

**In the Supreme Court of the United States**

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STATE OF OKLAHOMA,

*Petitioner,*

v.

SHAYNNA LAUREN SIMS,

*Respondent.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

1. Whether a state has authority to prosecute non-Indians who commit crimes against Indians in Indian country.

2. If the answer to the first question is no, whether a state has authority to prosecute a non-Indian for a crime committed in Indian country when the crime does not directly harm the person or property of an Indian.

**LIST OF PROCEEDINGS**

Oklahoma Court of Criminal Appeals

No. F-2017-635

*Shaynna Lauren Sims*, Appellant v.

*The State of Oklahoma*, Appellee

Date of Final Opinion: October 7, 2021



Oklahoma District Court (Tulsa County)

No. CF-2015-2252

*The State of Oklahoma*, Plaintiff v.

*Shaynna Lauren Sims*, Defendant

Date of Judgment and Sentence: November 13, 2020

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**OPINIONS BELOW**

The opinion of the Oklahoma Court of Criminal Appeals, dated October 7, 2021, is included in the Appendix at App.1a-12a. The Findings of Fact and Conclusions of Law of the District Court in and for Tulsa County, State of Oklahoma, November 13, 2020, is included below at App.13a-18a. These opinions and orders were not designated for publication.





## JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on October 7, 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. § 1152 (in relevant part)** **Law governing (Indian country)**

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.



## STATEMENT OF THE CASE

On January 21, 2022, this Court granted review to determine whether a State has authority to prosecute non-Indians who commit crimes against Indians in Indian country. *Oklahoma v. Castro-Huerta*, No. 21-429. Like in *Castro-Huerta*, the Oklahoma Court of Criminal Appeals held in this case that the state lacked authority to prosecute respondent, a non-Indian, for crimes committed in Indian country. But here, the court did so on the ground that a crime against the corpse of an already-deceased tribal member qualifies as a crime against an Indian “victim.” Because an affirmative answer to the question granted certiorari in *Castro-Huerta* would resolve this case, this case should be held pending a decision in *Castro-Huerta*. But if the question in *Castro-Huerta* is answered in the negative, then the petition for a writ of certiorari in this case should be granted to address the important question of what crimes involve an Indian victim for purposes of federal criminal law. Because this Court’s decision in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), as well as the recent choice not to reconsider that ruling at this time, has significantly expanded the number of Americans subject to the criminal rules of Indian country, it is now especially important that questions about the allocation of authority in Indian country are answered.

1. On April 30, 2015, respondent Shaynna Lauren Sims entered the Moore Eastlawn Funeral Home and proceeded to the viewing room where the body of Tabatha Lynch was displayed. Tr. Vol. II at 450-51,

490, 494.\* Respondent cut the decedent's forehead from the hairline to the top of the nose, cut the hair, smeared the decedent's make-up, and cut off a toe and both breasts. Tr. Vol. III at 512, 530, 536-37, 542, 586, 598, 601, 621-22, 646-47, 840, 842; Tr. Vol. IV at 12. Respondent then took photographs of the mutilated body with a cell phone. State's Exs. 20-30, 32. She removed the decedent's pants and took photographs of the vagina. State's Exs. 25-29. Respondent also captured a photograph showing her cutting off a toe from the body. State's Ex. 30.

After leaving the funeral home, respondent went to Ms. Lynch's apartment. Ms. Lynch's son, Tyren, answered the door. Tr. Vol. III at 862. Respondent told Tyren she worked with funeral homes and was there because his grandmother sent her and she needed a photograph of his mother so that she could make her look more presentable. Tr. Vol III at 863, 869. Tyren left respondent outside, locked the door and looked for a photograph. Tr. Vol. III at 863. Tyren told respondent he could not find a photograph of his mom and about that time Ms. Lynch's boyfriend arrived and told respondent that, if she was there to see Tyren, she needed to come inside. Tr. Vol. III at 833. Tyren opened the door and respondent entered Ms. Lynch's apartment. Tr. Vol. III at 801, 866. She introduced herself as Stephanie and said she was there to get make-up to redo Ms. Lynch's make-up. Tr. Vol. III at 802. Family members ultimately realized respondent was the one who had disturbed and mutilated Ms. Lynch's body. Tr. Vol. III at 843-845. The family kept respondent

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\* All fact citations are to the transcript of and exhibits from respondent's trial, which are available below. *See* Sup. Ct. R. 12.7.

inside the apartment until the police arrived. Tr. Vol. III at 846-48.

