

In the Supreme Court of the United States

STATE OF OKLAHOMA,

Petitioner,

v.

GAGE CHRISTOPHER J. SHRIVER,

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. F-2019-1276

Gage Christopher J. Shriver, Appellant v.
The State of Oklahoma, Appellee

Date of Final Opinion: October 7, 2021

Oklahoma District Court (Rogers County)

No. CF-2015-394

The State of Oklahoma, Plaintiff v.
Gage Christopher J. Shriver, Defendant

Date of Judgment and Sentence: December 8, 2017

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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-11a. The order of the Oklahoma Court of Criminal Appeals, dated August 14, 2020, remanding the case for an evidentiary hearing is included below at App.40a-44a. The Findings of Fact and Conclusions of Law of the District Court in and for Rogers County, State of Oklahoma, dated November 12, 2020, is included below at App.12a-39a. 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.

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 June 5, 2015, around 3:00 a.m., respondent was driving his pickup truck when he plowed into recent high school graduates Maranda Talley and Noelle New as the girls walked along 530 Road in Rogers

County, Oklahoma (Tr. II 387-88, 401-02, 480).* Ms. New died as a result of being struck and dragged underneath respondent's truck (Tr. 402; S.E. 83-98). Respondent was intoxicated, with a blood alcohol content of .026 seven hours after the collision (Tr. III 723-24, 730, 735; Tr. V 1143; Tr. VII 1757, 1795, 1805-06, 1808). His older brother Dakota was in the passenger's seat (Tr. V 1245). Dakota was also convicted of crimes arising out of this incident; his case is the subject of a pending petition for writ of certiorari in No. 21-486.

As a result of being run over, Ms. Talley sustained a brain injury, was in a coma, endured a gash to the back of her head, a broken nose, her lip was ripped off of her face, her hand was smashed, and her fingers were ripped back (Tr. II 403, 413, 467-69; S.E. 3-9). Her face required reconstructive surgery (Tr. II 482). As a further result of her injuries, Ms. Talley lost a cheerleading scholarship to Oral Roberts University (Tr. II 423-24).

Respondent was convicted of first-degree manslaughter, leaving the scene of a fatality accident, leaving the scene of an accident involving injury, driving under the influence resulting in great bodily injury, leaving the scene of an accident resulting in damage to a fixture, failure to report a personal injury accident, and obstructing an officer. He was sentenced to twenty-five years' imprisonment for manslaughter, ten days in prison for failure to report a personal injury accident, and one year of imprisonment for each of the other counts.

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

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. The court accepted the parties' stipulations and found that respondent is an Indian who committed crimes within the boundaries of the Cherokee Nation's reservation. App.38a.

The case then returned to the Oklahoma Court of Criminal Appeals. The Court of Criminal Appeals reversed the convictions "pursuant to *McGirt*." App.7a. Judge Lumpkin, who authored the opinion, expressed in a footnote his agreement with Chief Justice Roberts' dissent in *McGirt*. App.1a, n.1. Two judges wrote separate opinions.

Presiding Judge Rowland concurred in the result but expressed his concern that the statute of limitations for prosecuting respondent in federal court may have expired. App.10a.

Vice Presiding Judge Hudson specially concurred 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.11a.

It is the State's understanding that the federal government will not be prosecuting respondent due to the statute of limitations, but that the Cherokee Nation had at least lodged a detainer before respondent was discharged from state custody.



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 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 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,

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JANUARY 5, 2022