IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| UNITED STATES OF AMERICA | : | |
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| v. | : | CRIMINAL NO. 02-527 |
| | : | |
| BRANDON JONES | : | |

**MEMORANDUM**

**Padova, J.** **June 10, 2003**

Defendant Brandon Jones was convicted by a jury on one count of carjacking, in violation of 18 U.S.C. § 2119, on February 14, 2003. At the end of the Government's case-in-chief, Defendant moved for judgment of acquittal before submission to the jury under Federal Rule of Criminal Procedure 29(a). The Court reserved decision on the Motion at the time, pursuant to Federal Rule of Criminal Procedure 29(b). Defendant has now renewed that Motion and has filed a similar motion under Federal Rule of Criminal Procedure 29(c) for Judgment of Acquittal after jury discharge. For the reasons that follow, the Court denies both Motions in all respects.

## I. Background

Shortly after midnight on April 29, 2002, Defendant carjacked Lorena Edwards, a lone woman, at the Coastal Gas Station located at the corner of Stenton Avenue and Tulpehocken Street in Philadelphia. The victim unlocked her green 1996 Jeep Cherokee with her remote and entered it through her driver's side door after she returned from the gas station where she purchased cigarettes. At the same time,

Defendant entered her vehicle through the passenger-side door. He immediately told the victim, “I have a gun, don’t look around, just drive.” (N.T. 2/10/2003 at 38.) Defendant had his hand shoved in the side of his puffy jacket, which was bulging towards her, and motioned as if he were holding a gun. (N.T. 2/10/2003 at 39.) The victim testified that she did not see a gun, but that she followed Defendant’s demands. When the victim reached to put her seatbelt on, Defendant grilled her as to what she was doing and told her, “Don’t worry about your seatbelt, just drive.” (N.T. 2/10/2003 at 38.)

Defendant forced the victim to drive him to an ATM machine at Cedarbrook Mall, located at the corners of Cheltenham Avenue and Easton Road in Wyncote, just across the northern border with Philadelphia. They arrived at the ATM machine at approximately 12:30 a.m. Throughout the victim’s forced ride with Defendant, he repeatedly told her in a loud and threatening manner that he would shoot her if she looked at him. (N.T. 2/10/2003 at 43, 47.) Defendant also stole $6.00 from the victim’s person and $1.00 from her purse. After rifling through her car and purse, he also stole her house keys, identifying information, including her daughter’s social security card, and some cigarettes.

Defendant told the victim to park the vehicle by the ATM machine and then ordered her to withdraw money from the machine. Defendant also threatened her, “If you try to run or if you try to signal for help I’m going to run you down.” (N.T. 2/10/2003 at 46,

47.) The victim testified that she thought the car was still running when she went to the ATM machine to attempt to withdraw money. (N.T. 2/11/2003 at 65-66.) She testified that she did not run while at the ATM machine because she "didn't think [she] could outrun a bullet. . . . or the vehicle." (N.T. 2/11/2003 at 38.) She testified that during the drive, Defendant repeatedly threatened to shoot her, so that when she was at the ATM machine, she was "extremely scared" and kept looking over her shoulder to see what Defendant was doing or whether "he was moving the car or training the gun on me." (N.T. 2/10/2003 at 47.) The victim accessed through the ATM machine a bank account at Sovereign Bank which had almost no funds. She reported her lack of success to Defendant who ordered her back into the vehicle. At this point, Defendant had possession of her purse, including her house keys, and grilled her as to which door each key opened. She also testified that Defendant moved to the driver's side of the vehicle after she returned from the ATM and showed him the receipt that showed she had no money. (N.T. 2/11/2003 at 38.)

Defendant eventually ordered the victim to get out of her car and told her to "Go in the back door, your husband is home. Walk home normal." (N.T. 2/10/2003 at 50.) He took social security cards, including her daughter's, which he identified as such, and told her, "I know who you are and I know where you're at." (N.T. 2/10/2003 at 49-50.) He again threatened her, "Don't call the police, don't flag down a car. If you do, I'm going to shoot you, I'm going to run you

down. I know where you're at, I'm going to come to your house, there's gonna be an upset." (N.T. 2/10/2003 at 54.) Defendant then abandoned the victim in the parking lot near the ATM machine and drove away in her vehicle.

