No. _____

In the Supreme Court of the United States

OCTOBER TERM, 2022

JASON EDWARD SIMPSON, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Friesell Westerlage, PLLC

By: /s/ John Riley Friesell
John Riley Friesell
Attorney at Law
Texas Bar No. 90001413
One City Centre
1021 Main Street, Suite 1250
Telephone: (713) 236-9177
Fax: (888) 749-3831

Counsel for Petitioner

QUESTION PRESENTED

1. Whether a conviction of a substantive offense under 21 U.S.C. § 841 of the Controlled Substances Act ("CSA") requires that a jury find beyond a reasonable doubt that the defendant had knowledge of the type and quantity of controlled substance involved where the type and quantity of controlled substance alleged in the indictment increases the statutory minimum or maximum sentence.

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

RELATED CASES

1. *United States of America v. Jason Edward Simpson*, Southern District of Texas, USDC No. 4:18-CR-630-03.

2. *United States of America v. Jason Edward Simpson*, United States Court of a Appeals for the Fifth Circuit, Fifth Circuit Case No. 21-20564.

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No._____

In the Supreme Court of the United States

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v.

UNITED STATES OF AMERICA, RESPONDENT.

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

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PETITION FOR WRIT OF CERTIORARI

Friesell Westerlage, PLLC

By: /s/ John Riley Friesell
John Riley Friesell
Texas Bar No. 90001413
One City Centre
1021 Main Street, Suite 1250
Houston, Texas 77002
Telephone: (713) 236-9177
Fax: (888) 749-3831

Counsel for Petitioner

PRAYER

Petitioner respectfully requests the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in *United States v. Jason Edward Simpson*, 5th Cir. Case No. 21-20564, 2023 WL 128946, January 9, 2023 (not designated for publication).

OPINION BELOW

On January 9, 2023, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming Petitioner's judgment of conviction and sentence. The opinion of the court of appeals is unpublished and is reproduced and attached at Appendix A.

PROVISIONS OF THE CONSTITUTION AND STATUTES INVOLVED

This case involves U.S. Const. amend. VI, which provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

This case involves 21 U.S.C. § 841. The full text of 21 U.S.C. § 841 at the time of the charged offenses is reproduced and attached at Appendix B.

JURISDICTION

This case was brought as a federal criminal prosecution under 21 U.S.C. §§ 846, 841(a)(1) and, 841(b)(1)(B), and 18 U.S.C.A. § 2. The district court therefore had jurisdiction under 18 U.S.C. § 3231.

The judgment of the court of appeals was entered on January 9, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

A. Course of Proceedings.

A second superseding indictment charged Jason Edward Simpson ("Simpson") and a single codefendant ("GH") with drug trafficking related offenses ROA.1987. This codefendant is referred to through this Petition by his initials because the charges are sealed as to the codefendant. Count One charged that from August 14, 2018, through August 30, 2018, Simpson and GH conspired with each other "and with other persons known and unknown to the Grand Jury, to commit the following offenses against the United States: to possess with intent to distribute a Schedule I controlled substance, namely 3,4-methylenedioxy-methamphetamine (MDMA)" in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(C). ROA.1987. Count Two charged that on August 22, 2018, Simpson aided and abetted "others known and unknown to the grand jury" to possess with intent to distribute "a Schedule II controlled substance, namely 50 grams or more of a mixture or substance containing a detectible amount of methamphetamine, its salts, isomers, and salts of its isomers"

in violation of 18 U.S.C § 2; 21 U.S.C. § 841(a)(1); and, 21 U.S.C § (b)(1)(B)(viii). ROA.1988. Count Three charged that on August 30, 2018, Simpson aided and abetted GH "and others known and unknown to the grand jury" to possess with intent to distribute "a Schedule II controlled substance, namely 500 grams or more of a mixture or substance containing a detectible amount of methamphetamine, its salts, isomers, and salts of its isomers" in violation of 18 U.S.C § 2; 21 U.S.C. § 841(a)(1); and, 21 U.S.C § (b)(1)(B)(viii). ROA.1988. Count Four charged that on August 30, 2018, Simpson aided and abetted GH in the carrying of a firearm during and in relation to a drug trafficking crime and possessing a firearm in furtherance of a drug trafficking crimes alleged in Count One and Count 3 in violation of 18 U.S.C. § 924(c)(1)(A) and 18 U.S.C. § 2. ROA.1989. Count Five charged that on August 30, 2018, Simpson and GH aided and abetted "each other and others known and unknown to the grand jury" to conspire "with persons known and unknown to the Grand Jury," to carry a firearm during and in relation to a drug trafficking crime and in furtherance of a drug trafficking crimes alleged in Count One and Count Three in violation of 18 U.S.C. § 924(c)(1)(A); 18 U.S.C. § 924(o); and 18 U.S.C. § 2. ROA.1990.

