

No. 21-1102

IN THE
Supreme Court of the United States

STATE OF OKLAHOMA,

Petitioner,

v.

SHAYNNA LAUREN SIMS,

Respondent.

On Petition for a Writ of Certiorari
to the Oklahoma Court of Criminal Appeals

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the Oklahoma Court of Criminal Appeals correctly hold that States lack jurisdiction to prosecute crimes by non-Indians against Indians in Indian country, as this Court has repeatedly affirmed and as lower courts uniformly agree?

2. Should this Court grant certiorari to address the Oklahoma Court of Criminal Appeals' holding that States lack jurisdiction over crimes by non-Indians against deceased Indians—in an unpublished, nonbinding opinion addressing an issue that no court anywhere in the country has ever addressed?

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INTRODUCTION

This petition presents two questions. The first is identical to the first question presented in *Oklahoma v. Castro-Huerta*, on which this Court granted certiorari and heard oral argument. No. 21-429 (U.S. Jan. 21, 2022). The second question presented, which asks whether States have jurisdiction over crimes against deceased Indians, does not warrant review. That question implicates no split. Indeed, no other court has ever addressed the issue—which also implicates unresolved threshold issues that the decision below addressed only in a nonprecedential opinion that is not binding even in Oklahoma. The decision below is also correct. This petition should be held pending a decision in *Castro-Huerta*; should the Court affirm in *Castro-Huerta*, it should deny review on the second question presented.

STATEMENT OF THE CASE

In *Sharp v. Murphy*, 140 S. Ct. 2412 (2020), and *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), it was common ground that the Court’s holding would apply to all crimes involving Indians, whether as defendants or victims. That was because, as Oklahoma explained, “States lack criminal ... jurisdiction ... if either the defendant or victim is an Indian.” Petition for a Writ of Certiorari at 18, *Royal v. Murphy*, No. 17-1107 (U.S. Feb. 6, 2018). Hence, Oklahoma emphasized that an adverse ruling would invalidate convictions for “crimes committed against Indians” by Indians or non-Indians, “which the state would not have jurisdiction over.” Transcript of Oral Argument at 54, *McGirt*, No. 18-9526 (U.S. May 11, 2020).

Respondent invoked that law below. Respondent Shaynna Lauren Sims was charged by information in May 2015 for alleged crimes committed within the Creek

reservation. Information (Okla. Dist. Ct., Tulsa Cnty. May 6, 2015).¹ Those alleged crimes included disturbing the body of a recently deceased Indian and removing the victim's body parts. Pet. App. 23a-24a. Respondent was convicted in 2017 and sentenced to seven years in Oklahoma prison. Pet. 5. Respondent appealed.

Shortly thereafter, in August 2017, the Tenth Circuit applied *Solem v. Bartlett*, 465 U.S. 463 (1984), to hold that the Muscogee reservation endured. *Murphy v. Royal*, 875 F.3d 896, 966 (10th Cir. 2017). On appeal, Respondent argued that Oklahoma lacked jurisdiction, because the conduct took place in the Muscogee reservation and the alleged victim was a member of the Muscogee Nation. Br. of Appellant at 36-38 (Okla. Ct. Crim. App. Oct. 10, 2017).² The State's lone response was to contend that Respondent had failed to show the victim's Indian status or the location of the offenses. Br. of Appellee at 46-49 (Okla. Ct. Crim. App. Feb. 6, 2018). The Oklahoma Court of Criminal Appeals ("OCCA") held the case in abeyance pending this Court's decision in *Murphy*. Order (Okla. Ct. Crim. App. Mar. 22, 2019).

Following *McGirt*, the OCCA remanded to the district court for an evidentiary hearing on the victim's Indian status and the location of the alleged crimes. Pet. App. 24a. On remand, the parties stipulated that the victim was a member of the Muscogee Nation and that the alleged crimes took place within the Muscogee Reservation. Pet. App. 19a-20a. In the district court, the State raised for the

¹ References to district-court filings are to Case No. CF-2015-2252, available at <https://bit.ly/3swIQyB>.

² References to filings in the Oklahoma Court of Criminal Appeals are to Case No. F-2017-635, available at <https://bit.ly/3KaGag7>.

first time its arguments that the State had concurrent jurisdiction over crimes committed by non-Indians in Indian country and that the State had exclusive jurisdiction over victimless crimes committed by non-Indians in Indian country. *See* Pet. App. 17a. The State reiterated these arguments on appeal. *See* Supplemental Br. of Appellee after Remand (Okla. Ct. Crim. App. Dec. 7, 2020).

