No. _____

IN THE

Supreme Court of the United States

_____

SADONNIE KITCHEN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

_____

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

_____

PETITION FOR WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED

1. Whether a prior conviction for drug trafficking under Fla. Stat. § 893.135 that rests upon the mere possession of a specified quantity of drugs qualifies as a "controlled substance offense" for federal sentencing enhancement purposes, where the Florida statute is missing the requisite element of intent to distribute – an issue that divides the circuits?

2. Whether 18 U.S.C. § 922(g)(1) is facially unconstitutional because it exceeds Congress's authority under the Commerce Clause, and is unconstitutional as applied to the intrastate possession of a firearm?

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Sadonnie Kitchen, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINION AND ORDER BELOW

The Eleventh Circuit's opinion, 705 F. App'x 842 (11th Cir. 2017), is provided in Appendix A. The Eleventh Circuit's order denying rehearing and rehearing en banc is provided in Appendix B.

JURISDICTION

The Eleventh Circuit issued its opinion on August 14, 2017 (App. A). On October 20, 2017, the Eleventh Circuit denied Petitioner's timely filed petition for rehearing and rehearing en banc (App. B). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I, Section 8, Clause 3 of the U.S. Constitution provides:

> The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

The Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e), provides in pertinent part:

> (1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).
>
> (2) As used in this subsection–
>
> (A) the term "serious drug offense" means–
>
> (i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import

> and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, for which a maximum term of imprisonment of ten years or more is prescribed by law; or
>
> (ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law.

Section 922(g)(1) of Title 18 provides, as relevant here:

> It shall be unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to . . . possess in or affecting commerce, any firearm or ammunition.

The U.S. Sentencing Guidelines provide for an increased base offense level when a defendant has one or more prior convictions for a "controlled substance offense." U.S.S.G. § 2K2.1(a).

The U.S. Sentencing Guidelines define a "controlled substance offense" to mean:

> an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

U.S.S.G. § 4B1.2(b); *see* U.S.S.G. § 2K2.1 cmt. n.1 (providing that the term "controlled substance offense" "has the meaning given that term in §4B1.2(b) and Application Note 1 of the Commentary to §4B1.2 (Definitions of Terms Used in Section 4B1.1)").

Fla. Stat. § 893.135 proscribes "trafficking in illegal drugs" and provides, in relevant part:

> Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, oxycodone, hydrocodone, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)

> 3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:
>
> a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

Fla. Stat. § 893.135(1)(c)(1)(a) (2010).[1]

STATEMENT OF THE CASE

1. Florida defines the offense of "trafficking in illegal drugs" to include the possession of specified quantities of drugs. Fla. Stat. § 893.135(1)(c). The Florida statute does not require – as an element for this offense – the intent to distribute. Therefore, a conviction under § 893.135 may rest upon the mere possession of drugs. *See, e.g.*, *In re Standard Jury Instructions in Criminal Cases (No. 2005-3)*, 969 So. 2d 245, 265-66 (Fla. 2007); *Greenwade v. State*, 124 So. 3d 215, 220 (Fla. 2013) (describing the "three essential elements" of a trafficking-in-cocaine offense, § 893.135, as "(1) the defendant . . . possessed a certain substance; (2) the substance was cocaine; and (3) the quantity of the substance met the statutory weight threshold"); *Johnson v. State*, 712 So. 2d 380, 381 (Fla. 1998) (concluding that the possession component of § 893.135 does not have as an element the intent to sell); *Pallin v. State*, 965 So. 2d 1226, 1228 (Fla. 1st DCA 2007) ("under Florida law, a conviction for trafficking may be obtained based on mere possession"); *Paey v. State*, 943 So. 2d 919, 921 (Fla. 2d DCA 2006) ("a person may commit the offense by knowingly being in actual or constructive possession of an enumerated controlled substance in a quantity equal to or greater than a weight designated by statute").

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[1] The current version of Fla. Stat. § 893.135 similarly proscribes "trafficking in illegal drugs," which is committed when a person "knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of" a specified quantity of drugs. Fla. Stat. § 893.135(1)(c) (2017) (internal quotation marks omitted).

2. This Court has held that a prior conviction resting upon possession, lacking the element of intent to distribute, does not qualify as a "controlled substance offense" for federal sentencing guidelines purposes. *Salinas v. United States*, 547 U.S. 188, 188 (2006) (vacating and remanding because "the Fifth Circuit erred in treating petitioner's conviction for simple possession as a 'controlled substance offense'").

3. In 2015, Petitioner was charged by indictment in the United States District Court for the Middle District of Florida with possessing a firearm "in and affecting interstate and foreign commerce," after being convicted of felony offenses, in violation of 18 U.S.C. § 922(g)(1). Doc. 1 at 1. Petitioner entered a guilty plea, without a plea agreement, to the § 922(g)(1) offense. As the factual basis for the plea, the commerce element was based upon the firearm's manufacture in Austria, and travel to Florida, prior to Petitioner's possession. Doc. 49 at 15-16, 18-20.

The government sought to enhance Petitioner's sentence based upon a 2010 prior conviction under Fla. Stat. § 893.135(1)(c)(1)(a), contending that this prior conviction qualified as a "controlled substance offense" under the sentencing guidelines. Doc. 30 (PSR) at ¶ 18; Doc. 45 at 8-11. Petitioner objected to this enhancement before the district court, contending that (i) an elements-based approach applies when determining whether a prior conviction constitutes a controlled substance offense, and (ii) this prior conviction, resting upon possession, lacked the element of intent to distribute required by the guidelines' definition of a controlled substance offense. Doc. 30 (PSR) at pages 25-28; Doc. 45 at 5-8.[2]

The district court overruled this objection, but noted that it did so "[w]ith some hesitation." Doc. 45 at 11-12. As a result of this ruling, Petitioner's guidelines range became

[2] The *Shepard*-approved documents relied upon to enhance Petitioner's sentence only permit the conclusion that the conviction rested upon nothing more than the possession of between 4 and 14 grams of opioids. *See* Appendix C; *Johnson v. United States*, 559 U.S. 133, 137 (2010); *Shepard v. United States*, 544 U.S. 13, 26 (2005).

