

No. _____

In the
Supreme Court of the United States

JAMES E. WORKMAN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. The criminal charges of wire fraud, theft of government funds, and social security fraud each required proof that Workman engaged in fraudulent activity to obtain disability benefits. Can he be guilty absent proof that he understood his obligation to report work activity and understood that not reporting such work activity would maintain his benefits?

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States v. Workman*, No. 21-3839 (8th Cir.) (opinion issued June 22, 2023); and
- *United States v. Workman*, No. 19-cr-227 (W.D. Mo.) (judgment entered Nov. 30, 2021).

There are no other proceedings in state or federal trial or appellate courts directly related to this case.

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PETITION FOR CERTIORARI

Petitioner James E. Workman respectfully petitions this Court for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit to review the judgment in this case.

ORDERS AND OPINIONS BELOW

The district court's judgment (Appendix ("App.") D) was not reported. The opinion of the court of appeals (App. A) was reported at 71 F.4th 661.

JURISDICTION

The judgment of the court of appeals was entered on June 22, 2023. (App. B). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

FEDERAL STATUTES INVOLVED

This case involves convictions under four federal statutes:

18 U.S.C. § 1343: "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both."

18 U.S.C. § 641: "Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of

another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof . . . [s]hall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.”

18 U.S.C. § 408(a)(3): “Whoever . . . at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to payment under this subchapter . . . shall be guilty of a felony and upon conviction thereof shall be fined under Title 18 or imprisoned for not more than five years”

18 U.S.C. § 408(a)(4): “Whoever . . . having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this subchapter, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized . . . shall be guilty of a felony and upon conviction thereof shall be fined under Title 18 or imprisoned for not more than five years”

STATEMENT OF THE CASE

Petitioner James E. Workman (Workman) was convicted of wire fraud, theft of government funds, and social security fraud. Each offense required proof that he knowingly engaged in fraudulent activity to obtain Social Security Disability Insurance (SSDI) benefits. The government proved, and the district court accepted, only that Workman did not report work activity as required under the Social Security Administration's (SSA) rules because he misunderstood SSA's rules and reporting requirements. That theory of *mens rea* cannot support his conviction.

Factual Background

Workman served in the United States Army as an infantryman, completed multiple tours of duty in Operation Iraqi Freedom and Operation Enduring Freedom, and was honorably discharged with numerous awards and commendations. (Gov. Exh. 1, p. 198, 275, 279). As a result of combat-related events and injuries, Workman suffered from PTSD, memory loss, depression, anxiety, seizures, headaches, and difficulties with attention, concentration, reading, and following instructions. (*Id.*, p. 104-42, 248, 259, 261, 267-70, 273-75, 278-82).

In August 2007, Workman applied by telephone for SSDI benefits. (Gov. Exh. 3, p. 1). In September 2007, a psychologist reviewed Workman's medical records, examined Workman, and determined that he was "functioning on the low end of the borderline range of memory function." (Govt. Exh. 1, p. 248). Regarding Workman's potential for competitive employment and

ability to manage his benefits, the psychologist concluded that Workman “would have difficulties remembering work location and procedures,” “understanding and following simple directions,” and “coping with the expectations of a competitive work environment.” (*Id.*) The psychologist further concluded that Workman could not “manag[e] or direct[] management of benefits in his own best interest because of both his cognitive and emotional impairments.” (*Id.*). Likewise, a second psychologist concluded in 2007 that Workman was “markedly limited” (the most severe limitation available) in his ability to understand, remember, and carry out detailed instructions. (*Id.*, p. 228).

In September 2007, SSA awarded Workman SSDI benefits retroactively to July 2007. (Gov. Exh. 4, p. 1). SSA did not appoint a representative payee for Workman despite the psychologist’s finding that Workman could not manage his own SSDI benefits. (Gov. Exh. 1, p. 244; Gov. Exh. 7, p. 1; *see also* Trial Tr., Vol. 2, p. 88).

In June 2009, Workman and his wife started a business called “A.V. Heating and Cooling.” (Gov. Exh. 32; Trial Tr., Vol. 2, p. 111). Workman’s wife was the majority owner (Gov. Exh. 32), and Workman performed some repairs for the business with assistance from others. (Trial Tr. Vol. 2, p. 288-89). The business was later incorporated as an LLC in 2014. (Gov. Exh. 30 & 31).

In 2010 and 2014, Workman reported to SSA that he was not working. (Gov. Exh. 10; Trial Tr. Vol. 2, p. 56-57). Workman later explained to SSA that he

believed that work activity needed to be reported only if he earned \$1,000 per month, the approximate threshold limit for substantial gainful activity in 2009. (Trial Tr., Vol. 2, p. 127-29; Gov. Exh. 2 & 75, p. 14-16; Def. Exh. 3).

