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Holloway v. United States: Conditional v. Unconditional Intent to Kill

In *Holloway v. United States*,¹ the United States Supreme Court held that the “intent to kill” element in the federal carjacking statute² was satisfied by a mere conditional intent to kill.³ The Court reasoned that a common-sense reading of the statute indicated Congress’s attempt to include the *mens rea* of both unconditional and conditional intent.⁴

I. FACTUAL BACKGROUND

The federal carjacking statute provides that “[w]hoever, with the intent to cause death or serious bodily harm takes a motor vehicle . . . from the person or presence of another by force and violence or by intimidation” is subject to imprisonment ranging up to twenty-five years or capital punishment, depending on the harm caused.⁵ Petitioner Holloway was found guilty of several offenses related to the larceny of cars, including three counts of carjacking. In each case, petitioner and an armed accomplice would target a car and follow it until it was parked. Armed with a gun, the accomplice would then approach the driver of the vehicle, demand the keys to the car, and threaten to shoot if the driver failed to comply. The accomplice testified at trial that while harming the driver was never planned, he would have used his gun if any of the drivers had presented a problem. In the past, the accomplice had punched a driver in the face when the victim hesitated before complying with the offender’s demand.⁶

Over defendant’s objections, the district court judge instructed the jury that “[i]n some cases, intent is conditional. That is, a defendant may intend to engage in certain conduct only if a certain event occurs.”⁷ The judge directed the jury that if it found beyond a reasonable doubt that

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1. 119 S. Ct. 966 (1998).
 2. 18 U.S.C. § 2119 (1994 & Supp. III 1997).
 3. 119 S. Ct. at 972.
 4. *Id.* at 970.
 5. 18 U.S.C. § 2119.
 6. 119 S. Ct. at 968.
 7. *Id.*

defendant had "intended to cause death or serious bodily harm [when] the alleged victims had refused to turn over their cars," then the government had satisfied the intent element of the offense.⁸

After his conviction, defendant made a motion for a new trial, contending that the judge's last instruction was inconsistent with the text of the statute. The judge denied this motion and stated that the statute, as originally enacted in 1992, lacked an intent element but was applicable only when a firearm was used. The 1994 amendment added the intent element and omitted the firearm requirement, thus broadening the scope of applicability to include other weapons.⁹ The judge then commented that an "odd result" would be reached if the statute were deemed to apply only in the rare case of a carjacker who intends "to commit another crime—murder or a serious assault."¹⁰

The Court of Appeals for the Second Circuit affirmed, agreeing that defendant's interpretation of the statute 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."¹¹ The court stated that a literal interpretation of a statute should be avoided when it yields a result "clearly at odds with the intent of the drafters."¹² The United States Supreme Court granted certiorari,¹³ affirmed the Second Circuit's decision, and held that a defendant's intent to kill or harm a driver if necessary to complete the larceny of a car satisfies the intent requirement of the federal carjacking statute.¹⁴

II. LEGAL BACKGROUND

Although conditional intent is a relatively new issue for federal courts, state courts have long recognized it. In *State v. Morgan*,¹⁵ the North Carolina Supreme Court confronted the issue. The victim in this case, a constable, had seized defendant Morgan's gun. When Morgan returned home and found the constable still there, he raised his ax, stepped up to the constable, and threatened to split him in two. The constable rapidly

8. *Id.*

9. *United States v. Holloway*, 921 F. Supp 155, 156 (E.D.N.Y. 1996), *aff'd sub nom. United States v. Arnold*, 126 F.3d 82 (2d Cir. 1997).

10. 921 F. Supp. at 159.

11. *Arnold*, 126 F.3d at 88.

12. *Id.* at 89.

13. 118 S. Ct. 1558 (1998). The Court granted certiorari to resolve a split in the circuits that was created when a conflicting decision was reached by the Ninth Circuit Court of Appeals in *United States v. Randolph*, 93 F.3d 656 (1996). *Holloway*, 119 S. Ct. at 969. See text accompanying notes 86 & 87, *infra*.

14. 119 S. Ct. at 972.

