No. _____

In The

# Supreme Court of the United States

## GEORGE P. NAUM, III,

*Petitioner,*

v.

## UNITED STATES OF AMERICA,

*Respondent.*

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

---

## APPENDIX TO PETITION FOR WRIT OF CERTIORARI

---

**Elgine H. McArdle**
*Counsel of Record*
**McArdle Law Offices**
**2135 Market Street**
**Wheeling, WV 26003**
**(304) 232-0700**
**elgine@mcardlelawoffice.com**

***Counsel for Petitioner***

*Gibson*Moore Appellate Services, LLC
206 East Cary Street ♦ P.O. Box 1460 (23218) ♦ Richmond, VA 23219
804-249-7770 ♦ www.gibsonmoore.net

**TABLE OF CONTENTS**
**Appendix**

**Page:**

**Opinion**
**U.S. Court of Appeals for the Fourth Circuit**
**filed April 11, 2025. . . . . Appendix A**

**Judgment**
**U.S. Court of Appeals for the Fourth Circuit**
**filed April 11, 2025. . . . . Appendix B**

**PUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

---

**No. 20-4133**

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GEORGE P. NAUM, III,

Defendant - Appellant.

---

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. Irene M. Keeley, Senior District Judge. (1:18-cr-00001-IMK-MJA-2)

---

Argued: October 29, 2024 Decided: April 11, 2025

---

Before KING and QUATTLEBAUM, Circuit Judges, and FLOYD, Senior Circuit Judge.

---

Affirmed by published opinion. Judge Quattlebaum wrote the opinion in which Judge King and Senior Judge Floyd joined.

---

**ARGUED:** Elgine Heceta McArdle, MCARDLE LAW OFFICES, Wheeling, West Virginia, for Appellant. Eleanor F. Hurney, OFFICE OF THE UNITED STATES ATTORNEY, Martinsburg, West Virginia, for Appellee. **ON BRIEF:** William J. Powell, United States Attorney, William Ihlenfeld, United States Attorney, Wheeling, West Virginia, Sarah E. Wagner, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Clarksburg, West Virginia, for Appellee.

---

**APPENDIX A**

QUATTLEBAUM, Circuit Judge:

A nurse at a medical clinic where Dr. George P. Naum, III worked prescribed controlled substances without the supervision of a doctor. Contending he knew about the nurse's conduct but did not try to stop it, the government prosecuted Naum for conspiracy and for aiding and abetting the distribution of controlled substances outside the usual course of his professional practice, all in violation of 21 U.S.C. § 841(a). And a federal jury concluded the government proved its case, convicting Naum on those counts. Later, the Supreme Court clarified that to convict a defendant under § 841(a), the government must prove not only that that he knowingly or intentionally distributed controlled substances, it must also prove he "knew or intended that his [ ] conduct was unauthorized." *Ruan v. United States*, 597 U.S. 450, 467 (2022). Seizing on that decision, Naum asks us to vacate his convictions. He argues that the district court failed to instruct the jury that the government had to prove he subjectively knew his conduct was unauthorized. And he insists that had the jury been properly charged, he would not have been convicted.

We agree with Naum that his jury instructions misstated the law after *Ruan*. But applying plain error review, as we must, Naum has not met his burden of showing that had the jury been properly charged, there is a reasonable probability the outcome of his trial would have been different. So, we affirm.

## I.

Naum, a physician authorized to practice osteopathic medicine and surgery in West Virginia, registered with the Drug Enforcement Administration to prescribe, handle and

dispense controlled substances. Based on that registration, Naum received a unique DEA number that could be used to dispense controlled substances. Naum separately registered under 21 U.S.C. § 823 to treat patients for drug addiction with controlled substances.

