Oklahoma v. Castro-Huerta holding

“We conclude that the Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country.”

Photo – News on 6 (2021)

ASU Sandra Day O’Connor College of Law
Arizona State University
Indian Gaming and Tribal Self-Governance Programs
Oklahoma v. Castro-Huerta majority & dissent

- Opinion delivered June 29, 2022
- 5-4 majority opinion drafted by Justice Kavanaugh; joined by Justices Alito, Thomas, Roberts, & Barrett
- Justice Gorsuch drafted the dissent; joined by Justices Breyer, Sotomayor & Kagan

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Oklahoma v. Castro-Huerta facts

- Victor Manuel Castro-Huerta convicted of child neglect in 2015 under OK state law
- In 2020, SCOTUS rules in favor of Jimcy McGirt in *McGirt v. Oklahoma*, declaring a large portion of eastern Oklahoma remains Indian country
- Castro-Huerta argues on appeal that the state did not have jurisdiction to convict him because of *McGirt*
- Oklahoma Court of Criminal Appeals agrees; State of Oklahoma petitions for certiorari
- Cert granted in January 2022
Pre-Oklahoma v. Castro-Huerta

- **Worcester v. Georgia** (1832) – Indian affairs is exclusively federal; states have no authority over Indian affairs.

- Judge Canby – “*States traditionally have no criminal jurisdiction in Indian country over crimes committed by . . . non-Indians against Indians.*”

- Felix Cohen – “*As a general rule, states lack jurisdiction in Indian country absent a special grant of jurisdiction.*”

Photo – Thunderheart (1992)
Oklahoma v. Castro-Huerta . . . but how?

Policy Considerations

- Sentencing disparity between Castro-Huerta’s state court sentence (35-year sentence) v. his federal plea agreement (7-year sentence followed by removal from U.S.)
- Location is described as: “what is now recognized as Indian country (Tulsa) . . .” (emphasis added).
- “[A] now-familiar pattern in Oklahoma in the wake of McGirt”:
  - “The Oklahoma courts have reversed numerous state convictions . . . . After having their state convictions reversed, some non-Indian criminals have received lighter sentences in plea deals negotiated with the Federal Government. Others have simply gone free.”
  - “[T]he state estimates . . . it will have to transfer prosecutorial responsibility for more than 18,000 cases per year to the Federal and Tribal Governments.”
Legal Analysis

• “[A]s a matter of state sovereignty, a State has jurisdiction over all of its territory, including Indian country.” [citing the 10th Amendment to the Constitution]

• Worcester v. Georgia ➔ “early years of the Republic . . .”

• NOW ➔ “In short, the Court’s precedents establish that Indian country is part of a State’s territory and that, unless preempted, States have jurisdiction over crimes committed in Indian country.”

• McBratney (1882) & Draper (1896) – States enjoy exclusive jurisdiction over crimes committed by non-Indians against other non-Indians in Indian country.

• Reviewed GCA & P.L. 280 and determined that neither explicitly preempt states from exercising this jurisdiction in Indian country.

• Bracker analysis applied to see whether the exercise of state jurisdiction would unlawfully infringe upon tribal self-government.
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<td>25 U.S.C. § 1304 (restored inherent right to self-govern);</td>
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Oklahoma v. Castro-Huerta . . . What’s next?

Photo – *News on 6* (2021)  
Photo – *Thunderheart* (1992)
Questions???