15. 38 Am. Dec. 714 (N.C. 1842).

negotiated a compromise with Morgan, which was accepted, and the ax was lowered. The jury found defendant's actions justified, whereupon the state appealed.¹⁶

The court began its analysis by distinguishing the case before it from previous cases, such as the case when a defendant had raised a whip towards the victim, but uttered, "If you were not an old man, I would knock you down."¹⁷ The court indicated that in such situations, an express declaration of an intent *not* to do harm was present.¹⁸ In *Morgan*, however, there was a threat coupled with the present ability to carry out the threat and a specific intent to do harm unless the victim complied with the attacker's demand.¹⁹ The court observed that one who unlawfully kills in order to prevent a trespass on his property is guilty of murder.²⁰ It then pointed out that if the attacker's anger had not been pacified and he had struck and killed the constable, he would have been guilty of murder.²¹ Therefore, the court held, "the assault made was an assault with intent to commit murder."²²

Thirty-five years after *Morgan*, in *Hairston v. State*,²³ the Mississippi Supreme Court was confronted with a case in which defendant threatened to shoot any man who attempted to stop him from moving the property of a fellow employee. The victim had reached out to stop defendant's wagon mules, whereupon defendant drew his pistol and uttered the threat.²⁴ The court found that although there was "an intentional offer to commit violence, with an overt act towards its accomplishment, based upon a conditional threat," defendant had the right to prevent the commission of a trespass upon his property.²⁵ The court stated explicitly that if defendant had merely raised his hand and threatened to strike the victim in this case, he would have been guilty of nothing.²⁶ The court reasoned that an intent to kill "must be actual, not conditional, and especially not conditioned upon non-compliance with

16. *Id.* at 714.

17. *Id.* at 715 (quoting *State v. Crow*, 1 Ired. 375 (N.C. 1841)).

18. *Id.* at 716.

19. *Id.*

20. *Id.* at 719.

21. *Id.*

22. *Id.*

23. 54 Miss. 689 (1877).

24. *Id.* at 692.

25. *Id.* at 692-93.

26. *Id.* at 693.

a proper demand."²⁷ Thus, defendant was deemed guilty of assault only.²⁸

In *Thompson v. State*,²⁹ conditional intent premised on an unlawful demand resulted in defendant's conviction.³⁰ Defendant Thompson, a prisoner in a county jail, assisted a fellow inmate in an escape attempt. During a struggle with a guard, defendant retrieved the guard's pistol, pointed it at him, and the two prisoners compelled the guard to enter a cell, where the prisoners locked him in.³¹ The court determined that the prisoners intended to kill the guard if necessary to effect their escape.³² The prisoners had no right to resist or use force on the guard, and if the guard had been killed during the course of the escape, the proper charge would have been murder.³³ Therefore, the court held that because defendant "intended to kill, or make [the guard] comply with the unlawful demand, [defendant] was guilty of an assault with intent to murder."³⁴

A similar result was reached by the Illinois Supreme Court in *People v. Connors*.³⁵ Defendant Connors and several accomplices confronted the victim, pointed revolvers at him, and threatened to kill him unless he removed his union overalls and walked off the job.³⁶ Upon conviction for "assault to murder," defendants appealed and, relying on *Hairston*, argued that such a result could not be reached because "the intent [was] in the alternative . . . , [it was] coupled with a condition, and for that reason [was] not a specific intent to kill."³⁷ The court pointed out that the decision in *Hairston* was based on the Mississippi court's view that the threat was lawful.³⁸ In *Connors*, however, defendants had no right to force the victim to walk away from his job.³⁹ The court noted that if an attempt to assault was committed, during which the victim was given a condition impossible to meet, the assailant should be held to have the specific intent to impose the harm threatened.⁴⁰ It

27. *Id.* at 694.

28. *Id.*

29. 36 S.W. 265 (Tex. Crim. App. 1896).

30. *Id.* at 266.

31. *Id.* at 265.

32. *Id.* at 266.

33. *Id.*

34. *Id.*

35. 97 N.E. 643 (Ill. 1912).

36. *Id.* at 645.

37. *Id.*

38. *Id.* at 646.