Sharon Jackson, a registered nurse, and Eric Drake, a musician and business manager with no medical training, owned and operated a drug treatment center in Weirton, West Virginia named Advance Healthcare. A substantial part of the practice was treating patients addicted to opioids. Jackson and Drake ran Advance's day-to-day operations. Between 2008 and 2016, Advance contracted with Dr. Naum and Dr. Felix Brizuela to provide medical care. These doctors had full-time jobs elsewhere, but alternated afternoon shifts at Advance.

Although a registered nurse, Jackson was not registered to treat patients for addiction with controlled substances under § 823. And neither Jackson nor Drake were medical practitioners with DEA numbers. Nevertheless, often when Brizuela and Naum were not physically present at the clinic, Jackson used their DEA numbers to prescribe suboxone—a controlled substance sometimes used to treat opioid addiction—to Advance patients. She also used their DEA numbers to change dosages for existing suboxone prescriptions.

After Jackson pled guilty and cooperated with the government, a federal grand jury indicted Brizuela, Naum and Drake in a multi-count indictment. Brizuela was charged with multiple counts of unauthorized distribution of controlled substances under § 841; Brizuela, Naum and Drake were charged with a count of conspiracy to distribute controlled substances outside the bounds of professional medical practice under §§ 841 and 846; and

Naum and Drake were charged with multiple counts of aiding and abetting the distribution of controlled substances outside the bounds of professional medical practice under § 841.[1] Before trial, the district court granted in part Naum's motion to sever his trial from that of his co-defendants.[2] Also prior to trial, the district court granted the government's motion to dismiss five of the substantive aiding and abetting counts against Naum. Thus, Naum's case proceeded to trial on the government's theory that Naum acted beyond the bounds of professional practice by letting Jackson make medical decisions—including prescribing suboxone—for his drug-addicted patients.

During a six-day trial, the government's witnesses included a DEA investigator, an undercover officer who posed as an Advance patient, several actual Advance patients, Jackson, Drake and expert witness Dr. Patrick Marshalak. These witnesses testified that Jackson regularly used the doctors' DEA numbers to prescribe suboxone and modify prescriptions of that controlled substance. The witnesses also testified that, generally, Advance patients saw Naum or Brizuela on their first visit, and when they did, those doctors submitted the initial suboxone prescriptions. But after those first visits, patients often saw Jackson only, and she would at times modify the patients' initial prescriptions on her own. At times, she even called in the initial suboxone prescriptions for patients who

[1] The indictment also charged Drake with distribution of controlled substances and with maintaining a drug-involved premises; charged Brizuela with violation of the Federal Anti-Kickback statute; and asserted a forfeiture allegation against the defendants.

[2] Brizuela was tried separately and convicted on all counts against him. But we vacated his convictions for separate reasons. *United States v. Brizuela*, 962 F.3d 784, 799–800 (4th Cir. 2020). Drake pled guilty before trial.

had not yet seen a doctor. At other times, she declined to follow instructions from Naum and Brizuela regarding the suboxone prescriptions.

Jackson recorded her actions in the patients' medical charts. So, the doctors learned that she had prescribed suboxone to patients or modified their prescriptions when they signed off on the charts. From his review of Naum's patient charts, Dr. Marshalak testified that certain prescriptions issued under Naum's DEA registration number were outside the bounds of professional medical practice because they were issued without patients having been seen or assessed by the physician.

Naum testified in his defense. He said that Jackson was not authorized to issue prescriptions or to change patients' doses without consulting him first. But he knew that it happened. Once it did, Naum said that he "wasn't going to make a patient suffer for something that I had disagreed with her about . . . [w]hen that happened, for a patient to be turned back out on the street to potentially go back out on the street, not find a dealer that she or he could get Suboxone, and then possibly go and use heroin or go and use OxyContin or oxymorphone and have an overdose, I couldn't live with that on my [conscience] . . . . I couldn't . . . . So I was happy that they could get treated, but was I in agreement with her doing that? No." J.A. 2586. Although he knew Jackson regularly violated his instructions, Naum continued to sign off on patient charts after learning of her actions because he was concerned that if he stopped her, patients might get medication on the street or overdose. Naum said that he "believe[d] what [he] was doing was proper." J.A. 2742. He believed nurses working in the addiction field had an expanded role compared to those working in other clinical areas. Naum also called an expert who testified that, according to guidelines

from the Substance Abuse and Mental Health Services Administration,[3] delegating follow-up visits to a nurse in an office-based treatment setting is within the bounds of professional medical practice.