After being carjacked, the victim ran to the nearby residence of the mother of her daughter's friend and reported the incident to the police. Philadelphia Police Officer William Helsel responded, at which point the victim described the defendant and her stolen vehicle. At about 12:50 a.m. the police issued a bulletin about the carjacking. At about 1:30 a.m., about an hour after Defendant left the victim in the parking lot near the ATM machine, Philadelphia Police Sergeant Shawn Wilson, after having heard the police bulletin, spotted Defendant driving the victim's vehicle on Wister Avenue in Philadelphia. This location is near both the scene of the carjacking and Defendant's home. When Sergeant Wilson activated the dome lights of his police cruiser, Defendant fled, disregarding traffic lights and stop signs, and led Sergeant Wilson on a high-speed chase for more than two miles. Defendant lost control of the victim's vehicle at Wadsworth and Mansfield Street in Philadelphia, crashing it, flipping it several times, and totaling it. Sergeant Wilson then apprehended and arrested Defendant.

During Defendant's arrest, Sergeant Wilson recovered from Defendant's person some of the items that Defendant had stolen from the victim, including her car keys, her daughter's social security

card, money, and her cigarettes. He did not recover a gun. The victim testified that other items from her vehicle, including a camera and tool kit, were never recovered. (N.T. 2/10/2003 at 108-09.)

After crashing the victim's vehicle and his subsequent arrest, Defendant was taken to Albert Einstein Medical Center. Hospital records reflect that the ambulance arrived at the accident scene at about 1:40 a.m. and delivered Defendant to the hospital at about 2:04 a.m. The victim arrived at the hospital as Defendant was arriving in the ambulance and immediately identified Defendant as the man who had carjacked her.

The Government also entered evidence, which Defendant produced on the morning of trial, of a letter allegedly received by the Defendant's family a few weeks before trial. The letter discussed the "real carjacker," disparaged the victim, and contained more of her personal items which were stolen that night, including her social security card.

**II. Legal Standard**

In deciding a motion for judgment of acquittal under Federal Rule of Criminal Procedure 29 on the basis of insufficiency of the evidence, the district court must determine whether the Government has adduced sufficient evidence respecting each element of the offense charged to permit jury consideration. United States v. Giampa, 758 F.2d 928, 934 (3d Cir. 1985). The district court cannot

and should not weigh the evidence. Id. The Court is not permitted to make credibility determinations. Id. at 935.

A defendant bears a very heavy burden when challenging the sufficiency of the evidence supporting a jury's verdict. United States v. Dent, 149 F.3d 180, 187 (3d Cir. 1998). The evidence must be weighed in the light most favorable to the government and the verdict upheld so long as "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." United States v. Voigt, 89 F.3d 1050, 1080 (3d Cir. 1996). The defendant cannot "simply reargue [his] defense." United States v. Smith, 186 F.3d 290, 294 (3d Cir. 1999). The Court must find there is no evidence in the record, regardless of how it is weighed, from which the jury could have found the defendant guilty. United States v. McNeill, 887 F.2d 448, 450 (3d Cir. 1989), cert. denied, 493 U.S. 1087 (1990). The defendant must overcome the jury's special province in matters involving witness credibility, conflicting testimony, and drawing factual inferences from circumstantial evidence. United States v. McGlory, 968 F.2d 309, 321 (3d Cir. 1992). For a motion under Rule 29(a), the Court must consider only the evidence presented by the Government; for a Motion under Rule 29(c), the Court shall consider all the evidence introduced at trial. Fed. R. Civ. P 29(a) and (c).

**III. Discussion**

Defendant was convicted of carjacking as charged in Count I of the Indictment. In order to sustain its burden of proof of the crime of carjacking, the Government had to prove that Defendant: (1) with intent to cause death or serious bodily harm; (2) took a motor vehicle; (3) that had been transported, shipped or received in interstate or foreign commerce; (4) from the person or presence of another; (5) by force and violence or intimidation. United States v. Applewhaite, 195 F.3d 679, 684-85 (3d Cir. 1999) (citing United States v. Lake, 150 F.3d 269, 272 (3d Cir. 1998)); 18 U.S.C. § 2119.

In his Motions, Defendant argues that there is insufficient evidence to prove the first element, intent to cause death or serious bodily harm, as there was no force or violence used against the victim and no evidence shown that he used, showed or displayed a gun or any other weapon. (Def.'s Rule 29(a) Mem. at 2.) Defendant also argues that, even if the victim's vehicle were to be considered a weapon, he did not threaten to harm the victim with the vehicle during the "taking," of the vehicle, which he argues occurred only when he initially entered the passenger's side of the vehicle and ordered her to drive, exercising control over her, not at any time afterward.

