
IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2023

NO. 23-5454

MOSES CROWE,
Petitioner,
-vs.-

UNITED STATES OF AMERICA,
Respondent.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT*

**PETITIONER'S REPLY
TO RESPONDENT'S BRIEF IN OPPOSITION**

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2023

NO. 23A28

MOSES CROWE,
Petitioner,
-vs.-

UNITED STATES OF AMERICA,
Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

The important questions of law presented in the Petition for Writ of Certiorari allege prejudicial errors resulting from substantive decisions made by the district court during Petitioner's jury trial in a carjacking case prosecuted by the United States. Congress has criminalized the act of “tak[ing] a motor vehicle . . . from the person or presence of another.” 18 U.S.C. § 2119. Under the specific facts of any particular carjacking case, when a “taking” begins and when it ends may be an essential inquiry (as it was under the facts of this case) and raises “the not insubstantial problem of delineating the precise temporal limits of the crime of carjacking.” United States v. Long Pumpkin, 56 F.4th 604, 610 (8th Cir. 2022) (quoting United States v. Vazquez-Rivera, 135 F.3d 172, 178 (1st Cir. 1998)).

The district court established the temporal limits of the carjacking of Phillip Moore on October 12, 2017 and held that a reasonable jury could have concluded

that the “taking” of Moore’s van began at the moment Moore was dispossessed of his van and continued thereafter uninterrupted until Moore was capable of regaining control of his van. *See Trial Tr. 562.* Petitioner’s properly-preserved challenge to the district court’s establishment of the temporal limits of Moore’s carjacking was appealed to the United States Court of Appeals for the Eighth Circuit, which unanimously rejected the temporal limits of the carjacking established by the district court and agreed with Petitioner that the events of October 12, 2017 did not constitute one extended and continuous “taking” of Moore’s van, but rather comprised two possible takings—one that occurred before Petitioner was present and one that occurred while Petitioner was present.

The district court’s erroneous view of the temporal limits of Moore’s carjacking was not harmless error—it was prejudicial error that undermined the integrity of the entire jury trial and requires Petitioner’s conviction be vacated and remanded for a new trial in accordance with the law. The district court relied on its erroneous view of the temporal limits of Moore’s carjacking to fashion jury instructions and resolve objections at trial. The Eighth Circuit’s rejection of the district court’s erroneous establishment of the temporal limits of the carjacking means that the jury was improperly instructed on the law and was not required to make essential findings. Did the jury determine the evidence at trial established one taking of Moore’s van or two? If one, which one—the taking where Petitioner was present, the taking where Petitioner was absent, or both? Which taking resulted in the essential element of Moore’s serious bodily injury—the taking where

Petitioner was present, the taking where Petitioner was absent, or both? We cannot know from the jury's verdict because the Eighth Circuit held the district court misapplied substantive law during Petitioner's jury trial and disregarded these critical inquiries. Without the answers to these questions, it is impossible to determine whether the government proved the essential elements of the crime and whether Petitioner was convicted by a unanimous jury in violation of Petitioner's rights to a fair trial and a unanimous jury.

The Eighth Circuit's rejection of the district court's ruling on the temporal limits of Moore's carjacking destroyed the foundation upon which Petitioner's jury trial was conducted. The issue was pressed extensively below, is not fact-bound, raises important issues related to Petitioner's Constitutional rights, and is properly preserved for review by this Court, Petitioner's court of last resort. As to the remaining issues raised in the Government's Brief in Opposition, Petitioner relies on the arguments and authorities presented in his Petition. Petitioner respectfully urges the Court to grant the Petition for Writ of Certiorari and consider the merits of the issues raised by this case with the benefit of full briefing.

Dated this 13th day of December, 2023.

Respectfully submitted,

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