Meanwhile, in 2010, Workman was again evaluated by a psychologist selected by SSA. (Gov. Exh. 57; Trial Tr. Vol. 2, p. 68-69). Workman told the psychologist that he was “trying to get a job and get off this by next spring,” and in particular to “to start [his] own business at home, heating and cooling [with] my brother and wife.” (Gov. Exh. 57, p. 1-2).

In the fall of 2015 or beginning of 2016, Workman called SSA to report an increase in his income that would make him ineligible for SSDI benefits. (Gov. Exh. 75, p. 12-13; Trial Tr., Vol. 2, p. 131, 191-92). The LLC’s net profit increased significantly in 2015, and some of that gain passed through to Workman as income. (Def. Exh. 12, p. 1). In April 2016, Workman reported to SSA that he was an owner of A.V. Heating and Cooling and that he earned \$1,000 per quarter and worked 20 hours per week. (Gov. Exh. 22). In May 2016, SSA ceased paying SSDI benefits to Workman. (Gov. Exh. 1, p. 343).

SSA opened a criminal investigation, and during that investigation, Workman explained to SSA agents that he did not understand the definition of working or SSA’s reporting requirements. (Gov. Exh. 75, p. 16; Trial Tr., Vol. 2, p. 127). He stated that SSA told him that he did not need to report his business activity until he earned more than the substantial gainful activity limit (roughly \$900 to \$1,100 per month from

2009 to 2016). Workman reported his work activity to SSA by telephone when he thought he was making “enough money” to be above the earnings limit. (Gov. Exh. 75, p. 12). SSA nonetheless determined him to be ineligible for SSDI benefits since November 2009 because, according to SSA, he had performed substantial gainful activity since February 2009. (Gov. Exh. 26; Trial Tr. Vol. 2, p. 178-82).

Proceedings Before the District Court

On June 26, 2019, a grand jury returned an eight-count Indictment against Workman, alleging that he fraudulently obtained SSDI benefits by concealing his self-employment as the owner and operator of A.V. Heating and Cooling. (R. Doc. 1, p. 3-4). Counts 1-5 alleged wire fraud in violation of 18 U.S.C. § 1343 based on five payments of SSDI benefits deposited into Workman’s account. Count 6 alleged theft of government money in violation of 18 U.S.C. § 641. Count 7 alleged social security fraud (concealment) in violation of 42 U.S.C. § 408(a)(4). Count 8 alleged social security fraud (false statement) in violation of 42 U.S.C. § 408(a)(3) based specifically on Workman’s representation in 2016 “that he began working as the owner of A.V. Heating and Cooling April 20, 2014, when in fact the defendant knew that he had worked as the owner of A.V. Heating and Cooling since in or about June 2009.” (R. Doc. 1, p. 9).

A three-day jury trial commenced on June 8, 2021. The government presented no evidence that Workman understood SSA’s reporting requirements, although it did introduce evidence that SSA sent notices and letters to Workman that explained the SSA rules.

At the close of the government's case, Workman moved for a judgment of acquittal (R. Doc. 61; Trial Tr., Vol. 3, p. 311-13). He argued that insufficient evidence supported the *mens rea* for all the charges. (R. Doc. 61; Trial Tr., Vol. 3, p. 312). The district court denied the motion without explanation under an agreement that it would be renewed at the close of evidence. (Trial Tr., Vol. 3, p. 312-13). Workman did not present a defense case. (Trial Tr., Vol. 3, p. 320).

The jury returned a verdict of guilty on Counts 1-3 and 6-8 and not guilty on Counts 4-5. (R. Doc. 69; Trial Tr., Vol. 3, p. 363-65).

Workman moved for a judgment of acquittal notwithstanding the verdict, again challenging the sufficiency of the evidence of *mens rea*. (R. Doc. 72). Without addressing Workman's defense based on his understanding of SSA's rules and reporting requirements, the district court concluded a reasonable jury could have found Workman guilty beyond a reasonable doubt on each count. App. C (R. Doc. 74). At the time of sentencing, however, the district court addressed Workman's "lay understanding":

In this particular case, sir, I believe that you were due Social Security disability, and like the government has argued, on many times you had the opportunity to tell the Social Security Administration that you were working and to provide information and not to . . . rely upon *your own lay understanding* of how the disability income determinations were made.