A jury convicted Simpson of Counts One, Two, Three, and Five of the second superseding indictment. ROA.500-501. The jury acquitted Simpson of Count Four. ROA.501. The district court sentenced Simpson to 168 months of imprisonment as to Counts One, Two, Three, and Five to be served concurrently on all counts. ROA.513.

Simpson appealed to the United States Court of Appeals for the Fifth Circuit. ROA.517.

On appeal, Simpson argued, *inter alia*, that the omission from the jury charge of his requested instructions as to Counts Two and Three which would have required the jury to find beyond a reasonable doubt that Simpson knew the offense involved methamphetamine in the amount alleged was not harmless error under the facts in this case. Simpson acknowledged that this argument was foreclosed by the Fifth Circuit's binding precedent in *United States v. Betancouurt*,586 F.3d 303, 308-309 (5th Cir. 2009), but raised it on direct appeal to preserve the issue for possible further review. *United States v. Jason Edward Simpson*, 5th Cir. Case No. 21-20564, *4, n. 2. On January 9, 2023, the Fifth Circuit affirmed Simpson's conviction and sentence in an opinion not designated for publication.

B. Statement of Relevant Facts.

In August 2018, Houston Police Department Detectives Garza and Guerra began an undercover investigation after obtaining the cell phone number of a suspected narcotic supplier. ROA.874, 1241. Detective Garza communicated with the suspected supplier, later identified as Fernando Melendez, throughout the investigation by text messages and phone calls. ROA.874.

On August 14, 2018, Detective Garza contacted Melendez and agreed to meet him at 7207 Santiago Steet in Houston to buy one pint of promethazine containing codeine. ROA.877-878. Detectives Garza and Guerra went to 7207 Santiago Street

where they met Melendez who said he was waiting for his supplier. ROA.883. Jose Garza then arrived with the promethazine and the sale was completed. ROA.883-884. But testing later revealed that what Melendez and Jose Garza had sold as being codeine syrup contained no codeine or any other controlled substance. ROA.887.

On August 19, 2018, Detective Garza received a text that Melendez had "tabs and bars" available for sale. ROA.888. On August 20, 2018, Detective Garza agreed that he would buy 2000 pills of MDMA for $1,500. ROA.890-891. But Melendez then canceled this sale when he learned his source did not have the pills. ROA.906-907. Detective Garza inferred from this that Melendez was not the source of the drugs and was working through several people to get the drugs he was selling. ROA.907.

On August 22, 2018, Melendez told Detective Garza that the 2000 MDMA pills were available. ROA.912. Detectives Garza and Guerra again went to 7207 Santiago where they met with Melendez. ROA.912, 916-917. A black Lincoln Navigator and a white Buick Enclave arrived and Melendez directed Detective Garza into the Lincoln Navigator. ROA.920-921. As Detective Garza got into the back of the Navigator to sit behind Melendez, he saw two bags on the center console containing pills of assorted colors. ROA.923-924. Simpson then got into the Navigator and sat behind the driver, Jose Garza. ROA.923-924, 986. According to Detective Garza, Simpson said the "pills were A1" and claimed that "at one time he was supplying the entire third ward." ROA.926. Detective Garza gave $1,350 to Melendez who split the money with Jose Garza and Simpson. ROA.927-928.

On August 29, 2018, Detective Garza received a text that Melendez had 5000 pills of MDMA available. ROA.931-934. The next day, August 30, 2018, Melendez told Detective Garza to go to meet the supplier at a barbershop in Houston to buy the pills. ROA.938. But Detective Garza refused to meet anywhere other than 7207 Santiago Street. ROA.938. Later that day, Melendez told Detective Garza he had found someone else who could supply 5000 pills for $4,000 and they agreed to meet later that evening at 7207 Santiago Street. ROA.939.

On the evening of August 30, 2018, Detectives Garza and Guerra arrived at 7207 Santiago to buy the 5000 pills. The detectives saw Simpson exit the rear passenger side of a Toyota Tacoma and that Simpson was carrying a white plastic bag containing several clear bags with multicolored pills. ROA.947. Melendez directed Simpson and Detective Garza to get into a red Pontiac G6 where Jose Garza was already sitting in the driver's seat. ROA.947, 950. Detective Garza told Melendez, Jose Garza, and Simpson that the pills looked better than the pills bought the last time. ROA.951-952. According to Detective Garza, Simpson responded that he had obtained the pills from a new source. ROA.951-952. Detectives Garza and Guerra agreed to the purchase and said they were going to their car to get the money. ROA.953-954. Melendez, Jose Garza, and Simpson were arrested. The driver and passenger of the Toyota Tacoma were also arrested and identified as Michael Manning and GH. ROA.957. Manning was in the driver's seat of the rented Toyota Tacoma and had $3,300 cash in his pocket. ROA.958, 998-999, 1076.

