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SUPREME COURT OF THE UNITED STATES

No. 97–7164

FRANÇOIS HOLLOWAY, AKA ABDU ALI, PETITIONER *v.* UNITED STATES

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

[March 2, 1999]

JUSTICE STEVENS delivered the opinion of the Court.

Carjacking "with the intent to cause death or serious bodily harm" is a federal crime.[1] The question presented in this case is whether that phrase requires the Government to prove that the defendant had an unconditional intent to kill or harm in all events, or whether it merely

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[1] As amended by the Violent Crime Control and Law Enforcement Act of 1994, §60003(a) (14), 108 Stat. 1970, and by the Carjacking Correction Act of 1996, §2, 110 Stat. 3020, the statute provides:

"Whoever, *with the intent to cause death or serious bodily harm* takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, or attempts to do so, shall–

"(1) be fined under this title or imprisoned not more than 15 years, or both,

"(2) if serious bodily injury (as defined in section 1365 of this title, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242 of this title) results, be fined under this title or imprisoned not more than 25 years, or both, and

"(3) if death results, be fined under this title or imprisoned for any number of years up to life, or both, or sentenced to death." 18 U. S. C. §2119 (1994 ed. and Supp. III) (emphasis added).

requires proof of an intent to kill or harm if necessary to effect a carjacking. Most of the judges who have considered the question have concluded, as do we, that Congress intended to criminalize the more typical carjacking carried out by means of a deliberate threat of violence, rather than just the rare case in which the defendant has an unconditional intent to use violence regardless of how the driver responds to his threat.

I

A jury found petitioner guilty on three counts of carjacking, as well as several other offenses related to stealing cars.[2] In each of the carjackings, petitioner and an armed accomplice identified a car that they wanted and followed it until it was parked. The accomplice then approached the driver, produced a gun, and threatened to shoot unless the driver handed over the car keys.[3] The accomplice testified that the plan was to steal the cars without harming the victims, but that he would have used his gun if any of the drivers had given him a "hard time." When one victim hesitated, petitioner punched him in the face but there was no other actual violence.

The District Judge instructed the jury that the Government was required to prove beyond a reasonable doubt that the taking of a motor vehicle was committed with the intent "to cause death or serious bodily harm to the person from whom the car was taken." App. 29. After explaining that merely using a gun to frighten a victim was not suffi-

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[2] He was also charged with conspiring to operate a "chop shop" in violation of 18 U. S. C. §371, operating a chop shop in violation of §2322, and using and carrying a firearm in violation of §924(c).

[3] One victim testified that the accomplice produced his gun and threatened, " 'Get out of the car or I'll shoot.' " App. 51. Another testified that he said, " 'Give me your keys or I will shoot you right now.' " *Id.,* at 52.

cient to prove such intent, he added the following statement over the defendant's objection:

> "In some cases, intent is conditional. That is, a defendant may intend to engage in certain conduct only if a certain event occurs.
>
> "In this case, the government contends that the defendant intended to cause death or serious bodily harm if the alleged victims had refused to turn over their cars. If you find beyond a reasonable doubt that the defendant had such an intent, the government has satisfied this element of the offense. . . ." *Id.,* at 30.

In his postverdict motion for a new trial, petitioner contended that this instruction was inconsistent with the text of the statute. The District Judge denied the motion, stating that there "is no question that the conduct at issue in this case is precisely what Congress and the general public would describe as carjacking, and that Congress intended to prohibit it in §2119." 921 F. Supp. 155, 156 (EDNY 1996). He noted that the statute as originally enacted in 1992 contained no intent element but covered all carjackings committed by a person "possessing a firearm." A 1994 amendment had omitted the firearm limitation, thus broadening the coverage of the statute to encompass the use of other weapons, and also had inserted the intent requirement at issue in this case. The judge thought that an "odd result" would flow from a construction of the amendment that "would no longer prohibit the very crime it was enacted to address except in those unusual circumstances when carjackers also intended to commit another crime– murder or a serious assault." *Id.,* at 159. Moreover, the judge determined that even though the issue of conditional intent has not been discussed very often, at least in the federal courts, it was a concept that scholars and state courts had long recognized.