57 to 71 months in prison. Doc. 45 at 12; Doc. 30 (PSR) at ¶ 92. The district court sentenced Petitioner to 57 months in prison, the low end of the enhanced range. Doc. 45 at 23.

Without the enhancement, Petitioner's guidelines range would have been 30 to 37 months in prison. Doc 30 (PSR) at pages 22-23. Petitioner is currently incarcerated and has served over 24 months of his sentence. *See* Doc. 30 (PSR) at page 1.

4. On appeal, the Eleventh Circuit affirmed Petitioner's conviction based upon binding circuit precedent. That precedent upholds § 922(g)(1) convictions resting upon a "minimal nexus" to interstate commerce, including the manufacture of the firearm outside of Florida prior to its possession (the criminal activity) by the defendant. App. A at 3-4.

The Eleventh Circuit also affirmed Petitioner's enhanced sentence, concluding that a prior conviction under Fla. Stat. § 893.135 resting upon the possession of a specified quantity of drugs constitutes a "controlled substance offense." Because Florida law makes clear that "intent to distribute" is not an element of the offense, the Eleventh Circuit relied upon an "inference" – i.e., that the Florida statute "infers" an intent to distribute. In affirming the enhancement in Petitioner's case, the court maintained its earlier decisions holding that a sentencing enhancement – whether under the ACCA or the sentencing guidelines – may be based upon this non-elemental inference. App. A at 3 (citing *United States v. James*, 430 F.3d 1150, 1154-55 (11th Cir. 2005) (ACCA enhancement based upon Florida conviction under § 893.135), *overruled on other grounds by James v. United States*, 550 U.S. 192 (2007); *United States v. Madera-Madera*, 333 F.3d 1228, 1232-34 (11th Cir. 2003) (guidelines enhancement based upon Georgia drug trafficking statute)).

Shortly after Petitioner's case was decided, the Eleventh Circuit issued two more decisions concluding that a non-elemental inference may be relied upon to determine that a prior conviction

under Fla. Stat. § 893.135, resting upon the possession of a specified quantity of drugs, constitutes a "controlled substance offense." *See United States v. Orr*, 705 F. App'x 892, 894-95 (11th Cir. 2017); *United States v. Dover*, No. 16-17650, 2017 WL 4334038, at *2 (11th Cir. Sept. 29, 2017). Petitioner, and each of these appellants, filed petitions for rehearing en banc, contending that the Eleventh Circuit's decisions (i) directly conflict with the Fifth Circuit's decision in *United States v. Sarabia-Martinez*, 779 F.3d 274, 276-77 (5th Cir. 2015), holding that a prior conviction under § 893.135 resting upon possession does not qualify as a guidelines predicate; and (ii) conflict with decisions of other circuits that reject the reliance upon a non-elemental inference for guidelines enhancement purposes.[3] The Eleventh Circuit denied rehearing en banc in all three cases.[4]

REASONS FOR GRANTING THE WRIT

I. The Circuits are Divided on Whether a Sentencing Court May Rely Upon a Non-Elemental Inference for Federal Sentencing Enhancement Purposes

This Court has held that a prior conviction resting upon the possession of a controlled substance, without the element of intent to distribute, is not a "controlled substance offense" for purposes of the federal sentencing guidelines. *Salinas v. United States*, 547 U.S. 188, 188 (2006) (vacating and remanding because "the Fifth Circuit erred in treating petitioner's conviction for simple possession as a 'controlled substance offense'").[5] Florida Statute § 893.135 defines the offense of "trafficking" to include the mere possession of specified quantities of drugs. Fla. Stat.

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[3] *See* Petition for Rehearing and Rehearing En Banc, *United States v. Kitchen*, No. 16-13691 (11th Cir. Sept. 5, 2017); Petition for Rehearing En Banc, *United States v. Orr*, No. 14-12240 (11th Cir. Sept. 21, 2017); Petition for Rehearing En Banc, *United States v. Dover*, No. 16-17650 (11th Cir. Oct. 20, 2017).

[4] *See* App. B; Order, *United States v. Orr*, No. 14-12240 (11th Cir. Nov. 2, 2017); Order, *United States v. Dover*, No. 16-17650 (11th Cir. Dec. 6, 2017).

[5] The federal sentencing guidelines define a "controlled substance offense" to include possession offenses only when the possession is "with intent to manufacture, import, export, distribute, or dispense." U.S.S.G. § 4B1.2(b); U.S.S.G. § 2K2.1(a) & cmt. n.1.

§ 893.135(1)(c). Florida law is clear that an "intent to distribute" is not an element of the offense. *See* p. 3, *supra* (citing Florida law); *Johnson v. United States*, 559 U.S. 133, 138 (2010) (stating that federal courts are "bound by the Florida Supreme Court's interpretation of state law, including its determination of the elements of" Florida crimes).

