



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**

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**STATE OF ARIZONA v. BOBBY RAY CARTER,  
CR-18-0508-PR**

**PARTIES:**

*Petitioner:* The State of Arizona  
*Respondent:* Bobby Ray Carter Jr.

**FACTS:**

One day in January 2015 Carter committed a series of criminal offenses near Willcox. First, he approached an SUV in a store's parking lot. The SUV's owner, C.L., sat in the passenger seat while waiting for her husband to return from the store. Carter got in by the driver's side door and ordered C.L. to get out of the vehicle. While she was doing that, Carter accelerated, causing C.L. to fall out of the vehicle and break her leg. Later that morning, Border Patrol agents found the SUV crashed in the desert outside Willcox.

The agents soon learned of a break-in at a house and barn near the wrecked SUV. The house belonged to E.A., who was leasing farm property and had just bought a new tractor. One agent found Carter sitting on the tractor outside the barn. After Carter saw the agent, he drove the tractor away. The agent followed and activated his emergency lights. After a short chase, Carter stopped in the middle of a field, and Border Patrol apprehended him.

Between stealing and wrecking the SUV, Carter also committed another burglary outside Willcox. J.S. and R.S. came home to find that their home had been burglarized. They were missing jewelry and several power tools. When arrested, Carter had J.S.'s jewelry in his pocket. Police later found R.S.'s missing power tools in the wreckage of the SUV.

The grand jury indicted Carter in three separate cases.

As to C.L., the grand jury indicted Carter on seven counts: two for aggravated assault and one each for burglary, criminal damages, theft, theft of means of transportation, and robbery.

As to E.A., Carter was indicted on three counts: one each for burglary, theft of means of transportation, and theft.

As to J.S. and R.S., the grand jury indicted Carter on three counts: two for burglary and one for theft.

The trial court ultimately consolidated the cases.

After trial the jury found Carter guilty of all thirteen charges, but the trial court vacated the conviction for Count Two (one of the aggravated assault charges against C.L.). The trial court sentenced Carter to consecutive and concurrent prison terms totaling 60.75 years.

The court of appeals concluded that theft is a lesser-included offense of vehicle theft, and thus Carter could not be convicted of both theft and vehicle theft as to the SUV or the tractor. And because theft is a lesser-included offense of robbery, the court reasoned, as to the SUV he could not be convicted of both theft and robbery. But because neither robbery nor vehicle theft is a lesser-included offense of the other, Carter *could* be convicted of both robbery and vehicle theft of the SUV. The court vacated Carter's convictions for Counts 5 and 9 (theft of the SUV and vehicle theft of the tractor) but affirmed his convictions for Counts 6, 7, and 10 (vehicle theft and robbery of the SUV and theft of the tractor).

**DEFINITION:**

*Lesser-included offense:* A crime for which all of the elements necessary to impose liability are also elements found in a more serious crime.

**ISSUES:**

Should this Court grant review or, at minimum, order that the court of appeals' opinion be depublished, where the court (1) erroneously held as an apparent issue of first impression that the comprehensive and unitary crime of theft is a lesser included offense of the factually narrow crime of theft of a means of transportation under the double-jeopardy/Blockburger same-elements test; (2) disagreed with its prior opinion in *State v. Garcia*, 235 Ariz. 627 (App. 2014), that theft of a means of transportation is a lesser included offense of robbery under the same-elements test, thereby creating a split of authority; and (3) reached the untenable conclusion that the Arizona Legislature intended that an offense on which it has affirmatively imposed a more serious penalty than the penalty imposed on another, public-policy-distinct offense should be subsumed/nullified by that lesser and distinct offense for multiple-punishment purposes?

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