

In the Supreme Court of the United States



STATE OF OKLAHOMA,

Petitioner,

v.

ARNOLD DEAN HOWELL,

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. C-2017-998

Arnold Dean Howell, Petitioner v.
The State of Oklahoma, Respondent

Date of Final Order: March 18, 2021



Oklahoma District Court (Creek County)

State of Oklahoma, Plaintiff/Respondent v.
Arnold Dean Howell, Defendant/Petitioner

No. CF-2015-186

Date of Judgment and Sentence: June 29, 2017

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OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals, dated March 18, 2021, is included in the Appendix at App.1a-9a. The order of the Oklahoma Court of Criminal Appeals, dated August 19, 2020, remanding the case for an evidentiary hearing is included below at App.21a-25a. The Order of the District Court of Creek County, Accepting the Stipulation, dated October 19, 2020, is included below at App.17a-18a. The order of the Oklahoma Court of Criminal Appeals, dated November 13, 2020, remanding for the entry of a proper order is included below at App.13a-16a. The Supplemental Order of the District Court of Creek County, dated November 18, 2020, is

included below at App.10a-12a. These opinions and orders were not designated for publication.



JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on March 18, 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. Bosse*, No. 21-186, this case presents the question whether *McGirt* should be overruled. For the same reasons given in the *Bosse* petition, review is warranted here to examine that question. The petition for a writ of certiorari in this case should either be granted or, if the petition in *Bosse* is granted, held pending a decision in *Bosse* and then disposed of as is appropriate.

1. On April 13, 2015, respondent murdered sixty-eight-year-old Michael Mondier Sr. (Tr. 5).¹ Mr. Mondier and his son, Michael Mondier II², lived in separate trailers on the same property (Tr. 5-7). Mr. Mondier’s other son, Patrick, was dating respondent’s

¹ All fact citations are to the transcript of respondent’s preliminary hearing (Tr.), and the state trial court’s original record (O.R.), which are available below. *See* Sup. Ct. R. 12.7.

² Michael Mondier Sr. will be referred to as “Mr. Mondier”, and Michael Mondier II will be referred to as “Michael”.

mother, and Mr. Mondier was allowing respondent and his sister to stay with him (Tr. 8).

Patrick called police on the night of the murder after respondent told him that he thought he had killed Mr. Mondier (Tr. 46). Responding officers found a terribly bloody scene in Mr. Mondier's bedroom (Tr. 10-11). Mr. Mondier had been stabbed at least ninety-three times, including defensive wounds "all around his arms" (Tr. 20-22). There was blood on each wall, the ceiling, and "all over the bed" (Tr. 20).

The murder was the result of a robbery planned by respondent and his sister (Tr. 50-51). After killing Mr. Mondier, respondent stole his truck, computer, wallet, watch, and guns (Tr. 12-13, 65-66).

In an interview with police, respondent admitted to holding the knives which killed Mr. Mondier, but denied actually stabbing him (Tr. 54-63). According to respondent, Mr. Mondier raised up into the knife (Tr. 61-63). Respondent did, however, admit to asking his sister to get a second knife after the first one broke (Tr. 62).

Respondent pled guilty to first-degree murder and first-degree robbery, and was sentenced to consecutive terms of life without parole and twenty-five years (O.R. 89-101, 162-66).

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 trial court accepted the parties' stipulations and concluded that respondent is an Indian and the crimes occurred within the Creek reservation boundaries recognized by *McGirt*. App.17a-20a.

The Court of Criminal Appeals vacated the convictions, adopting the trial court's conclusions and holding that the federal government had exclusive authority to prosecute respondent for the crimes at issue. App.1a-5a.

Two judges wrote separate opinions. Judge Lumpkin 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.

Judge Hudson specially concurred. App.9a. Like Judge Lumpkin, he concurred "as a matter of *stare decisis*," but he observed that *McGirt* has a "far-reaching impact on the criminal justice system in Oklahoma. . . ." App.9a.



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 *Bosse*, reconsideration of *McGirt* is the only realistic avenue for ending the ongoing chaos affecting every corner of daily life in Oklahoma. This case presents yet another opportunity to end the damage caused by *McGirt*. For the same reasons offered in *Bosse*, this petition should either be granted or, if the petition in *Bosse* is granted, held pending a decision in *Bosse* and then disposed of as is appropriate.

As explained more fully in *Bosse*, *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 that 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 third question presented in *Bosse*. For the compelling reasons explained in the petition in *Bosse*, review should be granted in that case. The Court should then either grant review in this case or hold the petition pending the resolution of the third question presented in *Bosse*.



CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, if the petition in *Oklahoma v. Bosse*, No. 21-186, 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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