

In the Supreme Court of the United States

STATE OF OKLAHOMA,

Petitioner,

v.

JUSTIN DALE LITTLE,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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 *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), should be overruled.

LIST OF PROCEEDINGS

Oklahoma Court of Criminal Appeals

No. F-2020-125

Justin Dale Little, Appellant v.

The State of Oklahoma, Appellee

Date of Final Opinion: June 17, 2021

Oklahoma District Court (Tulsa County)

No. CF-2018-1700

The State of Oklahoma, Plaintiff v.

Justin Dale Little, Defendant

Date of Judgment and Sentence: January 27, 2020

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OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals, dated June 17, 2021, is included in the Appendix at App.1a-9a. The order of the Oklahoma Court of Criminal Appeals, dated January 15, 2021, remanding the case for an evidentiary hearing is included below at App.15a-20a. The Findings of Fact and Conclusions of Law of the District Court in and for Tulsa County, State of Oklahoma, dated May 6, 2021, is included below at App.10a-14a. These opinions and orders were not designated for publication.



JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on June 17, 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 in *Castro-Huerta* should be granted, and this petition should be held pending a decision there. In the alternative, the petition in this case should be granted.

1. On April 22, 2018, respondent—motivated by obsession and jealousy—stalked and gunned down Mr. Jonathan Weatherford in broad daylight on a span of train tracks in Jenks, Oklahoma. Earlier that morning, Mr. Weatherford had been spending some time with Ms. Hannah Watkins, with whom he was romantically involved, at her apartment in Jenks. Tr. III 264-68.* While Ms. Watkins was romantically involved with Mr. Weatherford, she was also legally married to respondent and had a young child with respondent; however, Ms. Watkins and respondent were not romantically involved at that time. Tr. III

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

259-64. Instead, Ms. Watkins and respondent co-parented their young son, E.L., and shared custody. Tr. III 259-64.

That morning, Ms. Watkins had arranged for respondent to drop off E.L. in the late morning or early afternoon. Tr. III 268. Sometime before noon, Ms. Watkins received a phone call from respondent letting her know that he was on his way. Tr. III 268. Knowing there was tension between respondent and Mr. Weatherford, Ms. Watkins asked Mr. Weatherford to leave before respondent dropped E.L. off. Tr. III 268-69. Mr. Weatherford agreed and set off on foot on the train tracks toward his house nearby. Tr. III 268-69. Around twenty-five minutes later, respondent, dressed in a dark shirt and jeans, arrived at Ms. Watkins's apartment with E.L. in respondent's white pickup truck. Tr. III 270-74, 278, 284. However, Ms. Watkins soon noticed that respondent was acting slightly strange and seemed to be in an unusual hurry. Tr. III 270-74.

Unfortunately, Mr. Weatherford never made it home that day. Rather, Mr. Weatherford died on the train tracks, moaning and surrounded by strangers, after being shot in the back by a high-powered rifle. Tr. II 223-25, 228-30, 232-36, 239-41, 244-47; Tr. III 327-31, 353, 370. This shot to Mr. Weatherford's back first penetrated a backpack Mr. Weatherford was wearing and items within the backpack before entering Mr. Weatherford's body and causing severe internal bleeding and a collapsed right lung. Tr. III 353, 370, 388-94.

Upon hearing of Mr. Weatherford's death, Ms. Watkins immediately suspected respondent, and she informed police that respondent seemed to be the only

person with any feelings of ill will toward Mr. Weatherford. Tr. II 272-74. Indeed, respondent was obsessed with Ms. Watkins, had issues with almost every one of her romantic partners, and had previously threatened to ruin Mr. Weatherford's life. Tr. IV 483-84, 502-03; S.E. 37. A subsequent investigation revealed that respondent's white truck was spotted near the area that morning, and surveillance footage captured a person in dark clothing following Mr. Weatherford. Tr. III 339-41; Tr. IV 437-48, 458-78, 480, 502-04; S.E. 5-10. Furthermore, during interviews with police, respondent changed his story multiple times. S.E. 35-36. And while respondent never admitted to harming Mr. Weatherford, he eventually placed himself, his truck, and his son near the scene of the murder. S.E. 35-36. Moreover, police officers located two sets of earmuffs (for hearing protection) and a lens cover for a firearm scope in respondent's truck, as well as a high-powered rifle at respondent's residence. Tr. III 354-57, 360-74, 376-77.

Respondent was convicted of first-degree murder and sentenced to life imprisonment. He then appealed to the Court of Criminal Appeals, claiming the State lacked authority to prosecute him because he was an Indian and he killed Mr. Weatherford in Indian country.

2. After this Court issued its decision in *McGirt*, respondent filed his brief and requested that the Court of Criminal Appeals remand his case to the state district court for an evidentiary hearing. Subsequently, the State agreed with respondent's request for a remanded evidentiary hearing. Thus, the Court of Criminal Appeals remanded the case to the state district court for an evidentiary hearing on January 15, 2021. App.17a. On remand, the parties stipulated

that respondent was an enrolled member of the Seminole Nation of Oklahoma and possessed a 45/64 degree of Seminole blood at the time of the crime. App.11a-12a. Furthermore, the parties stipulated that respondent's crime occurred within the boundaries of the Muscogee (Creek) Reservation this Court recognized in *McGirt*. App.13a. The state district court ultimately accepted the parties' stipulations and determined that respondent was an Indian for purposes of federal criminal jurisdiction, and that the crime occurred within the boundaries of the Muscogee (Creek) Reservation under *McGirt*. App.13a.

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 argued *McGirt* was wrongly decided, but recognized that the state courts were bound by it. The Court of Criminal Appeals ultimately reversed the conviction pursuant to "[t]he ruling in *McGirt*." App.3a. Two judges wrote separate opinions.

Judge Hudson specially concurred in the result based on *stare decisis*, but stated 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.9a.

Judge Lumpkin also concurred in the result. App.6a-8a. 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.6a.



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*. If the petition in *Castro-Huerta* is granted, this petition should be held pending a decision in *Castro-Huerta* and then disposed of as is appropriate. In the alternative, this petition should be granted.

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.



CONCLUSION

The petition for a writ of certiorari in *Castro-Huerta* should be granted, and the petition in this case should be held pending a decision there and then disposed of as is appropriate. In the alternative, this petition should be granted.

Respectfully submitted,

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

COUNSEL FOR PETITIONER

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