

SECOND CIRCUIT REVIEW

Expert Analysis

Matters of First Impression Relating to Federal Carjacking

On March 31, 2021, in *United States v. Felder*, the U.S. Court of Appeals for the Second Circuit resolved three matters of first impression regarding the mens rea and causation requirements of the federal carjacking statute and joined six other circuits in identifying federal carjacking as a predicate crime of violence. In a unanimous opinion, written by Senior Circuit Judge Reena Raggi, and joined by Circuit Judges Richard Sullivan and Joseph Bianco, the Second Circuit ruled that (1) an unconditional intent to harm or kill can satisfy the mens rea element for federal carjacking, (2) but-for causation, without proximate causation,



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can satisfy the “death results” requirement for enhanced penalties in the federal carjacking statute, and (3) federal carjacking resulting in death is a predicate “crime of violence.”

Underlying Crimes and Convictions

In August 2014, defendant Tyrone Felder and three of his childhood friends hailed a black livery cab in the Bronx with the intention of stealing the vehicle to commit an armed robbery. When the cab driver, at gunpoint, refused to exit the vehicle, Felder shot the driver in the back of the head, killing him. Felder and his co-defendants then used the cab to commit two armed robberies

in Yonkers before abandoning it near Yankee Stadium.

A week later, Felder shot and killed another cab driver who refused to surrender his vehicle. Before the four co-defendants could use the vehicle to commit another armed robbery, they grew concerned that the police were following them and abandoned the vehicle and threw their clothing and rubber gloves in a nearby dumpster. One pair of discarded gloves allowed authorities to obtain incriminating DNA evidence and, within days, Felder and his co-conspirators were arrested.

Although his three co-defendants eventually pled guilty, Felder opted to stand trial, and a jury found him guilty on all charges. Felder was convicted, among other crimes, of two counts of carjacking resulting in death (18 U.S.C. §2119(3)), two counts of brandishing a firearm in connection with

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crimes of violence, and two counts of discharging a firearm in connection with crimes of violence (id. §924(c)(1)(A)(ii)-(iii)). On April 5, 2019, Judge Vincent Briccetti of the U.S. District Court for the Southern District of New York sentenced Felder to life imprisonment, plus 34 years.

The Opinion

Among his many grounds for appeal, Felder argued that (1) the district court erroneously instructed the jury as to both the mens rea and causation elements of federal carjacking resulting in death, and (2) carjacking resulting in death cannot categorically satisfy the “crime of violence” element of the brandishing and discharging a firearm offenses for which he was convicted. The Second Circuit ultimately rejected these arguments and affirmed Felder’s convictions. *United States v. Felder*, 993 F.3d 57 (2d Cir. March 31, 2021).

First, with regard to the mens rea element of the federal carjacking statute, Felder argued that the district court erred in instructing the jury that it must find that, when Felder took control of the vehicle, he intended to “seriously harm or kill the driver if necessary to steal the

car or for any other reason.” Felder argued that a defendant could only be found guilty if he intended to harm or kill the driver *for the purpose of stealing the vehicle* and that the jury instruction to the contrary was prejudicial because it allowed him to be convicted even if the killings were not committed for the purpose of stealing the vehicles.

The Second Circuit’s decision in ‘United States v. Felder’ resolved three open issues of first impression regarding the federal carjacking statute.

The Second Circuit quickly disposed of Felder’s argument that the jury instruction was prejudicial because his case had been “submitted to the jury on the very conditional intent theory that he urged.” Id. at 64.

The court also disagreed that the district court’s instruction was erroneous, finding instead that it was supported by both the text of the federal carjacking statute and Supreme Court precedent. In *Holloway v. United States*, 526 U.S. 1 (1999), the Supreme Court construed the statute to “cover both the conditional and the unconditional species of wrongful intent,” which the Second Circuit took

to identify “temporality, not purpose, as the critical limiting factor tying the mens rea and actus reus elements” of the statute. *Felder*, 993 F.3d at 66.

The court agreed with three other courts of appeals that the Supreme Court “saw a distinction between killing for its own sake and willingness to kill to effect the theft, and that it deemed both circumstances as meeting the intent standard.” Id. (citing *United States v. Castro-Davis*, 612 F.3d 53, 62 (1st Cir. 2010); *United States v. Washington*, 702 F.3d 886, 892 (6th Cir. 2012); *United States v. Perry*, 381 F. App’x 252, 254 (4th Cir. 2010)). The court thus aligned itself with the First, Fourth, and Sixth Circuits in holding that an unconditional intent to harm or kill can satisfy the statute’s mens rea requirement.

Second, with regard to the causation element of the federal carjacking statute, Felder argued that the district court erred in charging the jury with finding only but-for causation, without further requiring the need to find proximate causation, which would have required the jury to find that the carjacking victims’ deaths were reasonably foreseeable to Felder. In interpreting the statute’s “death results” language at the core of this causa-

tion question, the court relied on *United States v. Burkholder*, 816 F.3d 607, 618 (10th Cir. 2016), in which the Sixth Circuit determined that similar language in the Controlled Substances Act imposes a requirement of actual or but-for causation and not proximate causation. *Felder*, 993 F.3d at 70.

The court also disagreed that the jury instruction was prejudicial: “[T]he foreseeability of death was implicit in the district court’s instruction to the jury that it could find *Felder* guilty of the charged carjackings only if he acted ‘with the intent to cause death or serious bodily harm’ at the moment the cars were stolen.” *Id.* at 71. The court thus held that but-for causation, without proximate causation, can satisfy the “death results” requirement for enhanced penalties in the federal carjacking statute.

Finally, *Felder* argued that carjacking resulting in death does not qualify as a “crime of violence” under 18 U.S.C. §924(c)(3)(A), the federal statute under which he was convicted of brandishing and discharging a firearm *in relation to* crimes of violence. *Felder* focused on the possibility of the federal carjacking statute being satisfied by “intimidation,” 18 U.S.C. §2119,

which, he maintained, meant that it lacked “as an element, the actual, attempted, or threatened use of physical force” as required by §924(c)(3)(A). *Id.* at 79.

The court, noting that it had recently rejected a similar challenge regarding a federal bank robbery statute, explained that, “[e]ven when committed by intimidation, federal carjacking requires a defendant to act in a way that he knows will create the impression

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in an ordinary person that resistance to defendant’s demands will be met by force.” *Id.* (citing *United States v. Hendricks*, 921 F.3d 320 (2d Cir. 2019)). By definitively holding that federal carjacking is a categorical crime of violence, the Second Circuit joined “every other court of appeals to have considered the matter.” *Id.* at 79-80 (citing *Estell v. United States*, 924 F.3d 1291, 1293 (8th Cir. 2019); *United States v. Jackson*, 918 F.3d 467, 485-86 (6th Cir. 2019); *United States v. Cruz-*

Rivera, 904 F.3d 63, 66 (1st Cir. 2018); *United States v. Evans*, 848 F.3d 242, 246-48 (4th Cir.); *United States v. Jones*, 854 F.3d 737, 740-41 (5th Cir.); *In re Smith*, 829 F.3d 1276, 1280-81 (11th Cir. 2016)).

Conclusion

The Second Circuit’s decision in *United States v. Felder* resolved three open issues of first impression regarding the federal carjacking statute: (1) that an unconditional intent to harm or kill can satisfy the statute’s mens rea requirement, (2) that but-for causation, without proximate causation, can satisfy the “death results” requirement for enhanced penalties, and (3) that federal carjacking is a categorical crime of violence. In so holding, the court rejected a number of arguments aimed at limiting the scope and penalties of the statute, and provides significant guidance to lower courts and prosecutors.