39. *Id.*

40. *Id.* at 648.

then applied this same standard to an illegal demand, reasoning that no person can properly expect that another will "submit to an illegal demand made upon him."⁴¹ The court held that

where there is an attempt, coupled with the present ability to commit a felony and the assailant suspends the execution of his purpose merely to give his victim a chance to comply with an unlawful demand, the offense is complete even though the commission of the felony is averted by the submission of the assailed party to the unlawful demands made upon him.⁴²

Accordingly, defendants' convictions for assault to murder were affirmed.⁴³

In *Connors* the court's view of *Hairston* might have been different if the events had occurred eleven years later. At that time the Mississippi Supreme Court again addressed conditional intent to kill in *Stroud v. State*⁴⁴ and reached a decision completely at odds with *Connors*. In *Stroud* defendant went to the victim's residence to have him sign some papers. When the victim refused, defendant pulled a pistol, cocked it, and threatened to shoot the victim unless he signed. After his conviction for assault with intent to kill and murder, defendant appealed.⁴⁵ Citing *Hairston*, the Mississippi Supreme Court held that the conditional threat was insufficient to establish the element of intent to kill, which the court characterized as the main ingredient of the offense.⁴⁶ The court reasoned that "where the facts show that the intent to kill was conditioned upon the happening of some other event, which may, within reason, fail to take place, the real intent to kill and murder does not come into existence."⁴⁷ In response to the Attorney General's attempt to distinguish between lawful (consistent with *Hairston*) and unlawful demands, the court replied somewhat obstinately:

[I]t is the conditional threat, whether such condition is right or wrong, that relieves the assaulter of the intent to kill

The reasoning upon which the rule is based seems to be that in such a case there can be no actual or present intent to kill, and may never be, since the intent is conditioned upon some other event which may not happen.⁴⁸

41. *Id.*

42. *Id.*

43. *Id.* at 649.

44. 95 So. 738 (Miss. 1923).

45. *Id.* at 738.

46. *Id.*

47. *Id.*

48. *Id.*

A similar decision was reached by the same court twenty-five years later in *Craddock v. State*.⁴⁹ In that case, defendant pointed a pistol at a deputy attempting to arrest him and threatened three times to kill the deputy if he moved. A marshal present at the scene jerked the gun away from the direction of the deputy, and defendant was taken into custody.⁵⁰ The court, concluding that *Stroud* controlled, held that the facts were sufficient to sustain only the charges of assault, pointing a pistol at another, and resisting arrest.⁵¹

Notwithstanding Mississippi's view of conditional threat, the Maryland Court of Appeals in *Beall v. State*⁵² noted with approval the decision in *Connors*.⁵³ Defendant in the case, along with an accomplice, attempted to break into an occupied residence. During the ensuing chaos, defendant made several threats to the homeowners and to his accomplice.⁵⁴ The court observed that while a conviction for assault with intent to commit murder requires proof of both an assault and an intent to murder, "the threatened use of a deadly weapon [does not] establish intent to murder as a matter of law."⁵⁵ Yet the court added that the "character of the assault and the use of a deadly weapon are pertinent factors to be considered."⁵⁶ The court also indicated that intent to murder can only be present when murder, as opposed to manslaughter, would be charged had death ensued.⁵⁷ After finding that ample evidence existed for the trial court to find an intent to kill, the court sustained defendant's conviction.⁵⁸

A decision contrary to *Beall*, but consistent with Mississippi's view, was reached in *State v. Kinnemore*,⁵⁹ in which defendant was captured by store employees after shoplifting several records. In an attempt to escape, defendant grabbed an employee, placed a pair of scissors to her throat, and twice threatened to kill her unless the others let him go.⁶⁰ The Ohio Court of Appeals held the threat uttered by defendant was insufficient to prove beyond a reasonable doubt that he intended to kill

49. 37 So. 2d 778 (Miss. 1948).

50. *Id.* at 778.

51. *Id.*

52. 101 A.2d 233 (Md. Ct. App. 1953).

53. *Id.* at 236.

54. *Id.* at 234-35.

55. *Id.* at 236.

56. *Id.*

57. *Id.*

58. *Id.* at 236-37.

59. 295 N.E.2d 680 (Ohio Ct. App. 1972).

60. *Id.* at 681-82.

the victim.⁶¹ The court reasoned that “[a]lthough the assault was complete [when the threat was made], the exclamation tends to show that its objective was escape—not murder.”⁶² The court modified the conviction to assault with a deadly weapon.⁶³

The same result occurred in *State v. Irwin*,⁶⁴ which involved an escape from a North Carolina jail. During the course of the escape, the prisoner took a matron hostage, held a knife to her throat, and threatened to kill her unless his orders were followed. The matron’s face was cut in the process. The jury found defendant guilty of assault with a deadly weapon with intent to kill, and defendant appealed.⁶⁵ The court of appeals asserted that the specific intent to kill, “as opposed to an intent merely to intimidate,” must be shown.⁶⁶ Referencing the Mississippi cases,⁶⁷ the court explained

evidence that a defendant would have had an intent to kill only if a particular event occurred is not sufficient to meet the requirement that there be evidence of an actual, existing, and present intent to kill, since such a conditional intent to kill will never be actualized if the condition precedent upon which it is based never occurs.⁶⁸