The arresting officers also recovered six cell phones which were tagged into evidence. ROA.968. FBI Special Agent Christopher Menard obtained search warrants for each of the cellphones and extracted information from the cell phones associated with Melendez, Jose Garza, and GH. ROA.1239, 1233, 1238-1239, 1252, 1263. The data obtained from Jose Garza's phone included text messages and logged phone calls between Jose Garza and Simpson on August 30, 2018. ROA.1240-1241. The text messages recovered from Jose Garza's phone included text messages between Jose Garza and Melendez. ROA.1243.

The data from GH's cellphone which included approximately eight contacts by telephone and text message between GH and Simpson on August 30, 2018. ROA.1265-1266, 1302. But this data did not reveal any contacts between Simpson and GH before August 30, 2018. Nor did the data recovered from any of the phone reflect any communication between Jose Garza and Simpson on August 22, 2018. ROA.1303. The cell phone data also showed no communications between Simpson and Melendez.

Detective Garza testified that suppliers commonly substitute other less expensive controlled substances for MDMA, including methamphetamine and cocaine. ROA.871. And Jose Garza and Melendez sold what they represented as promethazine containing codeine to the undercover detectives on August 14, 2018, which, in fact, contained no controlled substance. And the Government introduced evidence through the Houston Forensic Science Center lab report that the pills sold

to Detectives Garza and Guerra on August 22, 2018, contained N-ethylpentylone as a controlled substance substituted for MDMA, and one of the samples tested from the August 30, 2018, transaction showed that it contained no controlled substances. ROA.1125, 1305-1306. Furthermore, the appearance of the pills did not disclose whether they contained MDMA, methamphetamine, cocaine, or no controlled at all. ROA.1303. And Jose Garza testified that he believed the pills contained MDMA rather than methamphetamine. ROA.1213-1214, 1228-1229.

Count Two of the second superseding indictment alleged that on August 22, 2018, Simpson aided and abetted the possession with intent to distribute at least 50 grams or more of a mixture or substance containing a detectible amount of methamphetamine. ROA.1988. Count Three alleged that on August 30, 2018, Simpson aided and abetted the possession with intent to distribute at least 500 grams of a mixture or substance containing a detectible amount of methamphetamine. ROA.1988. Simpson submitted proposed instructions that would have required the jury to find that the government had proven beyond a reasonable doubt that Simpson knew the offense involved methamphetamine in the quantity charged in Counts Two and Three. ROA.439, 443. The district court overruled Simpson's objection to the omission of this proposed instruction as to Counts Two and Three from the jury charge. ROA.1369-1370.

REASONS FOR GRANTING THE WRIT

I. This Court should grant the petition to resolve whether a conviction of a substantive offense under 21 U.S.C. § 841 of the Controlled Substances Act ("CSA") requires that a jury find beyond a reasonable doubt that the defendant had knowledge of the type and quantity of controlled substance involved where the type and quantity of controlled substance alleged in the indictment increases the statutory minimum or maximum sentence.

The CSA provides for increased maximum sentences and increased mandatory minimum sentences based on the type and quantity of controlled substance involved. Any fact which increases the mandatory minimum or maximum sentence is an element of the offense which must be submitted to the jury and proven beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *Alleyne v. United States*, 570 U.S. 99, 103 (2013). In this case, Count One charged a conspiracy to possess with intent to distribute a controlled substance with a range of applicable punishment of zero to twenty years of imprisonment. Count Two charged that the offense involved at least 50 grams of a mixture or substance containing a detectible amount of methamphetamine which exposed Simpson to a minimum of 5 years to 40 years imprisonment. Count Three charged that the offense involved at least 500 grams of a mixture or substance containing a detectible amount of methamphetamine which exposed Simpson to a mandatory minimum of 10 years and a maximum of life imprisonment. Because the type and quantity of controlled substance alleged it Counts Two and Three increased the applicable mandatory minimum and the potential maximum sentence, that the offense involved at least 50 grams (Count Two)

and at least 500 grams (Count Three) of a mixture or substance containing a detectable amount of methamphetamine was an element of the offense which was submitted to the jury to be proven beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *Alleyne v. United States*, 570 U.S. 99, 103 (2013). Simpson's objection to the lack of an instruction that the jury was required to find that he knowingly or intentionally committed an offense involving the type and quantity of controlled substance alleged in Counts Two and Three beyond a reasonable doubt were overruled.