In United States v. Holloway, the United States Supreme Court ("Supreme Court") held that conditional intent is sufficient to satisfy the statute's specific intent element, the "intent to cause

death or serious bodily harm." 526 U.S. 1, 11-12 (1999). In other words:

> 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.

Id. The Supreme Court held that, "[t]he intent requirement of § 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)." Id. at 12. "While an empty threat, or intimidating bluff, would be sufficient to satisfy the ['by force and violence or by intimidation'] element, such conduct, standing on its own, is not enough to satisfy § 2119's specific intent element." Id.

The Court has found no United States Court of Appeals for the Third Circuit ("Third Circuit") opinion that defines what is necessary to prove the intent element or that establishes a minimum threshold that must be met to prove intent. Instead, the Third Circuit opinions that have addressed the intent element have performed fact-specific analyses in determining whether the intent element has been met. See, e.g., United States v. Burney, No. 01-

3299, 2002 U.S. App. LEXIS 10550, at *3-4 (3d Cir. May 28, 2002); United States v. Lopez, 271 F.3d 472, 487 (3d Cir. 2001); United States v. Applewhaite, 195 F.3d 679, 685 (3d Cir. 1999); United States v. Lake, 150 F.3d 269, 272 (3d Cir. 1998); United States v. Anderson, 108 F.3d 478, 485 (3d Cir. 1997). The Third Circuit directs an examination of the "totality of all the surrounding facts and circumstances" in determining whether sufficient evidence exists to find the requisite intent. Anderson, 108 F.3d at 485; see also United States v. Malone, 222 F.3d 1286, 1291 (10th Cir. 2000) (holding that it is necessary to look at the totality of the circumstances to determine whether the words and actions of the defendants sufficiently demonstrate a conditional intent to cause serious bodily harm).

The United States Court of Appeals for the Seventh Circuit has suggested that threats made when carrying an unloaded gun establish the intimidation element, but might not satisfy the intent element. United States v. Jones, 188 F.3d 773, 777 (7th Cir. 1999). In Jones, however, the court found that the statement the defendants made to the carjacking victim's wife that they would kill her husband if she called the police was the "strongest piece of evidence supporting conditional intent" and was "sufficiently tied to the carjacking and could be the basis for a jury finding of conditional intent." Id. (noting that while there was no direct evidence that had the victim refused to drive the defendants they would have killed or injured

him, the three fugitive defendants were armed, had just robbed a bank, narrowly avoided capture after a police chase, brandished a gun at the victim's wife and daughter, and threatened to kill the victim's wife if she called the police). The United States Court of Appeals for the Eleventh Circuit has held that "[t]he defendant's intent 'is to be judged objectively from the visible conduct of the actor and what one in the position of the victim might reasonably conclude.'" United States v. Fulford, 267 F.3d 1241, 1244 (11th Cir. 2001) (citation omitted) (holding that sufficient evidence existed for a reasonable jury to find conditional intent where the defendant put a gun to the victim's face and told him to "get the fuck out of the car," the victim testified that he feared for his life, and the defendant testified that he had been previously convicted of armed robbery). The United States Court of Appeals for the Sixth Circuit has defined sufficient evidence to satisfy the intent requirement under Holloway as requiring "at the least, a showing that [the defendant] could have carried out his threat to harm his victims." United States v. Adams, 265 F.3d 420, 424 (6th Cir. 2001); see also United States v. Glover, 265 F.3d 337, 342 (6th Cir. 2001).

Defendant argues that there is insufficient evidence to show that he possessed a gun. As the Government argues, the statute does not require that Defendant possess a firearm.[1] The Government did

[1]Indeed, the 1994 Amendments to the statute eliminated the possession of a firearm element and replaced it with the subject intent element. See Anderson, 108 F.3d at 482.

not produce direct evidence that Defendant possessed a gun during the carjacking. The evidence regarding a gun included repeated threats from Defendant that he would shoot the victim and his gesturing under his jacket as though he were holding and aiming a gun. (N.T. 2/10/2003 at 38; 2/11/2003 at 15.). For example, he threatened, upon entering the victim's vehicle, "I have a gun, don't look around, just drive," (n.t. 2/10/2003 at 38) and, throughout the drive, repeatedly told the victim, "Don't look at me, don't look at my face, I'm going to shoot you." (N.T. 2/10/ 2003 at 38.) No evidence was introduced that Defendant did not possess a gun.