Over a strong dissent, the court held that even if the evidence “tended to show that defendant had an intent to kill [the matron] *eventually*, it is not evidence of the requisite intent to kill her by means of the assault.”⁶⁹ Accordingly, the court remanded the case for entry of a guilty verdict for assault with a deadly weapon.⁷⁰

Kinnemore and *Irwin* were relied upon unsuccessfully by the defense in *People v. Vandelinder*.⁷¹ There, defendant offered an undercover police officer money to kidnap, rape, and possibly kill his estranged wife in a scheme designed either to win her back or rid himself of her forever. The ostensible kidnapper was to videotape the rape, which defendant planned to use as leverage in the event his wife returned to him on his terms. Otherwise, the kidnapper was supposed to kill the victim.⁷² On

61. *Id.* at 683.

62. *Id.*

63. *Id.*

64. 285 S.E.2d 345 (N.C. Ct. App. 1982).

65. *Id.* at 349.

66. *Id.*

67. *See supra* notes 44-51.

68. 285 S.E.2d at 349.

69. *Id.*

70. *Id.* at 350.

71. 481 N.W.2d 787 (Mich. Ct. App. 1992).

72. *Id.* at 788.

appeal, defendant argued "that a conditional threat to kill [was] insufficient to support a conviction of solicitation to murder."⁷³ Noting that *Kinnemore* and *Irwin* represented the minority view on conditional threats, the court affirmed the conviction, holding that "[a] defendant cannot avoid conviction for solicitation merely because his intended victim may save herself from death as the result of some circumstance entirely beyond the defendant's control."⁷⁴

In *United States v. Randolph*,⁷⁵ a federal appellate court first addressed the problem of intent to kill in conjunction with the federal carjacking statute. Though defendant in the case pointed a rifle at the victim, he never threatened her with harm. The only demand he made was for her money and car.⁷⁶ The Ninth Circuit Court of Appeals held this was insufficient to show that defendant intended to kill or injure the victim.⁷⁷ The court also noted that "[t]he mere conditional intent to cause harm if she resists is simply not enough to satisfy [the statute's] new specific intent requirement."⁷⁸

However, a different conclusion was reached by the Third Circuit in *United States v. Anderson*.⁷⁹ There, defendant appealed his carjacking conviction, arguing that the statute required the government to show a specific intent to kill or cause serious bodily harm regardless of whether the victim surrendered the car to him. The government countered that the phrase "intent to kill or cause serious bodily injury" required only a showing that defendant "intended to cause death or serious bodily injury if the victim refused to relinquish his or her car."⁸⁰

In arriving at its conclusion, the court in *Anderson* looked to a popular treatise on criminal law,⁸¹ which directed it to the Model Penal Code.⁸² The code states: "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*

73. *Id.*

74. *Id.* at 789.

75. 93 F.3d 656 (9th Cir. 1996).

76. *Id.* at 664.

77. *Id.* at 665.

78. *Id.*

79. 108 F.3d 478 (3d Cir. 1997).

80. *Id.* at 481.

81. See WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., *SUBSTANTIVE CRIMINAL LAW* § 3.5(d) (2d ed. 1986). This treatise provides, "Where a crime requires the defendant to have a specified intention, he has the required intention although it is a conditional intention, 'unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.'" *Id.*

82. 108 F.3d at 483.

prevented by the law defining the offense."⁸³ Embracing this language, the court reasoned that "the fact that a defendant is able to achieve the goal of obtaining the car without resorting to the infliction of death or serious bodily harm obviously does not negate the intent to cause such harm in order to obtain the car."⁸⁴ Thus, the court held that the government's view was the proper interpretation of the statute.⁸⁵

The majority of federal courts addressing the issue of conditional intent to kill have been in accord with *Anderson*.⁸⁶ The Supreme Court granted certiorari to resolve the conflict between these cases and the Ninth Circuit's decision in *Randolph*.⁸⁷