In the decision below, the Eleventh Circuit relied upon a non-elemental "inference" – i.e., the court's conclusion that the Florida statute "infers" an intent to distribute – to hold that a prior conviction under Fla. Stat. § 893.135 qualifies as a "controlled substance offense." App. A at 3. The Eleventh Circuit's decision directly conflicts with the Fifth Circuit's decision holding that a prior conviction under § 893.135 resting upon possession does not qualify as a guidelines predicate. *See United States v. Sarabia-Martinez*, 779 F.3d 274, 276-77 (5th Cir. 2015). The decision below also conflicts with decisions of the Fifth, Sixth, Ninth, and Tenth Circuits that reject the reliance upon a non-elemental inference for sentencing enhancement purposes. Petitioner's case is an ideal vehicle to resolve this important issue that divides the circuits. Petitioner therefore respectfully requests this Court's review.

1. Based upon the statute's elements, a prior conviction under Fla. Stat. § 893.135 resting upon possession never qualifies as a controlled substance offense. *Salinas*, 547 U.S. at 188; *see Descamps v. United States*, 133 S. Ct. 2276, 2293 (2013) ("Because generic unlawful entry is not an element, or an alternative element, of § 459, a conviction under that statute is never for generic burglary."). Because the Florida statute is missing the element of intent to distribute, the Eleventh Circuit relied upon its conclusion that the statute "infers intent to distribute from the amount of drugs possessed." App. A at 3 (emphasis added).

The Eleventh Circuit's decision is incorrect and conflicts with decisions of this Court and other circuits. This Court's precedent requires that federal sentencing enhancements be based

upon the elements, rather than labels, of the prior offense. This Court has thus adopted the categorical approach for sentencing enhancement purposes. *See Taylor v. United States*, 495 U.S. 575, 599-602 (1990); *Descamps*, 133 S. Ct. at 2281-86 & n.3; *Mathis v. United States*, 136 S. Ct. 2243, 2251-56 (2016).

The Eleventh Circuit permits a sentencing court to rely upon an inferred intent to distribute to enhance sentences under the guidelines, stating that the guidelines do not define a predicate offense "by its elements." *United States v. Madera-Madera*, 333 F.3d 1228, 1233 (11th Cir. 2003) (concluding that Georgia drug trafficking conviction based upon possession qualified as a guidelines predicate). By contrast, the Fifth, Sixth, and Ninth, and Tenth Circuits have applied this Court's categorical (or elements-based) approach, first set forth in *Taylor*, to reject the reliance upon a non-elemental inference in determining whether a prior conviction qualifies for guidelines enhancement purposes.[6] These courts have thus concluded, contrary to the Eleventh Circuit, that convictions lacking an "intent to distribute" as an element do not qualify as guidelines predicates. *See United States v. Lopez-Salas*, 513 F.3d 174, 178-81 (5th Cir. 2008) (rejecting the reliance upon a presumption of "intent to distribute" based upon the quantity of drugs under the North Carolina drug statute, expressly disagreeing with the Eleventh Circuit's inference-based approach); *United States v. Montanez*, 442 F.3d 485, 493-94 (6th Cir. 2006) ("For federal sentencing Guideline purposes, we will simply not read into an offense an element that is not in the prior statute of conviction, nor admitted to by the defendant, nor found beyond a reasonable doubt by a jury. Neither of the defendant's prior [Ohio] convictions contained an element of intent to distribute that would allow his current sentence to be enhanced under § 4B1.1."); *United States v. Villa-Lara*, 451

[6] An inference is not an element, because it need not be proven to a jury beyond a reasonable doubt in every case to convict a defendant. *See Mathis*, 136 S. Ct. at 2248; *Descamps*, 133 S. Ct. at 2286 n.3.

F.3d 963, 964-65 & n.2 (9th Cir. 2006) (concluding, because the Nevada statute did not require "proof of any trafficking intent," that defendant's trafficking-by-possession conviction did not qualify as a guidelines predicate, disagreeing with the Eleventh Circuit's inference-based approach and stating: "*Madera-Madera* failed to cite *Taylor* or undertake a proper *Taylor* categorical analysis of only the statutory definition of the prior offense"); *United States v. Herrera-Roldan*, 414 F.3d 1238, 1240-43 (10th Cir. 2005) (rejecting reliance upon inference of intent to distribute for prior Texas conviction and distinguishing *Madera-Madera*).

This long-standing circuit split persists, with the Eleventh Circuit's decision below now directly conflicting with the Fifth Circuit's decision in *Sarabia-Martinez*, 779 F.3d at 276-77. In *Sarabia-Martinez*, the Fifth Circuit concluded that "[b]y classifying mere possession as drug trafficking, the Florida statute [§ 893.135] defines drug trafficking more broadly than does the guidelines." *Id.* at 276. The Fifth Circuit rejected the government's attempt to rely upon the argument that "Florida presumes intent to distribute" based upon the drug quantity, maintaining its disagreement with the Eleventh Circuit's non-elemental approach. *Id.* at 277.

2. The Eleventh Circuit has relied upon the non-elemental inference of an intent to distribute to affirm sentences enhanced under the ACCA and the sentencing guidelines. *See* App. A at 3; *United States v. James*, 430 F.3d 1150, 1153-56 (11th Cir. 2005) (ACCA enhancement), *overruled on other grounds by, James v. United States*, 550 U.S. 192 (2007). The Eleventh Circuit's reliance in *James* upon a non-elemental inference to determine that a prior conviction qualifies as a "serious drug offense" under the ACCA is doubtful in light of *Descamps* and *Mathis*. *See Descamps*, 133 S. Ct. at 2281-89; *Mathis*, 136 S. Ct. at 2251-56. The Eleventh Circuit's application of *James* to affirm Petitioner's enhanced guidelines sentence here is also incorrect, because the ACCA and sentencing guidelines use different language to define predicate offenses.