A strong presumption exists that every element of an offense requires proof of *mens rea*. *Flores-Figueroa v. United States*, 556 U.S. 646, 652 (2009). Accordingly, there is "a presumption that criminal statutes require the degree of knowledge sufficient to 'mak[e] a person legally responsible for the consequences of his or her act or omission.'" *Rehaif v. United States*, 139 S.Ct. 2191, 2195 (2019) quoting Black's Law Dictionary 1547 (10th ed. 2014). Where a statute "includes a general scienter provision," " 'the presumption applies with equal or greater force' to the scope of that provision." *Ruan v. United States*, 142 S.Ct. 2370, 237 (2022) quoting *Rehaif v. United States*, 139 S.Ct. 2191, 2195 (2019). Courts have therefore read statutes with a general scienter provision to require proof of *mens rea* as to each element of the offense even if that reading is not supported by "the most grammatical reading of the statute" when applying the presumption of *mens rea* to the determine the scope of the general scienter provision. *Rehaif v. United States*, 139 S.Ct. 2191, 2196 (2019)

quoting *X-Citement Video*, 513 U.S. at 70. And "Section 841 contains a general scienter provision" which requires proof that the defendant acted "knowingly or intentionally." *Ruan v. United States*, 142 S.Ct. 2370, 2377 (2022) quoting 21 U.S.C. § 841(a). The presumption that each element of an offense under Section 841 requires proof of *mens rea* as to each element of the offense therefore also applies to the scope of § 841's general scienter provision that the defendant act "knowingly or intentionally." Since Section 841 provides for increased maximum potential sentences and increased mandatory minimum sentences base on the type and quantity of controlled substance involved, the type and quantity are an element of the offense to which the presumption of a *mens rea* requirement applies.

The two exceptions to the presumption that a statute requires proof of *mens rea* as to each element of the offense are: (1) public welfare offense; and (2) jurisdictional elements of an offense. The presumption is not applied in the context of public welfare offenses where the statute exposes defendants only to a fine or short jail sentence or where a conviction for the public welfare offense would not damage the defendant's reputation. *United States v. D'Auterive*, 51 U.S. 609, 616 (1850) and *Morissette v. United States*, 342 U.S. 246, 256 (1952) The presumption that a statute requires proof of *mens rea* as to each element of the offense does not apply to jurisdictional elements because jurisdictional elements are not relevant to the wrongfulness of the prohibited conduct. *Rehaif v. United States*, 139 S. Ct. 2191, 2196 (2019). But the type and quantity of drug is not a jurisdictional element of 21 U.S.C.

§ 841. Nor are the aggravated offenses established under 21 U.S.C. § 841 based on the type and quantity of the controlled substance public welfare offenses. *Ruan v. United States*, 142 S.Ct. 2370, 2378 (2022). "Rather, § 841 imposes sever penalties upon those who violate it, including life imprisonment and fines up to $1 million. *Ruan,* 142 S.Ct. at 2378 (2022). And "[s]uch severe penalties counsel in favor of a strong scienter requirement." *Ruan*, 142 S.Ct. at 2378 (2022) citing *Staples v. United States*, 530 U.S. 255, 269 (2000).

Therefore, neither of the two exceptions to the presumption that each element of an offense requires proof of *mens rea* applies to 21 U.S.C. § 841. The presumption that a statute requires proof of knowledge as to each element of the offense sufficient to make the "defendant legally responsible for the consequences of his or her act or omission" therefore requires proof beyond a reasonable doubt that the defendant knew the type and quantity of the substance involved where that type and quantity increases the statutory minimum or maximum sentence.

In the alternative, the statute is ambiguous as to whether the government must prove the defendant's knowledge about the type and quantity of controlled substance the offense involved to prove an aggravated offense which exposes a defendant to either an increased mandatory minimum or potential maximum sentence, the rule of lenity requires that the statute be read to require such proof. Where a statute remains ambiguous after applying the cannons of statutory construction, the rule of lenity requires that the ambiguous criminal statute "be

interpreted in favor of the defendants subjected to them." *United States v. Santos*, 553 U.S. 507, 514, 128 S. Ct. 2020, 170 L. Ed. 2d 912 (2008). Because reading the statute to require knowledge of the type and quantity of controlled substance involved in the offense is not an unreasonable reading where that type and quantity can have drastic effects on the statutory minimum and maximum sentences a defendant are exposed to, the rule of lenity must be applied to require that the statute's requires proof beyond a reasonable doubt that the defendant knew the type and quantity of controlled substance the offense involved.

This case is an excellent vehicle for resolving this issue. This case comes to the Court on direct review and therefore involves no collateral relief complications. Petitioner preserved the issue for review by submitting proposed jury instructions that would have required the jury to find beyond a reasonable doubt that Simpson knew the type and quantity of controlled substance involved before finding him "guilty" of Counts Two and Three and briefed the issue on direct appeal.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Friesell Westerlage, PLLC

By: /s/ John Riley Friesell
John Riley Friesell
Attorney at Law
Texas Bar No. 90001413
One City Centre
1021 Main Street, Suite 1250
Houston, Texas 77002
Telephone: (713) 236-9177
Fax: (888) 749-3831

Counsel for Petitioner

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United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
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Clerk

No. 21-20564

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JASON EDWARD SIMPSON,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:18-CR-630-3

Before HIGGINBOTHAM, JONES, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

A jury convicted Jason Edward Simpson on three drug-related counts and one gun-related count. On direct appeal, Simpson challenges the sufficiency of the evidence. We affirm.