At trial, respondent was convicted of Knowingly Concealing Stolen Property, First Degree Burglary (for the deceptive entry into the apartment), Unauthorized Dissection, Disturbing or Interrupting a Funeral, and Unlawful Removal of Body Part from Deceased. She was sentenced to seven years in prison.

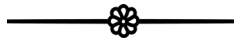
2. After this Court issued its decision in *McGirt*, the Court of Criminal Appeals remanded the case to the trial court for an evidentiary hearing on “the Indian status of the victim, Tabatha Lynch,” and whether the crime occurred in Indian country. On remand, the State preserved its argument that it has concurrent prosecutorial authority over respondent’s crimes because she is not Indian and because her crimes against a corpse were not crimes against an Indian and thus within the State’s prosecutorial authority. App.17a. The district court found that Tabatha Lynch had been Indian with 1/64th Indian blood, had been a member of the Muscogee (Creek) Nation, and that the crimes occurred within the boundaries of the Creek reservation. App.22a.

After the state district court issued its findings of fact and conclusions of law, the case returned to the Oklahoma Court of Criminal Appeals. There, the State continued to argue that it has prosecutorial authority over non-Indian-on-Indian crime and that, regardless, crimes against a corpse are crimes over which the State has authority. 12/08/2021 Supplemental Brief of Appellee After Remand.

The Court of Criminal Appeals rejected the State’s concurrent prosecutorial authority argument: “we have

addressed and rejected a similar argument on the concurrent jurisdiction of the federal and state governments.” App.7a. The court also rejected the argument that a corpse cannot be a victim because there was no authority addressing these precise crimes: “The State has cited no controlling authority establishing that the crimes in the case fall under that definition [of a victimless crime] or have been considered by a court as victimless crimes.” App.7a. Thus, it reversed all of respondent’s convictions.

3. It is the State’s understanding that the federal government will not file charges against respondent because of the statute of limitations.



## REASONS FOR GRANTING THE PETITION

1. The petition in *Castro-Huerta* demonstrates Oklahoma’s continued jurisdiction over crimes committed by non-Indians against Indian victims is consistent with statute and precedent. As this Court has repeatedly held, “absent a congressional prohibition,” a State has the right to “exercise criminal (and implicitly, civil) jurisdiction over non-Indians located on reservation lands.” *County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 257-58 (1992); *see also United States v. McBratney*, 104 U.S. (14 Otto.) 621, 624 (1881). Meanwhile, nothing in the text of the General Crimes Act, nor any other Act of Congress, prohibits States from exercising jurisdiction over crimes committed by non-Indians against Indians. *See* 18 U.S.C. § 1152. Thus, this Court in the past has upheld state laws protecting Indians from crimes committed by non-Indians on a reservation.

*New York ex rel. Cutler v. Dibble*, 62 U.S. (21 How.) 366, 370-71 (1858).

The first question presented in this case is identical to the one granted review in *Castro-Huerta*, and a favorable ruling for the State in *Castro-Huerta* would require reversal in this case as well. This Court should therefore, at a minimum, hold this petition pending the decision in *Castro-Huerta*.

2. If this Court does not reverse in *Castro-Huerta*, and instead holds states lack authority to prosecute crimes with Indian victims, this case raises a second important question: what crimes involve an Indian as the “victim”? This Court has never addressed this difficult issue, and, with the vast expansion of what is recognized as Indian country after *McGirt*, that question now has increased importance.