The ACCA defines a "serious drug offense" to include state offenses "involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance." 18 U.S.C. § 924(e)(2)(A)(ii) (emphasis added). The lower courts have used the word "involving" to give "an expansive interpretation" to the ACCA's definition of a serious drug offense. *See United States v. White*, 837 F.3d 1225, 1233-34 (11th Cir. 2016) (citing cases from other circuits), *pet. for cert. filed*, No. 17-6668 (U.S. Nov. 3, 2017). In contrast, the guidelines define a "controlled substance offense" to mean "an offense . . . that prohibits the . . . possession of a controlled substance . . . with intent to . . . distribute, or dispense." U.S.S.G. § 4B1.2(b) (emphasis added). The term "prohibits" is much narrower than the term "involving." *See White*, 837 F.3d at 1235 ("there is general agreement among the circuits that the ACCA's definition of a serious drug offense is broader than the guidelines definition of a drug trafficking or a controlled substance offense because of the ACCA's use of the term 'involving'").

The Eleventh Circuit's decision affirming Petitioner's enhanced guidelines sentence therefore cannot be sustained based upon the plain language of the guidelines. Indeed, had the guidelines meant to include possession offenses based merely upon the drug quantity, without an intent-to-distribute element, the guidelines would have so stated. *See Salinas*, 547 U.S. at 188; *Sarabia-Martinez*, 779 F.3d at 277. The Eleventh Circuit, unlike other circuits, permits federal sentencing courts to infer an intent to distribute – a missing element – to enhance a defendant's sentence under the guidelines. Review is warranted to resolve the division among the circuits.

3. Petitioner's case is an ideal vehicle to resolve the circuit split presented herein. Petitioner objected before the district court and court of appeals to the enhancement of his sentence based upon the non-elemental inference that the Florida statute implies an intent to distribute. Resolution of this issue in Petitioner's case would be outcome-determinative. Absent the reliance

upon a non-elemental inference to enhance his sentence, Petitioner's guidelines range would be significantly lower, and he would soon be eligible for a time-served sentence. *See Gall v. United States*, 552 U.S. 38, 49 (2007) ("a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range"). Petitioner therefore respectfully seeks this Court's review.

II. The Felon-in-Possession Statute, 18 U.S.C. § 922(g)(1), is Unconstitutional Because it Does Not Require that Possession of a Firearm Substantially Affect Interstate Commerce

Section 922(g)(1) of Title 18 makes it unlawful for a convicted felon "to . . . possess *in or affecting commerce*, any firearm or ammunition." 18 U.S.C. § 922(g)(1) (emphasis added). Unlike other statutory provisions, § 922(g)(1) does not limit "commerce" to "interstate or foreign commerce" for possession offenses. *Compare* 18 U.S.C. § 922(g)(1), *with* 18 U.S.C. § 921(2); 18 U.S.C. § 922(a)(1), (a)(2), (e), (f)(1), (g) (shipping, transporting, or receiving). Nor does § 922(g)(1) limit federal prosecutors to cases where the defendant's possession *substantially* affected interstate commerce.

In *Scarborough v. United States*, 431 U.S. 563, 564-78 (1977), this Court considered the predecessor statute to § 922(g) and held that evidence that the firearm had previously traveled in interstate commerce was sufficient to satisfy the interstate commerce element. The Court reached this conclusion as a matter of statutory interpretation, finding that Congress did not intend "to require any more than the *minimal* nexus that the firearm have been, at some time, in interstate commerce." 431 U.S. at 575 (emphasis added); *see id.* at 577. But, *Scarborough* pre-dates this Court's decision in *United States v. Lopez*, 514 U.S. 549 (1995), and did not resolve whether the Constitution requires that the criminal activity (here, possession) substantially affect interstate commerce. *See, e.g., Alderman v. United States*, 131 S. Ct. 700, 703 (2011) (Thomas, Scalia, JJ.,

dissenting from the denial of certiorari) ("If the *Lopez* [constitutional] framework is to have any ongoing vitality, it is up to this Court to prevent it from being undermined by a 1977 precedent [*Scarborough*] that does not squarely address the constitutional issue.").

Based on *Lopez*, § 922(g)(1) exceeds Congress's power under the Commerce Clause. In *Lopez*, this Court outlined the "three broad categories of activity that Congress may regulate under its commerce power": (i) "the use of the channels of interstate commerce," (ii) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities," and (iii) "those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce." 514 U.S. at 558-59 (citations omitted). As to the third category, the Court expressed that, "admittedly, our case law has not been clear whether an activity must 'affect' or 'substantially affect' interstate commerce in order to be within Congress' power to regulate it under the Commerce Clause." *Id.* at 559. The Court concluded, "consistent with the great weight of our case law, that the proper test requires an analysis of whether the regulated activity '*substantially affects*' interstate commerce." *Id.* (emphasis added). And based on this "substantially affects" standard, the Court held that 18 U.S.C. § 922(q), which prohibited the possession of a firearm in a school zone, exceeded Congress's Commerce Clause authority. *Id.* at 559-68.

Section 922(g)(1) likewise exceeds Congress's Commerce Clause authority, because it does not require that the possession "substantially affect" interstate commerce. This petition therefore presents an opportunity to resolve the statutory-interpretation decision in *Scarborough* with the constitutional decision in *Lopez*. In Petitioner's case, the commerce element was based upon the firearm's manufacture outside of Florida and the inference that it had therefore traveled to Florida *prior to* Petitioner's possession. Because the federal government's authority to

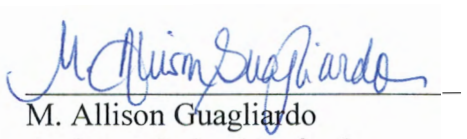
prosecute such cases raises an important and recurring question, Petitioner respectfully seeks this Court's review.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

Donna Lee Elm
Federal Defender



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Appendix A

Decision Below

705 Fed.Appx. 842
This case was not selected for
publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1
generally governing citation of judicial
decisions issued on or after Jan. 1, 2007.
See also U.S. Ct. of App. 11th Cir. Rule 36-2.
United States Court of Appeals,
Eleventh Circuit.