I.

On August 14, 2018, an undercover Houston Police Department ("HPD") detective texted a narcotics supplier to buy a pint of promethazine

* This opinion is not designated for publication. *See* 5TH CIR. RULE 47.5.

Appendix A

containing codeine (*i.e.*, "lean syrup"). Later that day, two undercover detectives met the supplier—Fernando Melendez—at a house on Santiago Street in Houston. Melendez's supplier, Jose Garza, arrived shortly thereafter with the lean syrup. The detectives exchanged marked money for the pint of lean syrup. But later lab tests revealed that the pint contained no controlled substances.

On August 19, 2018, Melendez texted an HPD detective and informed him that he had "tabs and bars" available. "Tabs" refers to ecstasy or MDMA; "bars" refers to Xanax. Melendez quoted the detective $1,500 for 2,000 ecstasy pills. Three days later the detectives again met Melendez at the Santiago Street house. When they arrived, they noticed a black Lincoln Navigator and a white Buick Enclave parked outside. Melendez told one detective to hop in the Navigator's back passenger seat. Garza sat in the driver's seat, and Melendez sat in the front passenger seat. The defendant—Jason Edward Simpson—sat in the backseat next to the HPD detective. Simpson said he supplied the pills, the pills were "A1," and that he used to supply "the entire Third Ward" of Houston. After these introductory remarks, Simpson handed a bag of pills to the undercover detective, who said the pills looked good and asked if he could get a bigger quantity. Although the initial agreement was for 2,000 pills, there were about 1,350 in the bag. Simpson adjusted the rate accordingly, and the detective paid Melendez $1,350 for the pills. Melendez kept a small portion of the money and gave a larger portion to Simpson.

On August 30, 2018, Melendez agreed to sell 5,000 ecstasy pills to the HPD detectives for $4,000. Later that day, the detectives arrived at the Santiago house and saw a red Pontiac G6 and a black Toyota Tacoma parked out front. When they arrived, Melendez was waiting outside. Simpson hopped out of the Tacoma with a plastic grocery bag. He held it open and showed the detectives a kaleidoscopic mix of tablets. Melendez directed

everyone inside the red Pontiac. Same seats as last time: Garza in the driver's seat, Melendez in the front passenger seat, and Simpson in the backseat with the HPD detective. Simpson placed the white grocery bag on the center console and explained that the pills were better quality than last time because they were from a different source. The HPD detective said the money was in his car and went to get it.

That's when the arrest team swooped in and arrested everyone, including Simpson. (Michael Manning and G.H., who remained in the Tacoma while the meeting went down in the Pontiac, were arrested too.) The arrest team recovered the grocery bag full of pills from the Pontiac, a loaded 7.62x25mm handgun[1] on the front passenger floorboard of the Pontiac, and an accompanying magazine. They also recovered a handgun under the driver's seat of the Tacoma, a loaded 9mm XTM Springfield Armory pistol. Garza later testified that (1) the 7.62x25mm handgun in the Pontiac belonged to him, (2) Simpson supplied the pills for both the August 22 and August 30 transactions, and (3) he and Simpson had been good friends from their neighborhood for three years.

The Government charged Simpson with five drug-trafficking-related offenses. A jury convicted Simpson on four of the five counts. *See* 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(C) (conspiracy to possess with intent to distribute 3,4 methylenedioxy-methamphetamine (ecstasy)) (Count One); 21 U.S.C. § 841(a)(1), (b)(1)(B)(viii), 18 U.S.C. § 2 (possession with intent to distribute 50 grams or more of methamphetamine) (Count Two); 21 U.S.C.

[1] The Government refers to this weapon as a "7.62 caliber handgun." Red Br. 15. But "caliber" refers to imperial cartridge diameters, not metric ones. Thus, a "7.62 caliber" weapon would shoot a bullet that is 7.62 inches wide, which is fatter than modern naval artillery rounds. The weapon found on the floorboard of the Pontiac was a PW Arms pistol chambered in 7.62x25mm Tokarev.

§ 841(a)(1), (b)(1)(B)(viii), 18 U.S.C. § 2 (possession with intent to distribute 500 grams or more of methamphetamine) (Count Three); 18 U.S.C. §§ 924(c)(1)(A), (o), 2 (conspiracy to use, carry, or possess a firearm during and in relation to a drug trafficking offense) (Count Five). The district court gave Simpson a below-Guidelines sentence: four concurrent 168-month terms of imprisonment and five years of supervised release. Simpson timely appealed.