Looking at the evidence in the light most favorable to the Government and looking at the totality of all the surrounding facts and circumstances, the Court finds sufficient evidence for the jury to conclude that Defendant had the requisite intent to cause death or serious bodily harm. The jury had the special province to determine witness credibility and to draw factual inferences from the circumstantial evidence. McGlory, 968 F.2d at 321. Accordingly, the jury had the province to take Defendant at his own word in his repeated threats to the victim that he had a gun. Moreover, the testimony included a description that Defendant had his hand in his jacket, which was bulging toward the victim, and he motioned with it that he had a gun. The victim testified that she believed Defendant had a gun and was afraid because she did not think she could outrun a bullet. Additionally, at least forty minutes passed

after Defendant left the victim and drove away in her car and before the police officer spotted him when he then led the officer on a high speed chase.[2] Thus, under the totality of the facts and circumstances, the Court finds that sufficient evidence existed to find intent.

Moreover, the Court finds that the intent element can also be met by Defendant's threat and ability to use the vehicle as a weapon. See United States v. Wright, 246 F.3d 1123, 1127 (8th Cir. 2001) (finding sufficient evidence for intent where the defendant used the vehicle to hit the victim).

Defendant argues that there is insufficient evidence to show conditional intent to use the vehicle as a weapon because the threat to run the victim down had no nexus to the "taking" of the vehicle, which he argues occurred at the moment he entered the victim's passenger side door and commandeered her to drive. He argues that the statement "I'm going to run you down" was not uttered until after the "taking," when the victim was about to retrieve money from the ATM machine. The Court finds that the "taking" did not occur only at the moment Defendant entered the victim's vehicle, but occurred during the entire carjacking incident under the facts in

[2]The victim also testified that some items were never recovered from her vehicle and evidence was introduced which Defendant produced on the morning of trial of a letter from the "real carjacker" which contained personal items stolen from the victim the night of the carjacking that had not previously been retrieved or found.

this case. In so holding, the Court finds persuasive the reasoning in United States v. Hicks, 103 F.3d, 843-44 (9th Cir. 1996) and the concurring opinion in United States v. Lebron-Cepeda, No.01-1650, No.00-2293, 2003 U.S. App. LEXIS 6052, at *28-29 (1st Cir. Mar. 31, 2003).

In Hicks, the defendants confronted one of the two carjacking victims with a gun, ordered the victims out of the car, locked them in the trunk of the car, drove to another site, released the victims from the trunk and separated them, beat the male victim to death, left his body in a pile of gravel, repeatedly raped the female victim, forced her back into the trunk, drove to another location, removed her from the trunk, hit her in the head with a large piece of asphalt, left her on the roadside, and then drove away in the vehicle, eventually abandoning it. 103 F.3d at 839-40. One defendant argued that the evidence about the murder, rape and assault was improperly admitted because it was not relevant to the carjacking. Id. at 842-43. The court did not examine the conditional intent issue, but held that "the vehicle was not taken from the person or presence of both victims until [the female victim] was dumped along the side of the road.[3]" Id. at 843. The court reasoned:

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[3]Intent was not at issue in this case – the court examined whether the acts of the murder, rape and assault were relevant evidence to prove the elements of the carjacking charge. At the time, the 1994 amendments had not been added to the intent element, and obviously were not at issue. The court held that though the murder, rape and acts of assault occurred at a later site, not the location where the carjacking crime began, "under either the

> [l]ocking the victims in the trunk of the stolen automobile is analogous to the criminal forcing the victims at gunpoint to drive to a remote location and killing them there, making the carjacking a continuous transaction that is not complete until the victims have been separated from their vehicle (i.e. 'takes . . . from the person or presence of another . . .'

Id. (citing 18 U.S.C. § 2119). The "carjacking continued until [the female victim] was permanently separated from her car." Id. at 844. Likewise, the Court finds that in this case the vehicle was not taken from the victim until Defendant left her in the parking lot near the ATM machine and drove away in her vehicle.