Over a dissent that accused the majority of "a clear

judicial usurpation of congressional authority," *United States* v. *Arnold*, 126 F. 3d 82, 92 (CA2 1997) (opinion of Miner, J.), the Court of Appeals affirmed. The majority was satisfied that "the inclusion of a conditional intent to harm within the definition of specific intent to harm" was not only "a well-established principle of common law," but also, and "most importantly," comported "with a reasonable interpretation of the legislative purpose of the statute." *Id.,* at 88. The alternative interpretation, which would cover "only those carjackings in which the carjacker's sole and unconditional purpose at the time he committed the carjacking was to kill or maim the victim," the court concluded, was clearly at odds with the intent of the statute's drafters. *Ibid.*

To resolve an apparent conflict with a decision of the Ninth Circuit, *United States* v. *Randolph*, 93 F. 3d 656 (1996),[4] we granted certiorari. 523 U. S. ___ (1998).

II

Writing for the Court in *United States* v. *Turkette,* 452 U. S. 576, 593 (1981), Justice White reminded us that the language of the statutes that Congress enacts provides

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[4]The Ninth Circuit held that neither a person's mere threat to the driver that " 'she would be okay if she [did] what was told of her' " nor "the brandishing of a weapon, without more" constituted an intent to cause death or serious bodily harm under the amended version of §2119. 93 F. 3d, at 664–665. The court therefore reversed the defendant's carjacking conviction on the ground of insufficient evidence. In the course of its opinion, the Ninth Circuit also stated more broadly that "[t]he mere conditional intent to harm a victim *if* she resists is simply not enough to satisfy §2119's new specific intent requirement." *Id.,* at 665. It is this proposition with which other courts have disagreed. See *United States* v. *Williams,* 136 F. 3d 547, 550–551 (CA8 1998), cert. pending, No. 97–9553; *United States* v. *Arnold*, 126 F. 3d 82, 89, n. 4 (CA2 1997); *United States* v. *Romero*, 122 F. 3d 1334, 1338 (CA10 1997), cert. denied, 523 U. S. ___ (1998); *United States* v. *Anderson*, 108 F. 3d 478, 481–483 (CA3), cert. denied, 522 U. S 843 (1997).

"the most reliable evidence of its intent." For that reason, we typically begin the task of statutory construction by focusing on the words that the drafters have chosen. In interpreting the statute at issue, "[w]e consider not only the bare meaning" of the critical word or phrase "but also its placement and purpose in the statutory scheme." *Bailey* v. *United States*, 516 U. S. 137, 145 (1995).

The specific issue in this case is what sort of evil motive Congress intended to describe when it used the words "with the intent to cause death or serious bodily harm" in the 1994 amendment to the carjacking statute. More precisely, the question is whether a person who points a gun at a driver, having decided to pull the trigger if the driver does not comply with a demand for the car keys, possesses the intent, at that moment, to seriously harm the driver. In our view, the answer to that question does not depend on whether the driver immediately hands over the keys or what the offender decides to do after he gains control over the car. At the relevant moment, the offender plainly does have the forbidden intent.

The opinions that have addressed this issue accurately point out that a carjacker's intent to harm his victim may be either "conditional" or "unconditional."[5] The statutory phrase at issue theoretically might describe (1) the former, (2) the latter, or (3) both species of intent. Petitioner argues that the "plain text" of the statute "unequivocally" describes only the latter: that the defendant must possess a specific and unconditional intent to kill or harm in order to complete the proscribed offense. To that end, he insists that Congress would have had to insert the words "if necessary" into the disputed text in order to include the conditional species of intent within the scope of the stat-

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[5] See, *e.g., Williams*, 136 F. 3d, at 550–551; *Anderson*, 108 F. 3d, at 481.

ute. See Reply Brief for Petitioner 2. Because Congress did not include those words, petitioner contends that we must assume that Congress meant to provide a federal penalty for only those carjackings in which the offender actually attempted to harm or kill the driver (or at least intended to do so whether or not the driver resisted).