(Sent. Tr., p. 29 (emphasis added)). In other words, the district court acknowledged that Workman had a “lay understanding” of the SSA rules, but he was criminally liable because his lay understanding was incorrect. (*Id.*).

Based on the jury’s findings of guilt, the district court entered judgment against Workman on six counts of the indictment. App. D (R. Doc. 89). Workman was sentenced to a term of probation and ordered to pay restitution, over Workman’s objection, in the amount of \$168,456. (*Id.*) The court also entered a forfeiture order based on the same theory of loss. (R. Doc. 84 & 85).

Proceedings Before the Court of Appeals

In a timely appeal to the U.S. Court of Appeals for the Eighth Circuit, Workman argued that (1) the evidence at trial was legally insufficient to prove *mens rea*, and (2) that the district court clearly erred in accepting the government’s proposed calculation for restitution and forfeiture.

On June 22, 2023, the court of appeals affirmed the conviction and vacated and remanded the forfeiture and restitution orders. The court acknowledged the government was required to prove the requisite fraudulent intent for each charge. It described the relevant evidence as follows:

The government presented evidence that Workman, together with his wife, had established a heating and cooling business in 2009, and that he personally took calls from customers and performed installations and

service. The government also presented evidence that the SSA repeatedly informed Workman of his obligation to report work; that Workman did not report the establishment of his business or any earnings before 2016; that he denied working in 2010 and 2014; that he did not report his employment-related activities when listing his daily activities during his benefits review in 2010 or report any change to his activities in 2014; and that he told a psychologist during his benefits review that he planned to start a business in the future a year after he had already done so.

App. A. Based on this evidence, the court concluded that “[a] jury could reasonably disregard Workman’s asserted reason for these inconsistencies—that he did not believe that he had to report ‘work’ below a certain income threshold—and find that he acted with intent to defraud the SSA by receiving benefits for which he was not eligible.” App. A.

The court of appeals vacated and remanded the restitution and forfeiture orders, holding that “the district court erred in accepting the statement of loss in the absence of evidence establishing the date that Workman became ineligible for benefits.” App. A.

ARGUMENT FOR GRANTING THE PETITION**I. THE DECISION BELOW PERMITS CRIMINAL FRAUD CONVICTIONS BASED ON MERE MISUNDERSTANDINGS OF SSA REGULATIONS. THE COURT SHOULD RESOLVE UNCERTAINTY OVER THE *MENS REA* REQUIRED FOR A CRIMINAL CHARGE INVOLVING RECEIPT OF GOVERNMENT BENEFITS.**

Justice Kavanaugh recently urged courts to “continue to vigorously apply (and where appropriate, extend) *mens rea* requirements, which as Justice Robert Jackson remarked, are ‘as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.’” *Wooden v. United States*, 142 S. Ct. 1063, 1076 (2022) (Kavanaugh, J., concurring) (quoting *Morrisette v. United States*, 342 U.S. 246, 250 (1952)). Indeed, in *Ruan v. United States*, 142 S. Ct. 2370 (2022), the Court traced through its rich jurisprudence emphasizing the importance of *mens rea* requirements, noting for example the presumption that defendants must possess “a culpable mental state,” and that “[w]ith few exception, wrongdoing must be conscious to be criminal.” *Id.* at 2376-78 (quotations omitted).

For every charge in this case, the government was required to prove that Workman knowingly defrauded the government – that is, that he thought he was obtaining SSDI benefits that he was not eligible to

receive.¹ The government had to prove beyond a reasonable doubt that Workman's actions (or lack of action) were based on more than a misunderstanding or mistaken belief as to SSA's rules and reporting obligations. Actions that merely violate a government regulation or program are not fraudulent unless the defendant knows the rules and intentionally violates those rules to defraud the government.²

The district court so instructed the jury. Violations of SSA's rules "cannot be the basis for imposing any criminal penalty on or a finding of guilt for anyone." (R. Doc. 64, p. 20, Jury Inst. No. 15). Workman had a defense based on his belief "so long as his net income was below countable income limits as set forth by the

¹ Cf. *Liparota v. United States*, 471 U.S. 419, 425-27 (1985) (holding that a conviction for food stamp fraud requires "showing that the defendant knew his conduct to be unauthorized by statute or regulations," in part because anything less would "criminalize a broad range of apparently innocent conduct."); *Staples v. United States*, 511 U.S. 600, 614-15 (1994) (following *Liparota* and holding that the government must prove a defendant knew that a weapon he possessed had characteristics that made it a machine gun under federal law, otherwise persons who are "entirely innocent" would be subject to prosecution).