III. RATIONALE OF THE COURT

In *Holloway v. United States*, the Supreme Court held in a seven to two decision that the intent requirement in 18 U.S.C. § 2119, the federal carjacking statute, is satisfied when "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."⁸⁸ Justice Stevens, writing for the majority, began the opinion with a review of the facts of the case and its history. He went on to note that although the language of a statute provides "the most reliable evidence" of Congress' intent in enacting it,⁸⁹ the Court must also consider "its placement and purpose in the statutory scheme," rather than the bare meaning of a single word or phrase.⁹⁰

The majority began its analysis by trying to define the *mens rea* Congress intended to require when it amended the carjacking statute in 1994 to read "with the intent to cause death or serious bodily harm."⁹¹ Rephrasing the issue, the Court characterized the question presented as "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."⁹² In the Court's view, what the driver does after the demand is made or what the offender does after gaining control of the car is irrelevant,

83. MODEL PENAL CODE § 2.02(6) (1962) (emphasis added).

84. 108 F.3d at 484.

85. *Id.* at 485.

86. See *United States v. Romero*, 122 F.3d 1334 (10th Cir. 1997); *United States v. Arnold*, 126 F.3d 82 (2d Cir. 1997); *United States v. Williams*, 136 F.3d 547 (8th Cir. 1998).

87. *Holloway*, 119 S. Ct. at 969.

88. *Id.* at 972.

89. *Id.* at 969 (quoting *United States v. Turkette*, 452 U.S. 576, 593 (1981)).

90. *Id.* (quoting *Bailey v. United States*, 516 U.S. 137, 145 (1995)).

91. *Id.* (quoting 18 U.S.C. § 2119).

92. *Id.*

because "[a]t the relevant moment, the offender plainly does have the forbidden intent."⁹³

The Court noted that a carjacker's intent to harm may be conditional or unconditional and that the statute might theoretically describe either or both types of intent.⁹⁴ Petitioner Holloway's main argument was that the plain meaning of the statute described only unconditional intent; that is, a specific intent to kill or injure the driver regardless of the driver's reactions to his demands.⁹⁵ Holloway argued that Congress would have placed the words "if necessary" into the statute if it wished to cover the conditional variety of intent.⁹⁶ Yet the Court pointed out that because the statute was aimed at a distinctive type of robbery, "[t]he statute's *mens rea* component . . . modifies the act of 'taking' 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"⁹⁷ If the judge or jury determines the offender had "the proscribed state of mind at that moment, the statute's scienter element is satisfied."⁹⁸

In contrast, Holloway's interpretation focused on the act of attempting to harm or kill in the course of a robbery, thus changing "the *mens rea* element from a modifier into an additional *actus reus* component of the carjacking statute."⁹⁹ The Court reasoned that under Holloway's view, the addition of the words "if necessary" as a qualifier "would have excluded the unconditional species of intent."¹⁰⁰ By adding "if necessary," Congress "would also have needed to add something like 'or even if not necessary' in order to cover both species of intent to harm."¹⁰¹ The Court concluded that because the statute never expressly mentions either form of intent separately, "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."¹⁰²

The Court discussed two main reasons to support its view of the statute.¹⁰³ First, the statute's authorization of federal prosecutions for

93. *Id.*

94. *Id.* at 970.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* (emphasis supplied by court).

103. *Id.*

carjacking serves as a deterrent to a crime that is a source of national concern.¹⁰⁴ This purpose is better accomplished by interpreting the statute to include both conditional and unconditional intent.¹⁰⁵ In the Court's view, "petitioner's interpretation would exclude from the coverage of the statute most of the conduct that Congress obviously intended to prohibit."¹⁰⁶

Second, the Court thought it "reasonable to presume that Congress was familiar with the cases and the scholarly writing that have recognized that the specific intent . . . may be conditional."¹⁰⁷ The Court reviewed the decision of the Illinois Supreme Court in *Connors* and noted that its holding "has been repeatedly cited with approval by other courts and by scholars. Moreover, [*Connors*] reflects the views endorsed by the authors of the Model Criminal Code."¹⁰⁸ The Court found that the main impetus behind 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."¹⁰⁹

The Court rejected Holloway's argument that reading the statute to include conditional intent renders the "by force and violence or by intimidation" language of Section 2119 superfluous.¹¹⁰ The Court stated that although an "empty threat" or "bluff" may satisfy the "intimidation" element, it does not go far enough to satisfy the specific intent element.¹¹¹ Further, where a driver surrenders his vehicle without being harmed, the government is required to show beyond a reasonable doubt that the defendant would have attempted to inflict serious harm or death if necessary to effect the larceny of the car.¹¹²

The Court concluded that Holloway's interpretation of the statute was unreasonable because it would require one "to assume that Congress intended to enact such a truncated version of an important criminal statute."¹¹³ Accordingly, the Court held:

the intent requirement of § 2119 is satisfied when the Government proves that at the moment the defendant demanded or took control

104. *Id.* at 970-71.