We believe, however, that a commonsense reading of the carjacking statute counsels that Congress intended to criminalize a broader scope of conduct than attempts to assault or kill in the course of automobile robberies. As we have repeatedly stated, " 'the meaning of statutory language, plain or not, depends on context.' " *Brown* v. *Gardner*, 513 U. S. 115, 118 (1994) (quoting *King* v. *St. Vincent's Hospital*, 502 U. S. 215, 221 (1991)). When petitioner's argument is considered in the context of the statute, it becomes apparent that his proffered construction of the intent element overlooks the significance of the placement of that element in the statute. The carjacking statute essentially is aimed at providing a federal penalty for a particular type of robbery. The statute's *mens rea* component thus modifies the act of "tak[ing]" the motor vehicle. It 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 of the intent element, in contrast, 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.[6] Indeed, if we

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[6] Although subsections (2) and (3) of the carjacking statute envision harm or death resulting from the crime, subsection (1), under petitioner's reading, would have to cover attempts to harm or kill when no

accepted petitioner's view of the statute's intent element, even Congress' insertion of the qualifying words "if necessary," by themselves, would not have solved the deficiency that he believes exists in the statute. The inclusion of those words after the intent phrase would have excluded the unconditional species of intent– the intent to harm or kill even if not necessary to complete a carjacking. Accordingly, if Congress had used words such as "if necessary" to describe the conditional species of intent, it would also have needed to add something like "or even if not necessary" in order to cover both species of intent to harm. Given the fact that the actual text does not mention either species separately– and thus does not expressly exclude either– that text is most naturally read to encompass the *mens rea* of both conditional and unconditional intent, and *not* to limit the statute's reach to crimes involving the additional *actus reus* of an attempt to kill or harm.

Two considerations strongly support the conclusion that a natural reading of the text is fully consistent with a congressional decision to cover both species of intent. First, the statute as a whole reflects an intent to authorize federal prosecutions as a significant deterrent to a type of criminal activity that was a matter of national concern.[7]

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serious bodily harm resulted.

[7] Although the legislative history relating to the carjacking amendment is sparse, those members of Congress who recorded comments made statements reflecting the statute's broad deterrent purpose. See 139 Cong. Rec. 27867 (1993) (statement of Sen. Lieberman) ("Th[e 1994] amendment will broaden and strengthen th[e] [carjacking] law so our U. S. attorneys will have every possible tool available to them to attack the problem"); 140 Cong. Rec. E858 (May 5, 1994) (extension of remarks by Rep. Franks) ("We must send a message to [carjackers] that committing a violent crime will carry a severe penalty"). There is nothing in the 1994 amendment's legislative history to suggest that Congress meant to create a federal crime for only the unique and unusual subset of carjackings in which the offender intends to harm or

Because that purpose is better served by construing the statute to cover both the conditional and the unconditional species of wrongful intent, the entire statute is consistent with a normal interpretation of the specific language that Congress chose. See *John Hancock Mut. Life Ins. Co.* v. *Harris Trust and Sav. Bank*, 510 U. S. 86, 94–95 (1993) (statutory language should be interpreted consonant with "the provisions of the whole law, and . . . its object and policy" (internal quotation marks omitted)). Indeed, 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 cases and the scholarly writing that have recognized that the "specific intent" to commit a wrongful act may be conditional. See *Cannon* v. *University of Chicago*, 441 U. S. 677, 696–698 (1979). The facts of the leading case on the point are strikingly similar to the facts of this case. In *People* v. *Connors*, 253 Ill. 266, 97 N. E. 643 (1912), the Illinois Supreme Court affirmed the conviction of a union organizer who had pointed a gun at a worker and threatened to kill him forthwith if he did not take off his overalls and quit work. The Court held that the jury had been properly instructed that the "specific intent to kill" could be found even though that intent was "coupled with a condition" that the defendant would not fire if the victim complied with his demand.[8] That holding has been

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kill the driver regardless of whether the driver accedes to the offender's threat of violence.

[8] The trial judge had given this instruction to the jury:

"'The court instructs you as to the intent to kill alleged in the indictment that though you must find that there was a specific intent to kill the prosecuting witness, Morgan H. Bell, still, if you believe from the evidence beyond a reasonable doubt that the intention of the defendants was only in the alternative– that is, if the defendants, or any of

repeatedly cited with approval by other courts[9] and by scholars.[10] Moreover, it reflects the views endorsed by the authors of the Model Criminal Code.[11] The core principle that emerges from these sources is that a defendant may not negate a proscribed intent by requiring the victim to comply with a condition the defendant has no right to impose; "[a]n intent to kill, in the alternative, is never-

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them, acting for and with the others, then and there pointed a revolver at the said Bell with the intention of compelling him to take off his overalls and quit work, or to kill him if he did not– and if that specific intent was formed in the minds of the defendants and the shooting of the said Bell with intent to kill was only prevented by the happening of the alternative– that is, the compliance of the said Bell with the demand that he take off his overalls and quit work– then the requirement of the law as to the specific intent is met.' " 253 Ill., at 272–273, 97 N. E., at 645.