UNITED STATES of America, Plaintiff–Appellee,
v.
Sadonnie Marquis KITCHEN, Defendant–Appellant.

No. 16–13691
|
Non–Argument Calendar
|
(August 14, 2017)

Synopsis

Background: Defendant pled guilty in the District Court for the Middle District of Florida, Steven D. Merryday, C.J., to possession of a firearm by a convicted felon, and was sentenced to 60 months' imprisonment. Defendant appealed.

Holdings: The Court of Appeals held that:

[1] defendant's prior conviction for Florida offense of drug trafficking qualified as "controlled substance offense" under Sentencing Guidelines, and

[2] defendant's conviction was constitutional as applied to defendant, based on firearm's minimal nexus to interstate commerce.

Affirmed.

West Headnotes (2)

[1] Sentencing and Punishment
Offense or adjudication in other jurisdiction

Defendant's prior conviction for Florida offense of drug trafficking qualified as "controlled substance offense," under sentencing guideline providing for enhancement of the base offense level of any defendant convicted of possession of a firearm by a convicted felon, who has been previously convicted of controlled substance offense, even though the Florida statute did not include element of intent; statute, which prohibited activity involving amounts of hydrocodone ranging from 4 grams to 30 kilograms, inferred intent to distribute from the quantity of drugs. Fla. Stat. Ann. § 893.135(1)(c); U.S.S.G. §§ 2K2.1(a)(4)(A), 4B1.2(b).

Cases that cite this headnote

[2] Commerce
Weapons and explosives

Weapons
Violation of other rights or provisions

Statute prohibiting possession of a firearm by a convicted felon was constitutional as applied to defendant, based on minimal nexus to interstate commerce established by defendant's admission in plea colloquy that the firearm was manufactured outside Florida. U.S. Const. art. 1, § 8, cl. 3; 18 U.S.C.A. § 922(g).

Cases that cite this headnote

Appeal from the United States District Court for the Middle District of Florida, D.C. Docket No. 8:15–cr–00504–SDM–AAS–1

Attorneys and Law Firms

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Christopher Francis Murray, James A. Muench, Arthur Lee Bentley, III, Germaine Seider, Plaintiff–Appellee.

Before MARCUS, MARTIN and ANDERSON, Circuit Judges.

Opinion

PER CURIAM:

***843** Sadonnie Kitchen appeals his conviction and 60–month sentence for possession of a firearm by a convicted felon. On appeal, he argues that: (1) he should not have received an increased base offense level based on his prior conviction under Florida's drug-trafficking statute; and (2) his conviction under 18 U.S.C. § 922(g) is void, because the statute is unconstitutional facially and as applied. After careful review, we affirm.

When reviewing a district court's findings with respect to guidelines issues, we consider legal issues de novo, factual findings for clear error, and the court's application of the Sentencing Guidelines to the facts with due deference, which is akin to clear error review. United States v. Rothenberg, 610 F.3d 621, 624 (11th Cir. 2010). We review the constitutionality of statutes de novo. United States v. Scott, 263 F.3d 1270, 1271 (11th Cir. 2001). To preserve an issue for appeal, a party must raise an objection that is sufficient to apprise the trial court and the opposing party of the particular grounds upon which appellate relief will later be sought. United States v. Straub, 508 F.3d 1003, 1011 (11th Cir. 2007).

We review issues raised for the first time on appeal only for plain error, but have said that allowing a conviction to stand under a statute which Congress was without power to enact is plain error. United States v. Williams, 121 F.3d 615, 618 (11th Cir. 1997). To establish plain error, a defendant must show (1) an error, (2) that is plain, and (3) that affected his substantial rights. United States v. Turner, 474 F.3d 1265, 1275–76 (11th Cir. 2007). If these three conditions are satisfied, we may exercise our discretion to recognize the error if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. Id. at 1276.

It is a cardinal rule of appellate review that a party may not challenge as error a ruling or other trial proceeding invited by that party. United States v. Baker, 432 F.3d 1189, 1216 (11th Cir. 2005), abrogated on other grounds, Davis v. Washington, 547 U.S. 813, 821, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006). The doctrine of invited error is implicated when a party induces or invites the district court into making an error. Id. Where invited error exists, a court cannot invoke the plain error rule and reverse. Id.

[1] First, we are unpersuaded by Kitchen's claim that the district court erred by increasing his base offense level based on his prior conviction under Florida's drug-trafficking statute. The Sentencing Guidelines provide for a base offense level of 20 for unlawful possession of a firearm if "the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense." U.S.S.G. § 2K2.1(a)(4)(A). The term "controlled substance offense" means "an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or ***844** a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense." Id. § 4B1.2(b). A sentencing court should look at the elements of the convicted offense and not the conduct underlying the conviction in determining if a prior conviction is a controlled substance offense under § 4B1.2. United States v. Lipsey, 40 F.3d 1200, 1201 (11th Cir. 1994).

We've held that a Georgia drug-trafficking statute that, in part, prohibited the possession of a certain amount of drugs, without explicitly requiring a showing of intent, was a "drug trafficking offense" under a guidelines provision worded identically to § 4B1.2(b). United States v. Madera–Madera, 333 F.3d 1228, 1232–34 (11th Cir. 2003). In Madera–Madera, we explained that "Georgia's trafficking statute necessarily infers an intent to distribute once a defendant possesses a certain amount of drugs," and that Georgia law recognized that someone in possession of a particular amount of drugs "plans on distributing and thereby 'trafficking' those drugs." Id. at 1232–33. Thus, we concluded that failing to recognize drug trafficking as a controlled substance offense would produce an anomalous result under Georgia's three-tiered scheme for drug crimes, because a defendant convicted for drug trafficking would not receive an enhanced sentence while a defendant convicted for the lesser offense of possession with intent to distribute any amount of drugs would. Id. at 1233–34.