No statute defines when a crime involves an Indian victim such that the state lacks authority to prosecute it in Indian country. This Court has only suggested states have authority over “victimless crimes by non-Indians” without ever addressing their contours. *Solem v. Bartlett*, 465 U.S. 463, 465 n.2 (1984); *see also State v. Warner*, 379 P.2d 66 (N.M. 1963) (holding state has jurisdiction to prosecute driving while intoxicated crime committed by non-Indian on reservation because offense was “not against an Indian nor involving Indian property”); *State v. Schaefer*, 781 P.2d 264, 266 (Mont. 1989) (holding state had jurisdiction to prosecute violation of pawnbroker statute by non-Indian on reservation, despite excessively high interest rates charged to Indians, because “the business is open to the entire public” and “[t]he State has a substantial interest in protecting all citizens against such violations”). But the Court has never adopted a test to determine whether any given crime involves an Indian “victim.”

That lack of clarity led to the erroneous decision below. No crime in this case, and certainly not every crime in this case, requires as an element direct harm to the person or property of an Indian. *E.g.* Okla. Stat. tit. 21, § 1155 (unauthorized dissection); *id.* § 1161(B) (unlawful removal of body part from deceased). The court below did not hold that any property interest was affected by the crimes here, choosing to only address the Indian status of the deceased individual (Ms. Lynch) without addressing the Indian status of anyone else. App.4a-6a, 24a. But a corpse is not a victim, nor is the crime of mutilating a corpse against an Indian person, since “[i]t is axiomatic that a corpse is not a person.” *Menashe v. Sutton*, 38 Haw. 449, 461 (1950) (quoting *Brooks v. Boston & Northern Street Railway*, 97 N.E. 760 (Mass. 1912)). The ordinary meaning of “person” is a living human being. *State ex rel. Bancroft v. Frear*, 128 N.W. 1068, 1071-72 (Wis. 1910); *see also, e.g., United States v. Doe*, 572 F.3d 1162, 1167 (10th Cir. 2009); *United States v. Bly*, 510 F.3d 453, 463 (4th Cir. 2007); *Monson v. Battelle*, 173 P. 927, 928 (Kan. 1918); *Morton v. Telegraph Co.*, 41 S.E. 484 (N.C. 1902). Personhood includes not only a body but also conscious apprehension, rationality, and a moral sense. *Menashe*, 38 Haw. at 461 (1950). The corpse was no longer the person Ms. Lynch. Thus, by identifying Ms. Lynch as the person who was victimized, the court below was applying an extended concept of victimhood to find that the crimes at issue were not victimless.

But the error of the decision below on the victim status of corpses is only one of many questions that arise if the state’s prosecutorial authority turns on the Indian status of victims. Non-Indian defendants could argue that the state lacks authority to prosecute drug

crimes because they result in harm to family, friends, and neighbors, at least one of whom could be an Indian in eastern Oklahoma. Traffic crimes could endanger passengers or nearby drivers, at least one of whom could be Indian in eastern Oklahoma. A bank robbery by a non-Indian of a non-Indian-owned bank may be said to affect Indian victims if they have deposits in the bank, or at least affects them emotionally if they were present to witness the robbery. Embezzling from a public company in eastern Oklahoma may be said to affect Indian victims if the company has any Indian shareholders anywhere in the world. Even defacing state-owned historical markers of tribal history could be claimed to have Indian victims because tribal members have an interest in a dignified presentation of their history.

Especially in the wake of *McGirt*, law enforcement needs clarity in determining when a crime is against an Indian victim if states lack authority to prosecute such crimes when committed by even non-Indians in Indian country. This Court should grant certiorari to define victims to be only persons or property owners directly harmed by a crime, addressing the limits of who qualifies as an Indian victim under federal Indian law.





## CONCLUSION

The petition in this case should be held pending a decision in *Castro-Huerta* and then addressed as is appropriate or, if the judgment in *Castro-Huerta* is affirmed, then certiorari should be granted on the second question presented in this case.

Respectfully submitted,

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