II.

Simpson raises two sufficiency-of-the-evidence challenges.[2] Under our precedent, where the defendant chooses not to present his own evidence, a boilerplate objection at the close of the Government's case is sufficient to preserve a sufficiency challenge. *See United States v. Kieffer*, 991 F.3d 630, 634 & n.1 (5th Cir. 2021) (simply asserting "Rule 29" is enough); *id.* at 637–41 (Oldham, J., concurring in the judgment) (criticizing that result). Simpson made such a boilerplate objection here, so our review is *de novo*. *See id.* at 634 (majority op.). Even so, the sufficiency standard is extremely difficult to meet: We will affirm the jury's verdict "unless, viewing the evidence and reasonable inferences in the light most favorable to the verdict, no rational jury could have found the essential elements of the offense to be satisfied beyond a reasonable doubt." *United States v. Ganji*, 880 F.3d 760, 767 (5th Cir. 2018) (quotation omitted). Simpson cannot come close to meeting that standard.

[2] Simpson also raises a statutory-interpretation challenge but concedes it is foreclosed by our precedent. *See United States v. Betancourt*, 586 F.3d 303, 308–09 (5th Cir. 2009) (concluding that "knowing" in 21 U.S.C. § 841(a) does not apply to the type and quantity determinations under 21 U.S.C. § 841(b)).

A.

Simpson argues the evidence the Government introduced to prove that he conspired to possess a firearm in relation to a drug trafficking crime was insufficient to support his conviction. We disagree.

To sustain a conviction for conspiracy to possess a firearm during a drug trafficking crime, the Government must prove (1) an agreement to commit the crime, (2) the defendant knew about the agreement, and (3) the defendant voluntarily participated in the agreement. *See United States v. Vargas-Ocampo*, 747 F.3d 299, 303 (5th Cir. 2014) (en banc). But a formal agreement is not required; the jury may infer knowledge of and involvement in the conspiracy from the defendant's conduct and the surrounding circumstances. *See United States v. Grant*, 683 F.3d 639, 643 (5th Cir. 2012); *see also United States v. McClaren*, 13 F.4th 386, 414 (5th Cir. 2021) ("Conspiracies must feature an agreement, although the agreement can be informal and unspoken. The agreement can be proven by circumstantial evidence alone." (quotation omitted)).

A rational juror had ample evidence to convict Simpson of conspiracy to possess a gun. The arresting officers found handguns in both vehicles at the scene of the August 30 drug transaction, and Simpson was charged with conspiracy to possess the loaded PW Arms 7.62x25mm pistol found in the Pontiac G6 in relation to a drug trafficking offense. Garza testified that the pistol belonged to him. Simpson and Garza were neighborhood friends for at least three years before the transaction, and Simpson was a routine supplier for Garza. An HPD detective testified that he found the handgun in plain view on the front passenger floorboard at Melendez's feet. A magazine and unspent cartridges of ammunition were also found in the Pontiac G6. A second handgun (a loaded 9mm XTM Springfield Armory handgun) was found under the driver's seat in the Tacoma. Manning admitted the

Springfield pistol found in the Tacoma belonged to him. It is undisputed that Simpson was present in both cars during the encounter before the arrest team arrived.

Moreover, after his arrest, Simpson sent two inmate emails that FBI agents intercepted. In those emails, Simpson stated that the reason he was present on August 30 was to provide security and to prevent a robbery. Based on these emails, an FBI agent told the jury Simpson was present on August 30 as "muscle" and testified that guns are usually carried or nearby and available during such drug transactions. *See United States v. Walker*, 750 F. App'x 324, 328 (5th Cir. 2018) (guns are a "tool of the drug trade").

True, Simpson's co-conspirators cooperated with the Government and testified in hopes of getting more lenient sentences. But credible testimony from cooperating co-conspirators is sufficient to sustain a conspiracy conviction. *See McLaren*, 13 F.4th at 400 ("Testimony is incredible as a matter of law only if it relates to facts that the witness could not possibly have observed or to events which could not have occurred under the laws of nature."). And nothing indicates that the testimony of Garza, Melendez, or Manning was either incredible or unbelievable. Thus, we reject Simpson's first sufficiency challenge.

B.

Simpson also argues that the evidence supporting his conviction for possession of 500 grams or more of a mixture containing detectible amounts of methamphetamine is insufficient. Specifically, he claims that the Government's forensic analyst used a defective sampling plan to test Simpson's drugs. Again, we disagree.

The forensic analyst used a sampling plan that is consistent with industry practice for testing large samples. He divided the pills into groups by color, randomly selected 29 samples from each color group to test, and

then tested them using two different testing methods (chemical spot test and GCMS). The sampling plan, chemical spot test, and GCMS were all performed in accordance with the standard protocol promulgated by field experts. After verifying that all the instruments were performing properly, the forensic analyst administered the two different tests on each of the 29 pills in the color subsets, and they all tested positive for methamphetamine. The total net weight of the entire sampling plan was 529.90 grams, which is over 500 grams.