[9] See *People* v. *Vandelinder*, 192 Mich. App. 447, 451, 481 N. W. 2d 787, 789 (1992) (endorsing holding of *Connors*); *Eby* v. *State*, 154 Ind. App. 509, 517, 290 N. E. 2d 89, 95 (1973) (same); *Beall* v. *State*, 203 Md. 380, 386, 101 A. 2d 233, 236 (1953) (same); *Price* v. *State*, 79 S. W. 2d 283, 284 (Tenn. 1935) (same). But see *State* v. *Irwin*, 55 N. C. App. 305, 205 S. E. 2d 345 (1982) (reaching opposite conclusion); *State* v. *Kinnemore*, 34 Ohio App. 2d 39, 295 N. E. 2d 680 (1972) (same).

[10] See 1 W. Lafave & A. Scott, Substantive Criminal Law §3.5(d), p. 312 (1986); R. Perkins & R. Boyce, Criminal Law 646–647, 835 (3d ed. 1982); 1 J. Bishop, Bishop on Criminal Law §287*a* (9th ed. 1923); 1 H. Brill, Cyclopedia of Criminal Law §409, p. 692 (1922); Alexander & Kessler, Mens Rea and Inchoate Crimes, 87 J. Crim. L. & C. 1138, 1140–1147 (1997). See also 2 C. Torcia, Wharton's Criminal Law §182 (15th ed. 1994) (supporting principle of conditional intent but not citing Connors).

[11] Section 2.02(6) of the Model Penal Code provides:

"Requirement of Purpose Satisfied if Purpose is Conditional.

When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense." American Law Institute, Model Penal Code (1985).

Of course, in this case the condition that the driver surrender the car was the precise evil that Congress wanted to prevent.

theless an intent to kill."[12]

This interpretation of the statute's specific intent element 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 the latter element, such conduct, standing on its own, is not enough to satisfy §2119's specific intent element.[13] In a carjacking case in which the driver surrendered or otherwise lost control over his car without the defendant attempting to inflict, or actually inflicting, serious bodily harm, Congress' inclusion of the intent element requires the Government to prove beyond a reasonable doubt that the defendant would have at least attempted to seriously harm or kill the driver if that action had been necessary to complete the taking of the car.

In short, we disagree with petitioner's reading of the text of the Act and think it unreasonable to assume that Congress intended to enact such a truncated version of an important criminal statute.[14] The intent requirement of

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[12] Perkins & Boyce, Criminal Law, at 647.

[13] In somewhat different contexts, courts have held that a threat to harm does not in itself constitute intent to harm or kill. In *Hairston* v. *State*, 54 Miss. 689 (1877), for example, the defendant in an angry and profane manner threatened to shoot a person if that person stopped the defendant's mules. The court affirmed the defendant's conviction for assault, but reversed a conviction of assault with intent to commit murder, explaining that "we have found no case of a conviction of assault with intent to kill or murder, upon proof only of the levelling of a gun or pistol." *Id.,* at 694. See also *Myers* v. *Clearman*, 125 Iowa 461, 464, 101 N. W. 193, 194 (1904) (in determining whether defendant acted with intent to commit great bodily harm the issue for the jury was "whether the accused, in aiming his revolver at [the victim], intended to inflict great bodily harm, or some more serious offense, or did this merely with the purpose of frightening her").

[14] We also reject petitioner's argument that the rule of lenity should apply in this case. We have repeatedly stated that " '[t]he rule of lenity

§2119 is satisfied when the Government proves that at the moment the defendant demanded or took control over the driver's automobile the defendant possessed the intent to seriously harm or kill the driver if necessary to steal the car (or, alternatively, if unnecessary to steal the car). Accordingly, we affirm the judgment of the Court of Appeals.

It is so ordered.

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applies only if, after seizing everything from which aid can be derived, . . . we can make no more than a guess as to what Congress intended.' " *Muscarello* v. *United States*, 524 U. S. ___, ___ (1998) (slip op., at 14) (quoting *United States* v. *Wells*, 519 U. S 482, 499 (1997)) (additional quotations and citations omitted). Accord, *Ladner* v. *United States*, 358 U. S. 169, 178 (1958). The result of our preceding analysis requires us to make no such guess in this case.