² See *Jacobs v. United States*, 359 F.2d 960, 965 (8th Cir. 1966) (Blackmun, J.) (reversing a false statement conviction because the record did not show that the defendant knew when he submitted a certification of invoices to a federal agency that he was not entitled to receive payment for those invoices and stating: "We realize that the defendant may have acted carelessly or even foolishly in his relations with [the agency]. . . . But carelessness or lack of wisdom is not equivalent to the knowledge of falsity required by the statute. And mere violation of a [the agency] 'policy' is not equivalent to a violation of § 714m(a).").

Social Security Administration, he was not involved in substantial gainful activity and therefore was not considered to be working.” (R. Doc. 64, p. 21, Jury Inst. No. 16). Workman contended he self-reported to SSA “when he believed his net income would exceed the countable income limits.” (*Id.*). Finally, the district court provided a good-faith instruction that a mistaken belief, if honestly held, was a complete defense. (R. Doc. 64, p. 37-38, Jury Inst. No. 30). All these instructions were correct, but the evidence compelled a judgment of acquittal under them.

The lower court decisions watered down the *mens rea* requirements for wire fraud, theft of government funds, and social security fraud. As such, they conflicted with the decisions from this Court. They also create uncertainty and confusion as to the proof necessary in prosecutions for defrauding government programs like SSDI.

The court of appeals followed circuit precedent³ and held that the jury could disregard Workman’s lay understanding of SSA’s rules because (a) SSA sent him written instructions that he needed to report all work

³ See *United States v. Morris*, 723 F.3d 934, 939 (8th Cir. 2013) (affirming a convictions arising from defendant’s receipt of social security benefits because a reasonable jury could have disregarded the innocent reasons for the inconsistency between his work activity and his reports to SSA); *United States v. Phythian*, 529 F.3d 807, 812 (8th Cir. 2008) (holding that a reasonable jury could find that the defendant concealed her work from SSA with fraudulent intent because SSA advised the defendant on multiple occasions that she needed to report any work but the defendant never reported working).

activity, (b) he had worked while receiving SSDI benefits, and (c) he failed to report his work activity to SSA. That effectively criminalizes every failure to report work activity while receiving SSDI benefits. SSA always sends notices that includes the requirement to report work activity. *Cf. Liparota*, 471 U.S. at 426 (rejecting a *mens rea* that would “criminalize a broad range of apparently innocent conduct”). This logic eliminates any independent significance of the *mens rea* requirements: fraudulent intent can always be found from a mere failure to report work activity. Thus, no defendant can challenge the sufficiency of evidence proving *mens rea* in a social security fraud case. Given the court of appeals holding in this case and its earlier cases and SSA’s practice of sending written instructions to beneficiaries, it is inconceivable that a defendant in a social security fraud prosecution could win a motion for judgment of acquittal based on the *mens rea* requirement.

This eliminates the government’s burden to prove beyond a reasonable doubt that Workman acted with fraudulent intent – not merely that he should have understood SSA’s rules and reporting requirements. *Cf. Ruan*, 142 S. Ct. at 2379 (heightening a *mens rea* requirement to “separat[e] a defendant’s wrongful from innocent conduct”); *United States v. X-Citement Video, Inc.*, 513 U.S. 64, (1994) (holding that the “knowingly” requirement applied to the age of performers because that issue “is the crucial element separating legal innocence from wrongful conduct”).

To highlight the narrow construction of the *mens rea* requirement applied in this case, contrast *United*

States v. Phillips, 600 F.2d 535 (5th Cir. 1979), where a social security fraud conviction was reversed due to insufficient evidence of fraudulent intent. Fraudulent intent in the context of a social security fraud charge, the court explained, had two requirements: (i) “that the defendant knew that he was legally obligated to disclose certain information,” and (ii) “that the defendant knew that by withholding the information he would receive greater payments than he was entitled to. In other words, a defendant is not guilty under § 408(d) unless he is aware both that he is deceiving the government and that the government will pay out more money because of his deception.” *Id.* at 536.⁴ “But if a defendant does not know that the government expects him to reveal certain information, then he does not know that the government will be misled by not receiving it; so if he has deceived the government, he has not done so deliberately, and he cannot be said to have acted with a fraudulent intent.” *Id.* at 537.

