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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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CARTER *v.* UNITED STATES

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

No. 99–5716. Argued April 19, 2000– Decided June 12, 2000

Having donned a ski mask and entered a bank, petitioner Carter confronted an exiting customer and pushed her back inside. She screamed, startling others in the bank. Undeterred, Carter ran inside and leaped over a counter and through one of the teller windows. A teller rushed into the manager's office. Meanwhile, Carter opened several teller drawers and emptied the money into a bag. After removing almost $16,000, he jumped back over the counter and fled. He was charged with violating 18 U. S. C. §2113(a), which punishes "[w]hoever, by force and violence, or by intimidation, takes . . . any . . . thing of value [from a] bank." While not contesting the basic facts, Carter pleaded not guilty on the theory that he had not taken the bank's money "by force and violence, or by intimidation," as §2113(a) requires. Before trial, he moved for a jury instruction on the offense described by §2113(b) as a lesser included offense of the offense described by §2113(a). Section 2113(b) entails less severe penalties than §2113(a), punishing, *inter alia*, "[w]hoever takes and carries away, with intent to steal or purloin, any . . . thing of value exceeding $1,000 [from a] . . . bank." The District Court denied the motion. The jury, instructed on §2113(a) alone, returned a guilty verdict, pursuant to which the District Court entered judgment. The Third Circuit affirmed.

Held: Because §2113(b) requires three elements not required by §2113(a), it is not a lesser included offense of §2113(a), and petitioner is prohibited as a matter of law from obtaining a lesser included offense instruction on the offense described by §2113(b). Pp. 3–18.

(a) In *Schmuck* v. *United States*, 489 U. S. 705, 716, this Court held that a defendant who requests a jury instruction on a lesser offense under Federal Rule of Criminal Procedure 31(c) must demon-

strate that the elements of the lesser offense are a subset of the elements of the charged offense. This elements test requires a textual comparison of criminal statutes, which lends itself to certain and predictable outcomes. *Id.*, at 720. Here, the Government contends that three elements required by §2113(b) are *not* required by §2113(a). A "textual comparison" of the elements of the two offenses suggests that the Government is correct. Whereas §2113(b) requires (1) that the defendant act "with intent to steal or purloin," (2) that the defendant "tak[e] and carr[y] away" the property, and (3) that the property have a "value exceeding $1,000," §2113(a) contains no such requirements. These extra clauses in subsection (b) cannot be regarded as mere surplusage; they mean something. *Potter* v. *United States*, 155 U. S. 438, 446. The Court rejects Carter's assertion that the foregoing application of the elements test is too rigid. Although he is correct that normal principles of statutory construction apply, the Court rejects his claim that such principles counsel a departure here from what is indicated by a straightforward reading of the text. Pp. 3–6.

(b) The Court rejects Carter's arguments pertinent to the general relationship between §§2113(a) and (b). His first contention– that it would be anomalous to impose criminal liability on a fence who receives bank property from a §2113(b) violator, as the text of §2113(c) plainly provides, but not on a fence who receives such property from a §2113(a) violator, unless §2113(b) is a lesser included offense of §2113(a)– is unpersuasive because the anomaly, if it truly exists, is only an anomaly. It is doubtful that it rises to the level of absurdity. Cf. *Green* v. *Bock Laundry Machine Co.*, 490 U. S. 504, 509–511, 527. In any event, nothing in §2113(c) purports to redefine the elements required by the text of §§2113(a) and (b). Although more substantial, Carter's second argument– that, insofar as §§2113(a) and (b) are *similar* to common-law robbery and larceny, the Court must assume that they require the *same* elements as their common-law predecessors, absent Congress' affirmative indication of an intent to displace the common-law scheme– is also unavailing because the canon on imputing common-law meaning applies only when Congress makes use of a statutory *term* with established meaning at common law. See, *e.g.*, *Morissette* v. *United States*, 342 U. S. 246, 263. Although "robbery" and "larceny" are terms with such meanings, neither term appears in the text of §2113(a) or §2113(b). While "robbery" appears in §2113's title, the title of a statute is of use only when it sheds light on some ambiguous word or phrase in the statute itself. *E.g., Pennsylvania Dept. of Corrections* v. *Yeskey*, 524 U. S. 206, 212. Carter does not claim that this title illuminates any such ambiguous language. Pp. 6–10.