105. *Id.* at 971; *see also* John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank, 510 U.S. 86, 94-95 (1993) (observing that the "statutory text should be interpreted consistent with the whole law, and to its object and policy").

106. 119 S. Ct. at 971.

107. *Id.*

108. *Id.* at 971 n.11.

109. *Id.*

110. *Id.* at 972.

111. *Id.*

112. *Id.*

113. *Id.*

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).¹¹⁴

Both Justices Scalia and Thomas dissented. Justice Scalia authored a lengthy dissent in which he argued that the plain meaning of the term "intent" does not embrace what has been characterized as conditional intent.¹¹⁵ The thrust of Justice Scalia's argument is that one cannot "intend" something that is contingent on an uncertainty and that one may wish will not happen.¹¹⁶ In his view carjackers in such a position have only an "intent to kill if resisted," rather than an "intent to kill."¹¹⁷ Justice Scalia discounted the possibility that the term "intent" has acquired a special meaning under the law.¹¹⁸ He also indicated that, given the past number of carjackings in which the victim was harmed, it made sense to think Congress intended to punish that specific crime.¹¹⁹ Furthermore, Justice Scalia noted that "the rule of lenity require[d] [the case] to be resolved in the defendant's favor."¹²⁰

Justice Thomas authored a separate dissent in which he determined that the statute could not be read to include conditional intent because no well-established tradition of using the term "intent" to embrace that concept existed.¹²¹

IV. IMPLICATIONS

The Court's decision in *Holloway v. United States* enhances the criminal justice system in general by recognizing that there may well be multiple, coexisting intents within the mind of a lawbreaker, and one intent should not provide a defense for another. For instance, a carjacker may intend to steal a car and (1) kill the driver if he protests the loss of his car or otherwise resists the carjacker's demands; (2) kill the driver if there are no witnesses around; (3) kill the driver if there is classical music playing on the stereo; or (4) kill the driver for an unlimited variety and combination of reasons. All these alternatives are

114. *Id.*

115. *Id.* at 972-73 (Scalia, J., dissenting).

116. *Id.* at 973.

117. *Id.*

118. *Id.*

119. *Id.* at 975.

120. *Id.* at 976. This sometimes followed rule requires ambiguity in a criminal statute to be determined in favor of the defendant. See *Bell v. United States*, 349 U.S. 81, 83 (1955). The court in *Bell* stated, "It may fairly be said to be a presupposition of our law to resolve doubts in the enforcement of a penal code against the imposition of a harsher punishment." *Id.*

121. 119 S. Ct. at 977 (Thomas, J., dissenting).

conditional intents, yet who would argue that the offender does not have an intent to kill where the victim's life depends on what music the victim is listening to at the time of the crime? Had the Court allowed defendant to escape punishment by asserting "I only meant to kill them if they didn't do what I said," lawbreakers would be given the power to dictate terms to their victims on a whim. This is an untenable position for effective law enforcement.

The Court's opinion will undoubtedly make the prosecution of carjackings easier for the government, because the burden of proving the elements of the crime has been reduced. Now the government only needs to show that the defendant would have killed or seriously injured the driver if necessary to effect the robbery. The presentation of a weapon and an accompanying threat should satisfy this burden. The Court's expansive ruling on the statute's *mens rea* requirement now allows federal prosecution of run-of-the-mill carjackings; whereas, prior to the ruling, federal prosecutors had to show the carjacking was of such a predatory nature that the defendant in fact intended to kill or harm the victims regardless of the outcome of the larceny.

For those tempted to argue in such a case that the defendant "might not have really meant" the threat, one can only respond that the criminal justice system must react to the evidence with which it is confronted. Achieving absolute certainty about the inner thoughts of all defendants is impossible. Rather, it is more beneficial to society for the system to punish the apparent intent of a lawbreaker than be forced to sit idly by until a criminal's true intent can be unequivocally determined, something that is not likely ever to occur.

MICHAEL DOUGLAS OWENS

* * *