The jury found Naum guilty of one count of conspiracy to distribute controlled substances outside the bounds of professional medical practice and four counts of aiding and abetting in the distribution of controlled substances outside the bounds of professional medical practice. After the district court denied Naum's motion for a new trial, Naum timely appealed. We affirmed the district court in an unpublished per curiam opinion. *See United States v. Naum*, 832 F. App'x 137 (4th Cir. 2020).

II.

After that, the Supreme Court issued its decision in *Ruan v. United States*. That case addressed the scienter requirement of 21 U.S.C. § 841. *See Ruan*, 597 U.S. at 458. Section 841(a)(1) provides, "[e]xcept 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." In *Ruan*, the Court held that § 841's "knowingly or intentionally" mens rea applies not only to the requirement that a defendant distribute a controlled substance; it also applies to authorization. *Ruan*, 597 U.S. at 454. That means to establish a violation of § 841(a)(1),

[3] The Substance Abuse and Mental Health Services Administration is an agency of the federal Department of Health and Human Services.

the government "must prove beyond a reasonable doubt that the defendant knowingly or intentionally acted in an unauthorized manner." *Id.* at 457.

The Supreme Court vacated our judgment affirming Naum's conviction and remanded for us to evaluate the jury instructions under the § 841 scienter standards from *Ruan*. *Naum v. United States*, 142 S. Ct. 2893 (2022). We take that question up today.

III.

Naum argues we must vacate his conviction because the district court's jury instructions did not comply with *Ruan*. The government disagrees. It first argues that we should decline to consider the jury instruction error under the invited error doctrine. But if we do consider the instructions, the government insists that we should affirm the conviction because any *Ruan* error was harmless.

A.

We first consider the government's invited error argument. Under the invited error doctrine, "a court can not be asked by counsel to take a step in a case and later be convicted of error, because it has complied with such request." *United States v. Herrera*, 23 F.3d 74, 75 (4th Cir. 1994) (quoting *Shields v. United States*, 273 U.S. 583, 586 (1927)). The government contends that the court gave mens rea and good faith jury instructions substantially similar to what Naum requested. Thus, it argues that Naum invited any error that may exist in the instructions and should not be permitted to now challenge them.

But we decline to follow the invited error doctrine in this case when the requested instructions relied on settled law that changed while the case was on appeal. *See United*

*States v. Duldulao*, 87 F.4th 1239, 1257 (11th Cir. 2023) (deciding not to invoke the doctrine after a substantive change in law, while recognizing the court was not "authorizing a free-roving change-in-law exception to the [general] rule of invited error"). Thus, we address the jury instructions on the merits to determine whether they misstated the law in light of *Ruan*.

B.

According to Naum, the jury instructions do not, as *Ruan* requires, make clear that the government had to prove beyond a reasonable doubt that he subjectively knew his conduct was outside the bounds of professional practice. The government initially disagreed that the jury instructions misstated the law in light of *Ruan*. But at oral argument, it conceded the jury instructions could not be squared with *Ruan*. Oral Argument at 24:50.

We agree with the parties. *Ruan* holds that Naum must have subjectively believed his conduct was outside the bounds of professional practice. And after *Ruan*, we have held that a jury instruction that does not charge that principle misstates the law. *See United States v. Smithers*, 92 F.4th 237, 240 (4th Cir. 2024). Here, the jury instructions do not charge this subjective mens rea requirement.