Phillips, who had a sixth-grade education, signed an application for disability benefits that said he was to notify SSA if he became able to work or returned to work. *Id.* The SSA representative who helped Phillips with the application said that, as a general practice,

⁴ In *Phillips*, the government charged the defendant with a misdemeanor under 42 U.S.C. § 408(d), which was a predecessor to the social security fraud statutes charged in this case. The charges in *Phillips* required that information be concealed or not disclosed “with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized.” Because the charges here similarly required a fraudulent intent, *Phillips* is relevant and instructive even though it involved different statutory language.

she asked applicants whether they agreed to notify SSA if they returned to work. *Id.* Phillips did not respond to multiple letters asking about his work activity, and then SSA sent a representative to interview him. During that conversation, Phillips said he was working 8 hours a day, 2 to 5 days per week. *Id.* SSA determined that he had been working since roughly the time he was awarded benefits. *Id.* at 538.

After terminating Phillips' benefits, SSA sent another agent to interview him, and Phillips admitted to the second agent that he had been told he was supposed to report his work activity to SSA. *Id.* That evidence, *which was missing in Workman's case*, was *still not enough to prove fraudulent intent*. *Id.* at 538-39. The government could not simply rely on its own letters advising Phillips that he had an obligation to report his work activity:

Essentially, then, the government's case that Phillips knew he was doing wrong rests on this failure to answer the letters sent to him. For many purposes, of course, the government is entitled to assume that citizens will read mail sent to them and be aware of its contents. But in a criminal prosecution where the government must show fraudulent intent, those of us who are comfortable with the forms and documents and often unlovely prose of the bureaucracy must not rush to assume that everyone is equally at ease with them.

Id. The court also emphasized that Phillips did not make any false statements or attempt to mislead SSA. *Id.* at 540.

As in *Phillips*, this record compelled a judgment of acquittal. **First**, SSA's rules are complex and difficult, as SSA specialists agreed at trial. (Trial Tr., Vol. 2, p. 130, 270, 275-81; *see generally* Def. Exh. 25-31 & 62). The government presented no evidence that Workman or his wife had any prior experience, education, or training as to SSA's rules and requirements. (Trial Tr., Vol. 2, p. 276). Given the complexity of this program, courts cannot assume that SSDI beneficiaries correctly understand SSA's rules and reporting requirements.

Second, SSA frequently confuses and conflates the concepts of "work" and "substantial gainful activity." SSA told Workman that his eligibility for SSDI benefits depended on whether he was *able to work*. (*E.g.*, Gov. Exh. 3, p. 1; Gov. Exh. 5, p. 1). The lead criminal agent told Workman, "But in regards to your benefits, you're obviously getting them because you can't, *you can't work*." (Gov. Exh. 75, p. 3 (emphasis added)). But the test for SSDI benefits is not whether someone is *unable to work*. Rather, it is whether someone can perform substantial gainful activity. SSA's statements to beneficiaries like Workman perpetuate that confusion and misunderstanding. When asked, Workman said that he did not understand what SSA meant by "working" and he thought it meant substantial gainful activity. (Gov. Exh. 75, p. 16).

Third, Workman's undisputed disability made it more difficult for him to correctly understand SSA's rules and reporting requirements. In fact, the psychologist who originally verified Workman's medical disability observed in 2007 that he would not be "capable of managing or directing management of

benefits in his own best interest because of both his cognitive and emotional impairments.” (Gov. Exh. 1, p. 241, 287). Yet, SSA failed to appoint a representative payee for Workman, and the SSA file does not reflect any consideration to the psychologist’s conclusion. (Gov. Exh. 1). Instead, SSA assumed Workman correctly understood and would comply with SSA’s rules and reporting requirements.

It is one thing for SSA to “expect citizens to understand the internal logic of complex governmental programs” when litigating about an overpayment in a civil or administrative proceeding. *Phillips*, 600 F.2d at 540. In overpayment disputes, SSA generally is not required to prove fraudulent intent or that a beneficiary understood SSA’s rules. But this was a *criminal* prosecution against a defendant with significant cognitive challenges during the period he first learned SSA’s rules.

The district court erred by allowing Workman to be convicted based on his incorrect “lay understanding” of SSA rules and reporting requirements. On this record, where the evidence that Workman correctly understood SSA’s rules and requirements was pure speculation or, at best, “evenly balanced between guilty and innocence,” then Workman’s conviction cannot stand. *Gay v. United States*, 408 F.2d 923, 931 (8th Cir.), *cert. denied*, 396 U.S. 823 (1969) (“Often the line between honest belief and purposeful misrepresentation is fine and indistinct, between the two however lies guilt or innocence, and where the evidence is evenly balanced between guilt and innocence, a conviction cannot

stand.” (quoting *Estep v. United States*, 140 F.2d 40, 45 (10th Cir. 1943)).

CONCLUSION

For the foregoing reasons, the Petitioner, James E. Workman, respectfully requests that the Court grant this petition for certiorari.

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