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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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HOLLOWAY AKA ALI *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 97–7164. Argued November 9, 1998– Decided March 2, 1999

Petitioner was charged with federal offenses including carjacking, which 18 U. S. C. § 2119 defines as "tak[ing] a motor vehicle . . . from . . . another by force and violence or by intimidation" "with the intent to cause death or serious bodily harm." Petitioner's accomplice testified that their plan was to steal cars without harming the drivers, but that he would have used his gun if any of the victims had given him a "hard time." The District Judge instructed the jury, *inter alia*, that the intent requisite under §2119 may be conditional, and that the Government satisfies this element of the offense when it proves that the defendant intended to cause death or serious bodily harm if the alleged victims refused to turn over their cars. The jury found petitioner guilty, and the Second Circuit affirmed, declaring, among other things, that the inclusion of a conditional intent to harm within §2119 comported with a reasonable interpretation of the legislative purpose. Petitioner's alternative interpretation, which would cover only those carjackings in which defendant's sole and unconditional purpose at the time of the offense was to kill or maim the victim, was clearly at odds with Congress'intent, concluded the court.

Held: Section 2119's "with the intent to cause death or serious bodily harm" phrase does not require the Government to prove that the defendant had an unconditional intent to kill or harm in all events, but merely requires proof of an intent to kill or harm if necessary to effect a carjacking. This *mens rea* component of §2119 directs the factfinder's attention to the defendant's state of mind at the precise moment he demanded or took control over the car "by force and violence or by intimidation." If the defendant has the proscribed state of mind at that moment, the statute's scienter element is satisfied. Petitioner's reading– that the defendant must possess a specific and un-

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conditional intent to kill or harm in order to complete the prescribed offense– would improperly transform the *mens rea* element from a modifier into an additional *actus reus* component of the carjacking statute; it would alter the statute into one that focuses on attempting to harm or kill a person in the course of the robbery of a motor vehicle. Given that §2119 does not mention either conditional or unconditional intent separately– and thus does not expressly exclude either– its text is most naturally read to encompass the *mens rea* of both species of intent, and *not* to limit its reach to crimes involving the additional *actus reus* of an attempt to kill or harm. Two considerations strongly support the Court's conclusion. First, petitioner's interpretation would exclude from the coverage of the statute most of the conduct that Congress obviously intended to prohibit. Second, it is reasonable to presume that Congress was familiar with the leading cases and the scholarly writing recognizing that the specific intent to commit a wrongful act may be conditional. The Court's interpretation does not, as petitioner suggests, render superfluous the statute's "by force and violence or by intimidation" element. While an empty threat, or intimidating bluff, would be sufficient to satisfy that element, such conduct, standing on its own, is not enough to satisfy §2119's specific intent element. Pp. 4–11.

126 F. 3d 82, affirmed.

STEVENS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., and THOMAS, J., filed dissenting opinions.