At the time of Kitchen's conviction, Florida's drug-trafficking statute provided felony penalties for any person "who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in

actual or constructive possession of" between 4 grams and 30 kilograms of hydrocodone. Fla. Stat. § 893.135(1)(c)1a (2010). We've previously addressed whether Florida's drug-trafficking statute qualified as a "serious drug offense" under the ACCA. United States v. James, 430 F.3d 1150, 1154–55 (11th Cir. 2005), overruled on other grounds by James v. United States, 550 U.S. 192, 127 S.Ct. 1586, 167 L.Ed.2d 532 (2007). In James, we noted that Florida has a three-tiered scheme for drug crimes similar to Georgia's, and held that, like the Georgia drug-trafficking statute in Madera–Madera, the Florida statute inferred intent to distribute from the quantity of drugs. Id. We determined that it was not necessary for the statute to include intent as an element under the ACCA's definition of a "serious drug offense," which included any offense "involving" intent to distribute. Id. at 1155. The word "involving," we explained, meant that serious drug offenses could include offenses that did not have intent as an element. Id. We also said that, as in Madera–Madera, holding that a drug-trafficking conviction in Florida was not a serious drug offense would produce an anomalous result. Id.

After James and Madera–Madera, the Supreme Court held that, when analyzing a statute to determine whether it is a violent felony under the ACCA, "sentencing courts may not apply the modified categorical approach when the crime of which the defendant was convicted has a single, indivisible set of elements." Descamps v. United States, 570 U.S. 254, 133 S.Ct. 2276, 2282, 186 L.Ed.2d 438 (2013). The Supreme Court later clarified that a statute is divisible when it lists alternative elements rather than merely alternative factual means of committing a single element. Mathis v. United States, ––U.S. ––––, 136 S.Ct. 2243, 2249, 195 L.Ed.2d 604 (2016).

Following Mathis, we relied on our holding in James to conclude that a conviction ***845** under Alabama's drug-trafficking statute was a serious drug offense under the ACCA. United States v. White, 837 F.3d 1225, 1235 (11th Cir. 2016). We explicitly held that Descamps and Mathis did not overrule or abrogate James, because they addressed only the question of when a court may use a modified categorical approach and did not address whether it is appropriate to infer intent to distribute based on the quantity of drugs. Id. at 1235 & n.13.

As applied here, our binding precedent establishes that Kitchen's conviction under Florida's drug-trafficking statute—even if based on mere possession of the requisite amount of drugs—is a controlled substance offense. While James addressed an ACCA provision with slightly different language from the Sentencing Guidelines, it established that Florida's drug-trafficking statute infers intent to distribute from the amount of drugs possessed, similar to Georgia's statute. James, 430 F.3d at 1154–55. In addition, Madera–Madera addressed language in a different guidelines provision identical to the "controlled substance offense" definition at issue here, and concluded that Georgia's drug-trafficking statute infers intent to distribute based on the amount of drugs possessed is a controlled substance offense. Madera–Madera, 333 F.3d at 1232–34. Put together, James and Madera–Madera instruct that Florida's drug-trafficking statute, like Georgia's statute, infers intent to distribute based on the amount of the drugs and satisfies the "controlled substance offense" definition.

Notably, neither James nor Madera–Madera has been overruled by an en banc panel of this Court or by the Supreme Court, and we are therefore bound by that precedent. White, 837 F.3d at 1235. As we've explained, because the Supreme Court's decisions in Descamps and Mathis dealt only with whether a statute is divisible, they did not abrogate James. White, 837 F.3d at 1235 & n.13. For the same reason, they did not abrogate Madera–Madera.

In addition, in Lipsey, we held that a sentencing court must look only to the elements of the statute rather than the facts of the offense. Madera–Madera took the same approach. And the district court here properly applied our law—it did not determine that Kitchen actually had intent to distribute drugs, but instead held that the statute under which he was convicted implied intent from the amount of drugs he had. Finally, although the quantity and type of drugs in James differed from those underlying Kitchen's conviction, Kitchen has pointed to no authority limiting the amount of drugs a state may rely upon to infer intent. We thereafter affirm the district court's application of an increased his base offense level based on Kitchen's prior conviction.

[2] We are also unconvinced by Kitchen's argument—raised for the first time on appeal—that his conviction under 18 U.S.C. § 922(g) is void. We've held that 18 U.S.C. § 922(g) is a facially constitutional use of Congress's Commerce Clause power, because it requires that the

possession of the firearm or ammunition be in or affecting interstate or foreign commerce. Scott, 263 F.3d at 1274. The statute is constitutional as applied so long as the government proves some minimal nexus to interstate commerce, which it may accomplish by demonstrating that the firearm traveled in interstate commerce through testimony that the firearm was manufactured in a different state. United States v. Wright, 607 F.3d 708, 715–16 (11th Cir. 2010).

Here, the district court did not plainly err by failing to find that § 922(g) is unconstitutional. Our binding precedent in ***846** Wright and Scott establishes that § 922(g) is facially constitutional, as Kitchen concedes. Wright, 607 F.3d at 715–16; Scott, 263 F.3d at 1274. Furthermore, the statute is constitutional as applied here, because the government met its burden of showing a minimal nexus to interstate commerce through Kitchen's admission in the plea colloquy that the firearm was manufactured outside the state of Florida.