The OCCA disagreed. First, the court held that Respondent’s crime did not qualify as a “victimless” crime, because it did not “involve[] only the criminal.” Pet. App. 7a (quoting Black’s Law Dictionary). The OCCA also rejected Oklahoma’s concurrent jurisdiction argument and, relying on *Roth v. State*, 2021 OK CR 27, 499 P.3d 23, *petition for cert. filed*, 90 U.S.L.W. 3198 (U.S. Dec. 21, 2021) (No. 21-914), held that Oklahoma lacked jurisdiction to prosecute Respondent. Pet. App. 7a. Therefore, on October 7, 2021, the OCCA dismissed Respondent’s case for lack of jurisdiction. Pet. App. 7a-8a.

REASONS FOR DENYING THE PETITION

Respondent maintains that this petition should be denied for the same reasons enumerated in the Brief in Opposition in *Castro-Huerta*. In *Castro-Huerta*, however, this Court granted certiorari on the first question presented here: whether States have concurrent jurisdiction over crimes committed by non-Indians against Indians in Indian country. 142 S. Ct. 877, 877-78 (2022). This Court should therefore hold this petition pending *Castro-Huerta* and dispose of it as appropriate after the decision in *Castro-Huerta*. If this Court affirms the OCCA’s decision in *Castro-Huerta*, it should deny this petition. The second question presented—whether the crime below was a victimless crime—does not merit this Court’s review, and the OCCA’s decision was correct.

I. The Splitless Question Of Whether States Have Jurisdiction Over Crimes Against Deceased Indians Does Not Warrant Review.

This Court grants certiorari to address important questions that have divided federal appellate courts or state courts of last resort. Here, however, Oklahoma cites no decision—from any court, anywhere in the country—that has ever addressed the question the OCCA decided below: Whether States have jurisdiction over crimes against the bodies of deceased Indians. Oklahoma certainly cites no split on that question.

Instead, the cases Oklahoma cites are far off point. The 72-year-old decision in *Menashe v. Sutton* addressed whether a statute that defined a “justice” of the Hawaii Supreme Court as “[a] person duly commissioned to hold courts” could include the corpse of a deceased justice. 38 Haw. 449, 460 (1950). The 110-year-old decision in *Brooks v. Boston Northern Street Railway Co.* asked whether a deceased person could bring a personal injury action in his own capacity. 97 N.E. 760, 760 (Mass. 1912). Neither case addresses whether mutilation of a dead body is “a crime which generally involves only the criminal,” Pet. App. 7a (quoting Black’s Law Dictionary (6th ed. 1990)), or whether it constitutes a “crime ... against [an] Indian[],” *Williams v. United States*, 327 U.S. 711, 714 n.10 (1946). The Court should thus follow its ordinary practice and deny review of the splitless question presented here.

Review is even more unwarranted because this case’s exotic facts implicate unresolved threshold questions. As Oklahoma admits, it builds its argument on this Court’s “suggest[ion],” in dicta, that “states have authority over ‘victimless crimes by non-Indians’” “without ever addressing the[] contours” of the category of “victimless”

crimes. Pet. 7 (quoting *Solem*, 465 U.S. at 465 n.2). So to decide this case, the Court would first have to elucidate the never-before-addressed question of what constitutes a “victimless” crime and then analyze whether this case’s unusual facts fall within that category.

Review is especially unwarranted given how far this case’s facts fall from the usual cases in which lower courts have found that states have jurisdiction over “victimless” crimes. In those cases, the crimes typically involve no other Indian at all, alive or dead. *E.g.*, *United States v. Langford*, 641 F.3d 1195, 1196 (10th Cir. 2011) (cockfighting); *State v. Reber*, 171 P.3d 406, 407-08 (Utah 2007) (hunting); *Atkins v. Payne*, No. 08-cv-52, 2011 WL 1226054, at *3 (D. Utah Mar. 28, 2011) (same); *United States v. Baker*, 894 F.2d 1144, 1146 & n.1 (10th Cir. 1990) (suggesting that manufacture and possession of methamphetamines may be victimless); *Woods v. Nunn*, No. 21-cv-237, 2021 WL 3924074, at *1 (W.D. Okla. Sept. 1, 2021) (drug and weapons-possession offenses); *State v. Sebastian*, 701 A.2d 13, 17, 25 n.31 (Conn. 1997) (public disturbance and breach of the peace); *Reber v. Payne*, No. 08-cv-50, 2011 WL 1226043, at *1 (D. Utah Mar. 29, 2011) (wanton destruction of wildlife); *Riggle v. State*, 151 N.E.3d 766, 771-72 (Ind. Ct. App. 2020) (unlawful possession of a syringe); *State v. Thompson*, 929 N.W.2d 21, 31-32 (Minn. Ct. App. 2019) (driving while intoxicated), *aff’d*, 937 N.W.2d 418 (Minn. 2020); *People v. Collins*, 826 N.W.2d 175, 177 (Mich. Ct. App. 2012) (delivery and possession of controlled substance). This case’s facts are far afield.