Recall that the jury convicted Naum of aiding and abetting in the distribution of controlled substances outside the bounds of professional medical practice and conspiracy of the same. First, the aiding and abetting distribution charge said the government must prove that Naum "knew suboxone was a controlled substance under the law." J.A. 2928. But it did not say that the government had to prove that Naum *knew* his actions were outside the bounds of professional medical practice. Instead, the instructions only charged the

government with proving that "[h]is actions were outside the bounds of professional medical practice." J.A. 2928. The only instruction that hinted at a state of mind for acting outside the bounds of professional medical practice addressed motive. And that particular instruction said no evidence of motive was required. J.A. 2928 ("Government need not prove his motive for [causing the unlawful distribution of suboxone outside the bounds of professional medical practice]."). Thus, the aiding and abetting instructions fail to incorporate the subjective mens rea *Ruan* requires.

The conspiracy jury instructions fare no better. To convict Naum of conspiracy to distribute controlled substances outside the bounds of professional medical practice, the jury was instructed that the government must prove three elements beyond a reasonable doubt: (1) "an agreement between two or more persons to distribute suboxone outside the bounds of professional medical practice;" (2) that Naum knew of the conspiracy; and (3) that Naum "knowingly and voluntarily participated in the conspiracy." J.A. 2921. The instructions added that the term "knowingly" means voluntarily and intentionally, such that the person was conscious and aware of his actions and acted on his own free will. J.A. 2922. They also explained that Naum could be found guilty if "there was a mutual understanding, either spoken or unspoken, between two or more people, to distribute suboxone outside the bounds of professional medical practice." J.A. 2922–23. But these instructions still do not clarify that Naum must have known that allowing Jackson to submit prescriptions the way she did was outside the bounds of professional medical practice. Thus, they are also incorrect after *Ruan*.

Finally, we have considered the error, not in isolation, but in the context of the entire charge. *See United States v. Blankenship*, 846 F.3d 663, 670–71 (4th Cir. 2017) (recognizing our review considers whether the instructions, taken as a whole, accurately and fairly state the controlling law). No other instructions cure the error or accurately state the controlling law.

C.

But does the error require us to vacate Naum's conviction? To answer that question, we must first determine the applicable standard of review before applying that standard to the *Ruan* error. In a criminal appeal, "the appropriate standard of review generally depends upon whether an appellant has properly preserved a claim of error by asserting a timely objection in the court below." *United States v. Robinson*, 460 F.3d 550, 557 (4th Cir. 2006).[4] If a defendant fails to preserve his objection, the review on direct appeal is for plain error. *United States v. Said*, 26 F.4th 653, 660 (4th Cir. 2022). Under that standard, the defendant must show that the court's jury instructions include an error, that the error was "clear and obvious" and that the error affected his substantial rights—meaning that it impacted the outcome of the district court proceedings. *Id.* (quoting *United States v. Ali*, 991 F.3d 561, 572 (4th Cir. 2021)); *see also* Fed. R. Crim. P. 52(b). Further, even if these

[4] Calling this an error seems at least harsh and perhaps even unfair to the district court because the error exists only with the benefit of hindsight. At the time of the trial, the Supreme Court had not decided *Ruan*. Therefore, the district court's instructions complied with the law as it existed in this Circuit at the time. *See United States v. Robinson*, 627 F.3d 941, 954 (4th Cir. 2010) (recognizing plain error review applies when the law was settled at the time of trial and noting that this rule is necessary to avoid "casual reversal of district courts who follow settled law to which no objection was raised at trial"). Nevertheless, from a legal standpoint today, the instructions misstated the law.

elements are met, we do not correct the plain error unless the error "seriously affects the fairness, integrity or public reputation of judicial proceedings." *United States v. Massenburg*, 564 F.3d 337, 343 (4th Cir. 2009) (quoting *United States v. Olano*, 507 U.S. 725, 732 (1993)).

