in a footnote that he was bound to follow *McGirt* but believed it was wrongly decided. App.1a-2a.

Two judges wrote separate opinions. Judge Lewis concurred in the result based on previous concurrences in which he—in relevant part—explained that *McGirt* required reversal. App.10a; 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 ___.

Judge Hudson specially concurred based on *stare decisis*, while 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.11a.

It is the State’s understanding that the federal government will not pursue charges against respondent. Any successful prosecution by tribal authorities is subject to the limitations on tribal penal authority set forth in federal law. *See, e.g.*, 25 U.S.C. 1302(a)(7).



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 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 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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