AFFIRMED.

All Citations

705 Fed.Appx. 842

Appendix B

Denial of Rehearing and
Rehearing En Banc

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

October 20, 2017

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 16-13691-GG
Case Style: USA v. Sadonnie Kitchen
District Court Docket No: 8:15-cr-00504-SDM-AAS-1

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Joe Caruso, GG/lt
Phone #: (404) 335-6177

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-13691-GG

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

SADONNIE MARQUIS KITCHEN,

Defendant - Appellant.

Appeal from the United States District Court
for the Middle District of Florida

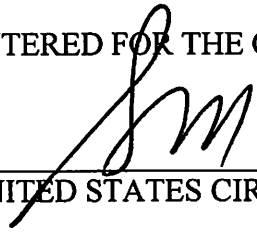
ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: MARCUS, MARTIN and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

ORD-42

Appendix C

Shepard Documents for the Prior Conviction at Issue

IN THE CIRCUIT COURT, 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
DIVISION : E
CASE NUMBER : 10-CF-010233
OBTS NUMBER : 2901252691

STATE OF FLORIDA
VS
KITCHEN, SADONNIE, MARQUIS
DEFENDANT

----------JUDGMENT----------

THE DEFENDANT KITCHEN, SADONNIE, MARQUIS BEING PERSONALLY BEFORE THIS COURT REPRESENTED WITH ASSISTANT PUBLIC DEFENDER CANDELA, ANTHONY, M ASSISTANT PUBLIC DEFENDER JAMES, RONNIE, DAWSON , ASSISTANT PUBLIC DEFENDER PUBLIC, DEFENDER , THE ATTORNEY OF RECORD AND THE STATE REPRESENTED BY ASSISTANT STATE ATTORNEY RUIZ, AMY, AND HAVING

Entered a plea of Guilty to the following crime(s):1

COUNT	CRIME	OFFENSE STATUTE NUMBER	DEGREE OF CRIME	COURT ACTION	DATE
1	TRAFFICKING IN ILLEGAL DRUGS 4	893135 1C1A-DRUG3912	FF	ADJG	07-DEC-2010

And no cause being shown why the defendant should not be adjudicated guilty, it is ordered that the defendant is hereby adjudicated guilty of the above crime(s).

IF YOU ARE A "QUALIFYING OFFENDER" UNDER SECTION 943.325, FLORIDA STATUTES, YOU ARE REQUIRED TO SUBMIT A DNA SAMPLE IN A MANNER CONSISTENT WITH FLORIDA LAW

STATE OF FLORIDA

VS.

CASE NUMBER: 10-CF-10233

Kitchen, Sadonnie
DEFENDANT

FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
6. Left Thumb	**7. Left Index**	**8. Left Middle**	**9. Left Ring**	**10. Left Little**
				

Fingerprints taken by: Bickerstaff 7248 — NAME
Bailiff — TITLE

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, Kitchen, Sadonnie, and that they were placed thereon by the defendant in my presence in open court this date.

DONE AND ORDERED in open court in Hillsborough County, Florida, this 07 day of DEC, 2010.

pg. 2

JUDGE

IN THE CIRCUIT COURT, 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
DIVISION : E
CASE NUMBER : 10-CF-010233
OBTS NUMBER : 2901252691

STATE OF FLORIDA
VS
KITCHEN, SADONNIE, MARQUIS
DEFENDANT

----------CHARGES/COSTS/FEES----------

A sum of $49.00 pursuant to Section 938.03(1), Florida Statutes (Crime Compensation Trust Fund)

A sum of $1.00 pursuant to Section 938.03(1), Florida Statutes (Crime Compensation Trust Fee)

$2.00 pursuant to Section 938.15, Florida Statutes (Criminal Justice Education by Municipalities and Counties)

A sum of $65.00 pursuant to Section 939.185, Florida Statutes (Circuit Criminal Additional Court Costs)

A sum of $225.00 pursuant to Section 938.05(1)(A), Florida Statutes (Criminal Justice Trust Fund)

A sum of $100.00 pursuant to Section 938.29(1)(A), Florida Statutes (Public Defender Fees)

A sum of $3.00 as a Court Cost pursuant to Section 938.01, Florida Statutes (Assessments - Florida [Criminal Justice Trust Fund]).

A sum of $50.00 pursuant to Section 775.083 Florida Statutes (BOCC - County Crime Prevention)

Pay a fine of $50000.00 ,pursuant to section 775.083, Florida Statutes

Pay $2500.00 , as the 5% surcharge required by section 938.04, Florida Statutes.

A sum of $100.00 pursuant to Section 938.27, Florida Statutes (Prosecution Costs)

DONE AND ORDERED IN HILLSBOROUGH COUNTY, FLORIDA, THIS 07TH DAY OF December 2010

JUDGE

DEFENDANT KITCHEN, SADONNIE, MARQUIS

DIVISION : E
CASE NUMBER : 10-CF-010233
OBTS NUMBER : 2901252691

SENTENCE

AS TO COUNT(s) : 1

THE DEFENDANT, BEING PERSONALLY BEFORE THIS COURT, ACCOMPANIED BY THE DEFENDANT'S ATTORNEY OF RECORD, ASSISTANT PUBLIC DEFENDER CANDELA, ANTHONY, M
ASSISTANT PUBLIC DEFENDER JAMES, RONNIE, DAWSON
ASSISTANT PUBLIC DEFENDER PUBLIC, DEFENDER
AND HAVING BEEN ADJUDGED GUILTY HEREIN, AND THE COURT HAVING GIVEN THE DEFENDANT AN OPPORTUNITY TO BE HEARD AND TO OFFER MATTERS IN MITIGATION OF SENTENCE, AND TO SHOW CAUSE WHY THE DEFENDANT SHOULD NOT BE SENTENCED AS PROVIDED BY LAW AND NO CAUSE BEING SHOWN