On the other hand, a preserved objection is analyzed for harmless error. Under that standard, any error that does not affect substantial rights must be disregarded. *See Olano*, 507 U.S. at 731 (referencing Fed. R. Crim. P. 52(a)). In other words, if an instructional error is properly preserved, then the court asks whether the error is harmless because it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error. *United States v. White*, 810 F.3d 212, 221 (4th Cir. 2016). And while the defendant bears the burden of establishing plain error, the government bears the burden of establishing that the error was harmless. *Robinson*, 460 F.3d at 557. "Although subsections (a) and (b) of Rule 52 contemplate the same inquiry into an error's effect on substantial rights, an appellant on plain error review bears the burden of persuasion with respect to prejudice" and the government bears the burden on harmless error review. *Id.*

The parties' views on the standard of review have evolved during this appeal. Initially, Naum conceded that plain error review applied. And while he never explicitly retracted that concession, Naum argued in his first supplemental brief that the district court excluded evidence of his subjective mens rea. That position suggests he believes he preserved his *Ruan* argument such that harmless error would apply. Still, Naum expressly maintained in his first supplemental brief that the district court's exclusion of subjective

mens rea evidence was plain error. Then, in his second supplemental brief, he referred at times to harmless error review and to plain error at others.

For its part, the government insisted in its first supplemental response brief that plain error applies. But in its second supplemental response brief and at oral argument, the government switched gears, stating that, should we reach the question in light of Naum inviting the jury instruction error, harmless error is the appropriate standard of review. According to the government, it changed its position because of *Smithers*. It said Naum sought the same jury instruction that *Smithers* held was sufficient to preserve a *Ruan* argument. *Smithers*, 92 F. 4th at 248. So, the government seems to argue that *Smithers* requires that we review for harmless error.

But regardless of the parties' positions, they cannot bind a court to an incorrect legal standard. For any issues presented, "the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law." *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991). For that reason, courts must apply the proper standard of review even if the parties have not. *See, e.g.*, *Sierra Club v. U.S. Dep't of the Interior*, 899 F.3d 260, 286 (4th Cir. 2018); *United States v. Escobar*, 866 F.3d 333, 339 n.13 (5th Cir. 2017) (per curiam); *United States v. Freeman*, 640 F.3d 180, 186 (6th Cir. 2011); *Worth v. Tyer*, 276 F.3d 249, 262 n.4 (7th Cir. 2001); *Gardner v. Galetka*, 568 F.3d 862, 879 (10th Cir. 2009).

Naum's claim that his effort to introduce evidence of legitimate medical purpose preserved a *Ruan* challenge as to jury instructions is problematic. Preservation of an objection requires the party to inform the court of "the action the party wishes the court to

take" or the party's objection to the court's action and "the grounds for that objection." Fed. R. Crim. P. 51(b). "A party wishing to preserve an exception to a jury instruction must 'stat[e] distinctly the matter to which he objects and the grounds of his objection.'" *United States v. Nicolaou*, 180 F.3d 565, 569 (4th Cir. 1999) (citing Fed. R. Crim. P. 30)). The district court must be adequately apprised of the disputed matter and the need to take corrective action to avoid a new trial. *Id.*

Attempting to introduce evidence at trial does not preserve an objection to jury instructions. That is particularly true here because Naum's position at trial as to the evidentiary issues is quite different than his position on appeal. Although on appeal Naum characterizes these evidentiary issues as an effort to introduce evidence of a subjective mens rea, he never said that during trial; instead, Naum said the district court's rulings thwarted his efforts to put up a good faith defense. What's more, we have no indication Naum ever mentioned anything about his subjective mens rea with respect to the jury instructions.

