

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

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STATE OF OKLAHOMA,

*Petitioner,*

v.

MARQUISE PETEY WHITE,

*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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JOHN M. O'CONNOR

*ATTORNEY GENERAL*

MITHUN MANSINGHANI

*SOLICITOR GENERAL*

*COUNSEL OF RECORD*

CAROLINE HUNT

JENNIFER CRABB

*ASSISTANT ATTORNEYS GENERAL*

BRYAN CLEVELAND

*ASSISTANT SOLICITOR GENERAL*

OFFICE OF THE OKLAHOMA

ATTORNEY GENERAL

313 N.E. TWENTY-FIRST STREET

OKLAHOMA CITY, OK 73105

(405) 522-4392

MITHUN.MANSINGHANI@OAG.OK.GOV

## **QUESTION PRESENTED**

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

**LIST OF PROCEEDINGS**

Oklahoma Court of Criminal Appeals

No. C-2020-113

*Marquise Petey White*, Appellant v.

*The State of Oklahoma*, Appellee

Date of Final Opinion: October 28, 2021



Oklahoma District Court (Rogers County)

No. CF-2017-762

*The State of Oklahoma*, Plaintiff v.

*Marquise Petey White*, Defendant

Date of Judgment and Sentence: December 20, 2019

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**OPINIONS BELOW**

The opinion of the Oklahoma Court of Criminal Appeals, dated October 28, 2021, is included in the Appendix at App.1a-22a. The order of the Oklahoma Court of Criminal Appeals, dated March 26, 2021, remanding the case for an evidentiary hearing is included below at App.29a-34a. The Findings of Fact and Conclusions of Law of the District Court in and for Rogers County, State of Oklahoma, dated June 7, 2021, is included below at App.23a-28a. These opinions and orders were not designated for publication.



## JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on October 28, 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 a writ of certiorari 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 the state courts lacked jurisdiction to convict respondent, a non-Indian, for crimes committed against an Indian in Indian country. Accordingly, the petition for a writ of certiorari in this case should be held pending a decision in *Castro-Huerta* and then disposed of as is appropriate.

1. On May 16, 2017, respondent and two other men committed an armed home-invasion robbery (P.H. 7-9, 21, 45, 47).<sup>\*</sup> After meeting some resistance from the occupants, respondent shot and killed Dakota Rex (P.H. 14-15, 34-35, 49).

Respondent pled guilty to first degree felony murder, as well as a number of other offenses that are not the subject of this petition. He was sentenced to life imprisonment without the possibility of parole.

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 State preserved its argument that it has concurrent prosecutorial authority over respondent's crimes because he is not Indian. App.4a, n.1. The district court found Dakota Rex was Indian with 1/64th Indian blood

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<sup>\*</sup> All fact citations are to the transcript of respondent's preliminary hearing (P.H.), which is available below. *See* Sup. Ct. R. 12.7.

and that the crimes occurred within the boundaries of the Cherokee Nation's reservation. App.24a.

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. 3/5/2021 Response to Order Directing Response to Proposition II in the Brief of Appellant and the Application for Evidentiary Hearing, 7-18; 6/7/2021 Motion to Stay and Abate Proceedings; 6/7/2021 Brief in Support of Motion to Stay and Abate Proceedings. The Court of Criminal Appeals rejected the State's concurrent prosecutorial authority argument: "Pursuant to *McGirt*, the State therefore has no jurisdiction as part of its inherent police power over the murder committed in this case." App.6a. The court felt it "ha[d] no choice but to dismiss appellant's murder conviction[.]" App.6a-7a.

3. It is the State's understanding that the federal government has not yet filed charges against respondent, but intends to do so.



## REASONS FOR GRANTING THE PETITION

The petition in *Castro-Huerta* demonstrates Oklahoma's continued jurisdiction over crimes committed by non-Indians against Indian victims like Mr. Rex 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 question presented in this case is identical to the one granted review in *Castro-Huerta*. This Court should therefore hold this petition pending the decision in *Castro-Huerta*.



## CONCLUSION

The petition in this case should be held pending a decision in *Castro-Huerta* and then disposed of as is appropriate.

Respectfully submitted,

JOHN M. O'CONNOR

*ATTORNEY GENERAL*

MITHUN MANSINGHANI

*SOLICITOR GENERAL*

*COUNSEL OF RECORD*

CAROLINE HUNT

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*ASSISTANT SOLICITOR GENERAL*

OFFICE OF THE OKLAHOMA

ATTORNEY GENERAL

313 N.E. TWENTY-FIRST STREET

OKLAHOMA CITY, OK 73105

(405) 522-4392

MITHUN.MANSINGHANI@OAG.OK.GOV

*COUNSEL FOR PETITIONER*

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