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(c) The Court also rejects Carter's specific arguments concerning §2113(b)'s three "extra" elements. Pp. 10–18.

(i) Carter is mistaken when he argues that an "intent to steal or purloin" requirement must be deemed implicit in §2113(a) by virtue of this Court's cases interpreting criminal statutes silent as to *mens rea* to include broadly applicable scienter requirements, see, *e.g.*, *United States* v. *X-Citement Video, Inc.*, 513 U. S. 64, 70. The presumption in favor of scienter generally requires a court to read into a statute only that *mens rea* which is necessary to separate wrongful conduct from "otherwise innocent conduct." *Id.*, at 72. In this case, interpreting §2113(a) not to apply to a person who engages in innocent, if aberrant, activity is accomplished simply by requiring general intent– *i.e.*, proof of knowledge with respect to the crime's *actus reus* (here, the taking of property of another by force or violence or intimidation). See, *e.g.*, *Staples* v. *United States*, 511 U. S. 600, 611–612. And once this mental state and *actus reus* are shown, the concerns underlying the presumption in favor of scienter are fully satisfied, for a forceful taking– even by a defendant taking under a good-faith claim of right– falls outside the realm of the "otherwise innocent." Thus, the presumption in favor of scienter does not justify reading a specific intent requirement– "intent to steal or purloin"– into §2113(a). Carter's reliance on §2113(a)'s legislative history is unavailing in light of this Court's approach to statutory interpretation, which begins by examining the text, see, *e.g.*, *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U. S. 469, 475, not by psychoanalyzing those who enacted it, *Bank One Chicago, N. A.* v. *Midwest Bank & Trust Co.*, 516 U. S. 264, 279. Pp. 10–14.

(ii) Similarly, Carter's claim that §2113(b)'s "takes and carries away" requirement should be deemed implicit in §2113(a) also fails. His argument that "takes" in §2113(a) is equivalent to "takes and carries away" in §2113(b) is at war with the statute's text. His suggestion that the text is not dispositive because nothing in §2113(a)'s evolution suggests that Congress sought to discard the common-law asportation requirement ignores the fact that the Court's inquiry begins with the textual product of Congress' efforts, not with speculation as to the internal thought processes of its Members. Congress is free to outlaw bank theft that does not involve asportation, and it hardly would have been absurd for Congress to do so, since the taking-without-asportation scenario has actually occurred. While the common law's decision to require asportation may have its virtues, Congress adopted a different view in §2113(a), and it is not for this Court to question that choice. Pp. 14–15.

(iii) Finally, the Court disagrees with Carter's claim that §2113(b)'s requirement that the property taken have a "value ex-

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ceeding $1,000" is a *sentencing factor*, not an element of the crime. First, §2113(b)'s structure strongly suggests that its two paragraphs– the first of which uses the phrase in question, requiring that the property taken have "value exceeding $1,000," the second of which refers to property of "value not exceeding $1,000"– describe distinct offenses. Each begins with the word "[w]hoever," proceeds to describe identically (apart from the differing valuation requirements) the elements of the offense, and concludes by stating the prescribed punishment. That these provisions "stand on their own grammatical feet" strongly suggests that Congress intended the valuation requirement to be an element of each paragraph's offense, rather than a sentencing factor of some base §2113(b) offense. *Jones* v. *United States*, 526 U. S. 227, 234. Furthermore, the steeply higher penalties– an enhancement from a 1-year to a 10-year maximum penalty on proof of valuation exceeding $1,000– leads to the conclusion that the valuation requirement is an element of §2113(b)'s first paragraph. See, *e.g.*, *Castillo* v. *United States*, *ante*, at ___. Finally, the constitutional questions that would be raised by interpreting the valuation requirement to be a sentencing factor persuade the Court to adopt the view that the requirement is an element. See *Jones*, *supra*, at 239–252. Pp. 15–18.

185 F. 3d 863, affirmed.

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