We also question the government's position that *Smithers* requires that we review Naum's appeal for harmless error. In *Smithers*, we addressed the question we face here—did jury instructions in a § 841 criminal trial misstate the law after *Ruan*? There, at trial, the government requested a disjunctive jury instruction that Smithers acted "without a legitimate medical purpose *or* beyond the bounds of medical practice." *Smithers*, 92 F.4th at 245 (emphasis added). Smithers, in contrast, asked for a conjunctive charge that he acted "without a legitimate medical purpose *and* beyond the bounds of medical practice." *Id.* (emphasis added). The court sided with the government, adopting the disjunctive phrasing.

On appeal, the parties disagreed about whether Smithers waived his argument about the mens rea requirement, and therefore about the appropriate standard of review. We concluded that the district court's instructions allowed the jury to convict Smithers for acting outside the "bounds of medical practice," which, we explained, involves a purely objective standard. *Id.* at 246.[5] On the other hand, we said that acting "without a legitimate 'medical purpose'" incorporated some subjective mens rea. *Id.* As a result, we concluded that by seeking an instruction that the government must prove conduct without "a legitimate medical purpose" in addition to "beyond the bounds of medical practice," Smithers had argued, albeit implicitly, that a subjective mens rea was required. *Id.* at 245–46. So, we concluded he preserved a *Ruan* challenge. *Id.* at 245, 247–50. We accordingly reviewed Smithers' challenge for harmless error. *Id*. at 245–46.[6]

Had Naum requested the same jury instructions Smithers requested, *Smithers* would require us to conclude that Naum preserved his *Ruan* challenge. But for two reasons, it does not appear that he did. First, the government's claim that Naum and Smithers requested the same instructions seems inconsistent with its invited error assertion. That's

[5] This followed our decision in *United States v. Hurwitz*, 459 F.3d 463 (4th Cir. 2006). There, we explained that "to convict a doctor for violating § 841, the government must prove: (1) 'that the defendant distributed or dispensed a controlled substance'; (2) that the defendant 'acted knowingly and intentionally'; and (3) 'that the defendant's actions were not for legitimate medical purposes in the usual course of his professional medical practice or were beyond the bounds of medical practice.'" *Id*. at 475 (quoting *United States v. Singh*, 54 F.3d 1182, 1187 (4th Cir. 1995)).

[6] *Smithers* did not decide whether the district court's decision to disjunctively charge that a defendant must act without a legitimate medical purpose or beyond the bounds of medical practice was correct. *Id*. at 250 n.5.

because by claiming that Naum requested the same instruction Smithers did, the government is arguing Naum pressed for a subjective mens rea jury instruction. However, the government separately asserts Naum invited the district court's error by requesting an objective mens rea instruction that he now says is inadequate. Second, the instructions proposed by Naum in the record do not match those requested by Smithers. Smithers asked for a charge that he acted without a legitimate medical purpose *and* beyond the bounds of medical practice. Naum, in contrast, asked for a charge that the government must prove (1) that Naum knowingly or intentionally distributed a controlled substance; (2) with knowledge that it was controlled under the law; and (3) that he did so "outside the usual course of professional practice." S.A. 13. Thus, because Naum only requested an instruction that referenced the "usual course of professional practice"—which is an objective inquiry under *Smithers*—he failed to preserve his *Ruan* challenge.

Perhaps there are requested jury instructions from Naum that we do not have in the record.[7] Or perhaps the government is referring to Naum's argument that he should have been permitted to introduce evidence of legitimate medical purpose even though the government's theory of the case was that Naum acted outside the bounds of professional practice, not that he acted without a legitimate medical purpose. In one sense, that argument is similar to the issues addressed in *Smithers*. But even though it is similar in content to the conjunctive versus disjunctive issue raised in *Smithers*, we cannot agree that Naum's

[7] The charge conference and the district court's reading of the jury charges are omitted from the trial transcript, and that looks to have been done intentionally.