In United States v. Lebron-Cepeda, Judge Howard wrote a concurring opinion solely to address the very issue of the length or definition of taking when there's an extended carjacking involving the continued presence of the victim. 2003 U.S. App. LEXIS 6052, at *28-39. The Court finds Judge Howard's reasoning and interpretation of Holloway both persuasive and thorough, and thus adopts much of it here. In Lebron-Cepeda, the defendants commandeered the two occupants of the car at gunpoint and drove them for a while in their vehicle, during which time they shot and killed one of the victims. Id. at *2-7. The defendants argued that they did

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'force, intimidation, or violence' element or the 'person or presence' element of the carjacking statute, [the] evidence is admissible." Id. at 843. The court noted, however, that the carjacking statute had since been amended to substitute "with the intent to cause death or serious bodily harm" for "possessing a firearm as defined in section 921 of this title" and that "this amendment would not affect our analysis." Id. at 843.

not form an intent to seriously harm or kill the victim until after they had initiated the carjacking. Judge Howard opined that the intent element should not be read to need exist only at the moment the carjacker demands the car. He reasoned that Holloway should not:

> be read to limit the jury's focus to the commencement of the carjacking in cases like this one which, under settled circuit precedent, involve 'takings' that occur over some period of time, see Ramirez Burgos v. United States, 313 F.3d 23, 30 n.9 (1st Cir. 2002) (declining to specify 'the temporal limits of a carjacking under § 2119' but 'reaffirming that the commission of a carjacking continues at least while the carjacker maintains control over the victim and her car').

Id. at *29. Judge Howard further reasoned:

> Many of the carjackings outlawed by § 2119(1)[4] are entirely committed in the usually brief and frequently instantaneous period of time that it takes to initiate and complete the actus reus: the demand (in the case of an attempted carjacking) or the taking (in the case of a successful carjacking) of the subject vehicle. They are, in other words, crimes in which the typical actus reus is aptly thought to occur at a 'moment' in time and not over a period of time.

Id. at 31. The carjacking in Holloway was of that nature, and thus, reasoned Judge Howard:

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[4]Section 2119(1), which sets forth the statutory penalty in cases where serious bodily harm or death need not have occurred, is the applicable provision in this case. Section 2119(2) sets forth the statutory penalty if serious bodily injury results and Section 2119(3) sets forth the penalty when death results.

> it is not surprising that the Holloway majority opinion would use the phrase 'the moment the defendant demanded or took control over the driver's automobile' to describe the point in time at which the fact finder should assess the mens rea of defendants who have committed this kind of carjacking. After all, the defendant's mens rea is to be measured when he commits the actus rea.

Id. at 31-32 (citing 18 U.S.C. § 2119 (stating that the proscribed taking or attempted taking must be committed "with" the specified intent) and Holloway, 526 U.S. at 8 ("The statute's mens rea component thus modifies the action of 'taking' the motor vehicle.")). Judge Howard continued:

> [I] do not find anything in Holloway to suggest that the majority in that case intended the phrase also to have prescriptive significance in those carjacking cases where the defendant kidnaps the vehicle's occupants and thus commits the actus reus not in a 'moment' but rather over an extended period of time.

Id. at 32 (citing Ramirez-Burgos, 313 F.3d at 30 n.9; other citations omitted). Judge Howard noted that, in Holloway, "there was no issue as to when the assailant's intent is properly measured because only one possibility presented itself under the case facts: the 'moment' at which the vehicle was commandeered (which was the moment at which the actus reus was concluded)". Id. at 33. Holloway did not address the temporal limits of a carjacking. Id. (citing Ramirez-Burgos, 313 F.3d at 30 n.9). Judge Howard concluded: "There is [n]o reason to suppose that, in those cases where the carjacking occurs over a period of time, Holloway circumscribes the

factfinder's entitlement to assess appellants' mens rea at any point during the commission of the actus reus." Id. at 34. This logical reading of Holloway permits sustaining convictions where the jury could have found that, at some point in time, defendants engaged in conduct constituting part of the actus reus proscribed by 18 U.S.C. § 2119 with the specified mens rea. Id. at 35. In the instant case, to demand that the intent exist only at the first moment Defendant commandeered the car is illogical since he commandeered the car for more than twenty minutes, and the victim could have resisted at any time during such commandeering.