A rational jury could obviously rely on the forensic analyst's uncontroverted testimony that the method he used to test the methamphetamine was consistent with industry practice. Simpson points to no authority showing that the industry-wide practice the forensic analyst used here was inaccurate or unreliable.

AFFIRMED.

United States Code Annotated
Title 21. Food and Drugs (Refs & Annos)
Chapter 13. Drug Abuse Prevention and Control (Refs & Annos)
Subchapter I. Control and Enforcement
Part D. Offenses and Penalties

This section has been updated. Click here for the updated version.

21 U.S.C.A. § 841

§ 841. Prohibited acts A

Effective: August 3, 2010 to December 20, 2018

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally--

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Penalties

Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving--

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of--

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or $10,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or $20,000,000 if the defendant is an individual or $75,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 849, 859, 860, or 861 of this title after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. Notwithstanding section 3583 of Title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving--

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of--

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or $5,000,000 if the defendant is an individual or $25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or $8,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of Title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of

law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of Title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of Title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(E)(i) Except as provided in subparagraphs (C) and (D), in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 10 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 15 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or $500,000 if the defendant is an individual or $2,500,000 if the defendant is other than an individual, or both.

(ii) If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 30 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both.

(iii) Any sentence imposing a term of imprisonment under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 4 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.

(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 844 of this title and section 3607 of Title 18.

(5) Any person who violates subsection (a) of this section by cultivating or manufacturing a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed--

(A) the amount authorized in accordance with this section;

(B) the amount authorized in accordance with the provisions of Title 18;

(C) $500,000 if the defendant is an individual; or

(D) $1,000,000 if the defendant is other than an individual;

or both.

(6) Any person who violates subsection (a), or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use--

(A) creates a serious hazard to humans, wildlife, or domestic animals,

(B) degrades or harms the environment or natural resources, or

(C) pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with Title 18 or imprisoned not more than five years, or both.

(7) Penalties for distribution

(A) In general

Whoever, with intent to commit a crime of violence, as defined in section 16 of Title 18 (including rape), against an individual, violates subsection (a) by distributing a controlled substance or controlled substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with Title 18.

(B) Definition

For purposes of this paragraph, the term "without that individual's knowledge" means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

(c) Offenses involving listed chemicals

Any person who knowingly or intentionally--

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this subchapter;

(2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this subchapter; or

(3) with the intent of causing the evasion of the recordkeeping or reporting requirements of section 830 of this title, or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required;

shall be fined in accordance with Title 18 or imprisoned not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical, or both.

(d) Boobytraps on Federal property; penalties; "boobytrap" defined

(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years or fined under Title 18, or both.

(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years or fined under Title 18, or both.

(3) For the purposes of this subsection, the term "boobytrap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

(e) Ten-year injunction as additional penalty

In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

(f) Wrongful distribution or possession of listed chemicals

(1) Whoever knowingly distributes a listed chemical in violation of this subchapter (other than in violation of a recordkeeping or reporting requirement of section 830 of this title) shall, except to the extent that paragraph (12), (13), or (14) of section 842(a) of this title applies, be fined under Title 18 or imprisoned not more than 5 years, or both.

(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 830 of this title have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under Title 18 or imprisoned not more than one year, or both.

(g) Internet sales of date rape drugs

(1) Whoever knowingly uses the Internet to distribute a date rape drug to any person, knowing or with reasonable cause to believe that--

(A) the drug would be used in the commission of criminal sexual conduct; or

(B) the person is not an authorized purchaser;

shall be fined under this subchapter or imprisoned not more than 20 years, or both.

(2) As used in this subsection:

(A) The term "date rape drug" means--

(i) gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4-butanediol;

(ii) ketamine;

(iii) flunitrazepam; or

(iv) any substance which the Attorney General designates, pursuant to the rulemaking procedures prescribed by section 553 of Title 5, to be used in committing rape or sexual assault.

The Attorney General is authorized to remove any substance from the list of date rape drugs pursuant to the same rulemaking authority.

(B) The term "authorized purchaser" means any of the following persons, provided such person has acquired the controlled substance in accordance with this chapter:

(i) A person with a valid prescription that is issued for a legitimate medical purpose in the usual course of professional practice that is based upon a qualifying medical relationship by a practitioner registered by the Attorney General. A "qualifying medical relationship" means a medical relationship that exists when the practitioner has conducted at least 1 medical evaluation with the authorized purchaser in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other heath[1] professionals. The preceding sentence shall not be construed to imply that 1 medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

(ii) Any practitioner or other registrant who is otherwise authorized by their registration to dispense, procure, purchase, manufacture, transfer, distribute, import, or export the substance under this chapter.