evidentiary challenge preserved a "*Ruan*-like" objection to the court's jury instructions for purposes of appeal. *See United States v. Fabode*, No. 21-1491, 2022 WL 16825408, at *7 (6th Cir. Nov. 8, 2022) (recognizing that the defendant never asked the court to instruct in accordance with *Ruan* and never objected to the instruction given which triggered a review for plain error). Naum's evidentiary argument never referenced the jury instructions. And he never mentioned anything about a subjective mens rea. So, we see no indication that Naum preserved a *Ruan* challenge. *See United States v. Roof*, 10 F.4th 314, 387 (4th Cir. 2021) (citing Fed. R. Crim. P. 30(d), recognizing defendant's failure to object to the instructions in the district court and applying plain error on appeal).[8] As a result, we are constrained to proceed with a plain error analysis.

D.

With our standard of review determined, we reach the ultimate issue—has Naum satisfied the requirements of plain error? To repeat, that standard requires Naum to show that the court's jury instructions include an error, that the error was clear and obvious and that the error affected his substantial rights—meaning that it impacted the outcome of the district court proceedings. *See Said*, 26 F.4th at 660. And Naum also must show that the

[8] "A party who objects to any portion of the instructions or to a failure to give a requested instruction must inform the court of the specific objection and the grounds for the objection before the jury retires to deliberate. An opportunity must be given to object out of the jury's hearing and, on request, out of the jury's presence. Failure to object in accordance with this rule precludes appellate review, except as permitted under Rule 52(b)." Fed. R. Crim. P. 30(d). "Where, as here, a party submits a proposed instruction on the same legal principle but fails to object contemporaneously to the jury instructions, the party does not preserve the issue for appeal." *Roof*, 10 F.4th at 387 n.47.

error seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *Id.* at 660 n.12.

As already discussed, the jury instructions conflict with *Ruan*. And with the benefit of hindsight, the error is clear and obvious. But other than claiming the instructions effectively criminalize medical malpractice, Naum does not marshal an argument as to how the result would have been different had the jury been properly instructed. In contrast, the government maintains that the undisputed record evidence at Naum's trial establishes that he subjectively understood he could not delegate his prescriptive authority to Jackson. The government points out that Naum conceded he was aware that Jackson prescribed medicine and made dosage changes with unrestricted use of the doctors' DEA numbers, even though she lacked authorization. What's more, the government notes Naum did not stop Jackson from doing this. Instead, Naum signed off on medical records knowing Jackson had done what she wasn't supposed to do. Naum knew it was wrong to do this, but he did it anyway because he was concerned his patients would just head to the street for drugs. Based on that evidence, the government insists Naum cannot show that the incorrect jury instructions actually affected the outcome of the proceedings.

We agree with the government. Naum has not met his burden of showing how the *Ruan* error affected his substantial rights.

IV.

Although the jury instructions misstate the law after *Ruan*, Naum has not met his burden of showing plain error. Therefore, the judgment is,

*AFFIRMED*.[9]

[9] Naum also reiterates his arguments from his initial pre-*Ruan* briefing that we already rejected. Previously, he argued that the district court erred by excluding evidence of certain federal regulations and the medical purposes of Naum's treatment; allowing an illegal variance between the crimes Naum was convicted of and those charged in the indictment; denying his motion for an acquittal; and ordering forfeiture. However, we affirmed the district court. *United States v. Naum*, 832 F. App'x 137, 139 (4th Cir. 2020). While this all happened before *Ruan*, nothing in *Ruan* changes the analysis from our earlier opinion on these issues. The district court's evidentiary and pretrial rulings were not an abuse of discretion; Naum was not subject to a fatal variance; the district court did not err in denying his Rule 29 motion for judgment of acquittal; and the court's forfeiture was supported by the record evidence. So, we affirm these rulings of the district court for the reasons stated in our previous opinion.

FILED: April 11, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

---

No. 20-4133
(1:18-cr-00001-IMK-MJA-2)

---

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

GEORGE P. NAUM, III

Defendant - Appellant

---

J U D G M E N T

---

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

**APPENDIX B**