The Court also finds Ramirez-Burgos v. United States instructive. 313 F.3d 23, 30 (1st Cir. 2002), cert. denied, 123 S. Ct. 981 (2003) (in determining whether a rape during a carjacking resulted in serious bodily injury, the court noted that it did not set forth the temporal limits of a carjacking under § 2119, but affirmed, without hesitation, "that the commission of a carjacking continues at least while the carjacker maintains control over the victim and her car.") (citing United States v. Vazquez-Rivera, 135 F.3d 172, 178 (1st Cir. 1998)). The court in Ramirez-Burgos noted that in the defendant's direct appeal, it found that "the rape, like the earlier brandishing of the gun, provided the intimidation by which the carjackers extended control of the victim and her automobile." Id. (citing Ramirez-Burgos I, 1997 U.S. App. LEXIS 11825, at *1, 5). Cf. United States v. Delacorte, 113 F.3d 154, 155

(9th Cir. 1997) (holding that the term "taking" does not require the physical relinquishment of a vehicle where the victim continued to drive his vehicle, defendant specifically instructed him where to drive, pointed his gun at the victim, who feared for his safety and did whatever defendant instructed, and noting, "[a] victim who is forced to remain in the car with his assailant, subject to the assailant's continuing threats and possible violence, will often experience more prolonged and severe intimidation and be placed in greater danger than a victim who is immediately released."); United States v. Perez-Garcia, 56 F.3d 1, 3 (1st Cir. 1995) (finding that "the vehicle was taken from the person of [the victim] when the defendant forced her to ride with him in her car to [another destination]. . . . Such a taking was, in law, a taking of the motor vehicle 'from the person' of [the victim]."); United States v. Gonzalez-Mercado, 239 F. Supp. 2d 148, 149-150 (D.P.R. 2002) (holding that a carjacking resulted in serious bodily injury where a rape occurred "during [defendant's] retention of the vehicle," – the defendants took the two victims and their vehicle to various ATM machines, then returned to the apartment where the vehicle was originally taken from, raped a third-party in the apartment while one defendant was still in full control of the carjacked vehicle, as he retained the keys to the car, had a victim in its trunk, and the owner under his command).

Thus, the Court finds that the taking in this case lasted for

the duration of the carjacking, during which Defendant had the weapon of the victim's vehicle and twice threatened her with it, stating, "I will run you down." (N.T. 2/10/2003 at 46, 47, 54.) Defendant argues that there was insufficient evidence that in his statement "I will run you down" he actually meant to literally run the victim down with her vehicle. (Def.'s Supp. Reply to Govt.'s Supp. Response at 3-4.) The victim testified that she believed Defendant would use the car against her. (N.T. 2/10/2003 at 47-48, 2/1//2003 at 38) (she did not believe she could outrun the vehicle). Viewing Defendant's threat in the light most favorable to the Government and under the totality of the circumstances, the Court finds it to be sufficient evidence from which a rational trier of fact could find that Defendant meant it as a threat to run down the victim with the vehicle. Defendant also argues that he took no further step to run the victim down, for example, he argues, he did not move into the driver's seat while the victim withdrew money from the ATM machine. Such a step is not necessary. Moreover, Defendant threatened the victim with the vehicle a second time, before she permanently exited the vehicle. (N.T. 2/10/2003 at 54.) Looking at just the evidence of the threats to use the vehicle and its potential use as a weapon in the light most favorable to the Government, the Court finds sufficient evidence of the intent element. Moreover, looking at the totality of all the surrounding facts and circumstances, including the weapon of the vehicle,

threats to run the victim down, repeated threats to shoot the victim, gestures as though Defendant were holding a concealed firearm, disregard for the victim's use of her seatbelt, and the reckless, high-speed chase Defendant led police on, resulting in his overturning the vehicle several times and requiring hospitalization, the Court finds that the evidence was sufficient to find that Defendant had the requisite intent to cause death or serious bodily harm if necessary.

**IV. Conclusion**

For the above stated reasons, Defendant's motions are denied in all respects.[5] An appropriate order follows.

[5]The Court finds that in its case-in-chief, the Government presented sufficient evidence to find intent. Examining the entire evidence admitted at trial, the Court finds no evidence to alter this finding. Accordingly, the Court denies both Motions.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| UNITED STATES OF AMERICA | : | |
| | : | |
| v. | : | CRIMINAL NO. 02-527 |
| | : | |
| BRANDON JONES | : | |

**O R D E R**

**AND NOW**, this 10th day of June, 2003, upon consideration of Defendant's Motion for Judgment of Acquittal made at trial pursuant to Federal Rule of Criminal Procedure 29(a) and Motion for Judgment of Acquittal pursuant to Federal Rule of Criminal Procedure 29(c) (Doc. No. 73), all related responses and pleadings thereto, and the hearing held before the Court on June 4, 2003, **IT IS HEREBY ORDERED** that the Motions are **DENIED**.

BY THE COURT:

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John R. Padova, J.