(iii) A person or entity providing documentation that establishes the name, address, and business of the person or entity and which provides a legitimate purpose for using any "date rape drug" for which a prescription is not required.

(3) The Attorney General is authorized to promulgate regulations for record-keeping and reporting by persons handling 1,4-butanediol in order to implement and enforce the provisions of this section. Any record or report required by such regulations shall be considered a record or report required under this chapter.

(h) Offenses involving dispensing of controlled substances by means of the Internet

(1) In general

It shall be unlawful for any person to knowingly or intentionally--

(A) deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by this subchapter; or

(B) aid or abet (as such terms are used in section 2 of Title 18) any activity described in subparagraph (A) that is not authorized by this subchapter.

(2) Examples

Examples of activities that violate paragraph (1) include, but are not limited to, knowingly or intentionally--

(A) delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with a modification authorizing such activity as required by section 823(f) of this title (unless exempt from such registration);

(B) writing a prescription for a controlled substance for the purpose of delivery, distribution, or dispensation by means of the Internet in violation of section 829(e) of this title;

(C) serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by sections[2] 823(f) or 829(e) of this title;

(D) offering to fill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire; and

(E) making a material false, fictitious, or fraudulent statement or representation in a notification or declaration under subsection (d) or (e), respectively, of section 831 of this title.

(3) Inapplicability

(A) This subsection does not apply to--

(i) the delivery, distribution, or dispensation of controlled substances by nonpractitioners to the extent authorized by their registration under this subchapter;

(ii) the placement on the Internet of material that merely advocates the use of a controlled substance or includes pricing information without attempting to propose or facilitate an actual transaction involving a controlled substance; or

(iii) except as provided in subparagraph (B), any activity that is limited to--

(I) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of Title 47); or

(II) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of Title 47 shall not constitute such selection or alteration of the content of the communication.

(B) The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not apply to a person acting in concert with a person who violates paragraph (1).

(4) Knowing or intentional violation

Any person who knowingly or intentionally violates this subsection shall be sentenced in accordance with subsection (b).

CREDIT(S)

(Pub.L. 91-513, Title II, § 401, Oct. 27, 1970, 84 Stat. 1260; Pub.L. 95-633, Title II, § 201, Nov. 10, 1978, 92 Stat. 3774; Pub.L. 96-359, § 8(c), Sept. 26, 1980, 94 Stat. 1194; Pub.L. 98-473, Title II, §§ 224(a), 502, 503(b)(1), (2), Oct. 12, 1984, 98 Stat. 2030, 2068, 2070; Pub.L. 99-570, Title I, §§ 1002, 1003(a), 1004(a), 1005(a), 1103, Title XV, § 15005, Oct. 27, 1986, 100 Stat. 3207-2, 3207-5, 3207-6, 3207-11, 3207-192; Pub.L. 100-690, Title VI, §§ 6055, 6254(h), 6452(a), 6470(g), (h), 6479, Nov. 18, 1988, 102 Stat. 4318, 4367, 4371, 4378, 4381; Pub.L. 101-647, Title X, § 1002(e), Title XII, § 1202, Title XXXV, § 3599K, Nov. 29, 1990, 104 Stat. 4828, 4830, 4932; Pub.L. 103-322, Title IX, § 90105(a), (c), Title XVIII, § 180201(b)(2)(A), Sept. 13, 1994, 108 Stat. 1987, 1988, 2047; Pub.L. 104-237, Title II, § 206(a), Title III, § 302(a), Oct. 3, 1996, 110 Stat. 3103, 3105; Pub.L. 104-305, § 2(a), (b)(1), Oct. 13, 1996, 110 Stat. 3807; Pub.L. 105-277, Div. E, § 2(a), Oct. 21, 1998, 112 Stat. 2681-759; Pub.L. 106-172, §§ 3(b)(1), 5(b), 9, Feb. 18, 2000, 114 Stat. 9, 10, 13; Pub.L. 107-273, Div. B, Title III, § 3005(a), Title IV, § 4002(d)(2)(A), Nov. 2, 2002, 116 Stat. 1805, 1809; Pub.L. 109-177, Title VII, §§ 711(f)(1)(B), 732, Mar. 9, 2006, 120 Stat. 262, 270; Pub.L. 109-248, Title II, § 201, July 27, 2006, 120 Stat. 611; Pub.L. 110-425, § 3(e), (f), Oct. 15, 2008, 122 Stat. 4828, 4829; Pub.L. 111-220, §§ 2(a), 4(a), Aug. 3, 2010, 124 Stat. 2372.)

Footnotes

1 So in original. Probably should be “health”.

2 So in original. Probably should be “section”.

21 U.S.C.A. § 841, 21 USCA § 841
Current through P.L. 117-327. Some statute sections may be more current, see credits for details.