IT IS THE SENTENCE OF THE COURT THAT THE DEFENDANT :
Is hereby committed to the custody of the Department of Corrections for a term of: 3 Years

DEFENDANT KITCHEN, SADONNIE, MARQUIS

DIVISION : E
CASE NUMBER : 10-CF-010233
OBTS NUMBER : 2901252691

---------- SPECIAL PROVISIONS ----------

AS TO COUNT(s) : 1

THE FOLLOWING MANDATORY/MINIMUM PROVISION(S) APPLY TO THE SENTENCE IMPOSED :

DRUG TRAFFICKING: It is further ordered that the 3 Years Mandatory Minimum Imprisonment provisions of Section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

DEFENDANT KITCHEN, SADONNIE, MARQUIS

DIVISION : E
CASE NUMBER : 10-CF-010233
OBTS NUMBER : 2901252691

---------- OTHER PROVISIONS ----------

AS TO COUNT(s) : 1

THE FOLLOWING MANDATORY/MINIMUM PROVISION(S) APPLY TO THE SENTENCE IMPOSED :

JAIL CREDIT: It is further ordered that the defendant shall be allowed a total of 158 Days as credit for time incarcerated before imposition of this sentence.

Count 1: STIPULATED

DEFENDANT KITCHEN, SADONNIE, MARQUIS

DIVISION : E
CASE NUMBER : 10-CF-010233
OBTS NUMBER : 2901252691

---------- OTHER PROVISIONS ----------

Sentencing Guidelines filed.

IN THE EVENT THE ABOVE SENTENCE IS TO DEPARTMENT OF CORRECTIONS, THE SHERIFF OF HILLSBOROUGH COUNTY, FLORIDA, IS HEREBY ORDERED AND DIRECTED TO DELIVER THE DEFENDANT TO THE DEPARTMENT OF CORRECTIONS AT THE FACILITY DESIGNATED BY THE DEPARTMENT TOGETHER WITH A COPY OF THIS JUDGEMENT AND SENTENCE AND ANY OTHER DOCUMENTS SPECIFIED BY FLORIDA STATUTE

THE DEFENDANT IN OPEN COURT WAS ADVISED OF THE RIGHT TO APPEAL FROM THIS SENTENCE BY FILING NOTICE OF APPEAL WITHIN 30 DAYS FROM THIS DATE WITH THE CLERK OF THIS COURT AND THE DEFENDANT'S RIGHT TO THE ASSISTANCE OF COUNSEL IN TAKING THE APPEAL AT THE EXPENSE OF THE STATE ON SHOWING OF INDIGENCY.

DONE AND ORDERED IN HILLSBOROUGH COUNTY, FLORIDA, THIS 07TH DAY OF December 2010

JUDGE

7/26

CASE NUMBER 2010-CF-010233
DIVISION E

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR THE COUNTY OF HILLSBOROUGH, STATE OF FLORIDA

TAMPA DISTRICT

JUL 20 2010, Spring Term, 2010

STATE OF FLORIDA

V

SADONNIE MARQUIS KITCHEN

INFORMATION FOR:

FILED
CLERK CIRCUIT COURT
2010 JUL 20 PM 4:44
HILLSBOROUGH COUNTY FL
CIRCUIT CRIMINAL

COUNT ONE
TRAFFICKING IN ILLEGAL DRUGS
(4 TO 14 GRAMS)
F.S. 893.135 (1)(c)1a.

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, MARK A. OBER, STATE ATTORNEY OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR THE COUNTY OF HILLSBOROUGH, CHARGES THAT:

COUNT ONE

SADONNIE MARQUIS KITCHEN, on the 14th day of June, 2010, in the County of Hillsborough and State of Florida, did knowingly, unlawfully, and feloniously deliver or be in actual or constructive possession of 4 grams or more, but less that 14 grams of Morphine, Opium, Oxycodone, Hydrocodone, Hydromorphone, or any Salt, Isomer, or Salt of an Isomer thereof, including Heroin, as described in Section 893.03(1)(b), (2)(a), 3(c), or (3)(c)4, Florida Statutes, or any mixture containing such substance. Contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Florida.

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

Personally appeared before me the undersigned Assistant State Attorney of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, who, being first duly sworn, says that this prosecution is set forth in the foregoing INFORMATION are based upon facts that have been sworn to as true by the material witness or witnesses for the offense and which, if true, would constitute the offense therein charged, and that the prosecution is being instituted in good faith.

Assistant State Attorney of the
Thirteenth Judicial Circuit in and
For Hillsborough County, Florida

Florida Bar # 0159108

Sworn to and subscribed before me at Tampa, Florida

This 20TH day of July, 2010

Vickie L. Ricks
Signature of Notary Public - State of Florida

VICKIE L. RICKS
Commission # DD 890783
Expires July 28, 2013
Bonded Thru Troy Fain Insurance 800-385-7019

Print, Type or Stamp Commissioned Name of Notary
And Date Commission Expires

Personally known ✓ or Produced Identification ____

Type of Identification Produced

July 16, 2010
JAMES L ROBERTS/sm

Parent

2010045227/2010-CF-010233-D001 SADONNIE MARQUIS (Open)
KITCHEN

COUNT ONE
TRAFFICKING IN ILLEGAL DRUGS
(4 TO 14 GRAMS)
F.S. 893.135 (1)(c)1a
1ST DEGREE FELONY - (7)

DRUG3912