Invoking *McGirt*, Oklahoma says the “vast expansion of what is recognized as Indian country” justifies taking up this case to “adopt[] a test to determine whether any given crime involves an Indian ‘victim.’” Pet. 7. But to begin, that argument makes it especially telling that Oklahoma cites

no split on *any* question of what constitutes a “victimless” crime. Indeed, courts *agree* that states may prosecute true victimless offenses committed by non-Indians within Indian country such as “[t]raffic crimes,” “bank robbery,” and “[e]mbezzl[ement].” Pet. 9; *see supra* 5-6. So going forward, there is no reason to doubt that Oklahoma will be able to prosecute the mine-run crimes that are actually likely to occur. And even if there were doubt, there could be no worse case to clarify that general question than one whose facts are such an outlier. If a split someday develops over mine-run “victimless” crimes, the Court can decide then whether review of that split is warranted. Those questions, however, have little to do with this case.

Finally, this case is yet more unworthy of this Court’s review because the OCCA’s parsimonious decision is unpublished and is not binding even in Oklahoma. In the unlikely event that a case someday arises on similar facts, the OCCA will be free to adhere to or depart from the decision below. And again, if cases arise concerning “[t]raffic crimes,” “bank robbery,” or “[e]mbezzl[ement],” Pet. 9, then the decision below will not limit the result the OCCA might reach.

II. The Decision Below Is Correct.

The decision below is also correct. This Court has long recognized that the federal government has exclusive jurisdiction over “offenses committed there, as in this case, by one who is not an Indian against one who is an Indian.” *Williams*, 327 U.S. at 714; *see generally* Br. for Respondent, *Castro-Huerta*. A core rationale for that rule is that the federal government has the exclusive duty to provide for protection against “crimes committed by white men against *the persons or property of the Indian tribes* while occupying reservations set apart for the very purpose of

segregating them from the whites and others not of Indian blood.” *Williams*, 327 U.S. at 714 n.10 (emphasis added) (quotation marks omitted). Protecting deceased Indians against the desecration of their bodies by non-Indians falls within the heartland of that exclusive federal duty. *E.g.*, 18 U.S.C. § 1170(a) (criminalizing the knowing sale, purchase, use for profit, or transport for sale or profit of unlawfully possessed Native American remains). The 19th-century Tribes who witnessed the murder of their members by state citizens would surely have regarded the desecration of a corpse as a crime against the “person[]” or “property” of Indians. *Williams*, 327 U.S. at 714 n.10; *cf.* 25 U.S.C. § 3002(a) (providing that ownership of certain Native American human remains shall be in the Native American’s descendants or tribe). Truly “victimless” crimes, by contrast, involve no Indians *at all*.

Oklahoma’s argument that dead bodies are not “persons” for certain other purposes, Pet. 8, has little to do with whether crimes against Indian corpses qualify as “victimless” for purposes of the federal criminal statutes specific to Indian country. *Solem*, 465 U.S. at 465 n.2. And even on their own terms, Oklahoma’s arguments lack merit. Instead, Oklahoma law treats crimes like the one alleged here as being *against* the deceased person (here, an Indian). Respondent was convicted under Okla. Stat. tit. 21, § 1155 (2011), which criminalizes “any dissection *of the body of a human being*, except by authority of law, or in pursuance of a permission given by the deceased.” Contrary to Petitioner’s assertion that the dead cannot be victims, Oklahoma law treats “the deceased” as “a human being”—indeed, a human being who must “give[]” “permission” before her body can be dissected. *Id.* So too with Okla. Stat. tit. 21, § 1161(B) (2011), which makes it a crime to “remove any part of the dead body of a human

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being.” Again, the statute proscribes conduct that harms a victim.

CONCLUSION

This Court should deny the petition.

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