

APPENDIX

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Decision of the Court of Appeals for the Eleventh Circuit,

United States v. Alexander, No. 16-16921

2017 WL 5438896 (11th Cir. Nov. 14, 2017)..... A-1

Judgment imposing sentence A-8

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2017 WL 5438869

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

UNITED STATES of America, Plaintiff-Appellee,
v.
Desmond ALEXANDER, Defendant-Appellant.

No. 16-16921

Non-Argument Calendar

(November 14, 2017)

Appeal from the United States District Court for the Southern District of Florida, D.C. Docket No. 1:15-cr-20800-KMW-2

Attorneys and Law Firms

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Katherine Anna Carmon, Tracy Michele Dreispul, Michael Caruso, Federal Public Defender, Federal Public Defender's Office, Miami, FL, for Defendant-Appellant

Before MARTIN, ROSENBAUM, and ANDERSON, Circuit Judges.

Opinion

PER CURIAM:

*1 Desmond Alexander appeals his convictions under the Maritime Drug Law Enforcement Act ("MDLEA") for conspiring to possess and possessing with intent distribute 1,000 kilograms or more of marijuana on board a vessel subject to the jurisdiction of the United States. Alexander argues that insufficient evidence supported the jury's finding that the offense involved 1,000

kilograms or more of marijuana, that the district court abused its discretion in admitting evidence of his post-arrest, pre-*Miranda*¹ silence, and that the MDLEA is unconstitutional as applied to him. Alexander also challenges his 120-month sentence of imprisonment, which is the statutory minimum under the MDLEA for an offense involving 1,000 kilograms or more of marijuana. He argues that excluding MDLEA defendants from relief under the so-called "safety valve," 18 U.S.C. § 3553(f), violates equal protection. After careful review, we affirm.

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

I.

In the light most favorable to the verdict, the relevant facts are these.² On the night of September 19, 2015, a marine patrol aircraft spotted a suspicious vessel traveling east in international waters about 70 nautical miles south of the Dominican Republic. The aircraft notified the U.S. Coast Guard cutter *Richard Dixon*, which moved to intercept. Approximately three hours later, in the early morning hours of September 20, the *Richard Dixon* arrived in the area of the suspect vessel, which was still in international waters, and then launched a small chase boat with a crew of four.

² "We review *de novo* whether there is sufficient evidence in the record to support a jury's verdict in a criminal trial, viewing the evidence in the light most favorable to the government, and drawing all reasonable factual inferences in favor of the jury's verdict." *United States v. Jiminez*, 564 F.3d 1280, 1284 (11th Cir. 2009).

The chase boat, commanded by Boatswain's Mate Travis Mills, approached the vessel and turned on its blue lights, which is an international sign for law enforcement. Using a megaphone, Mills identified himself as a Coast Guard officer and commanded the vessel to stop. Instead of stopping, the vessel made a 180-degree turn and fled, maneuvering erratically. Mills observed three men on board the vessel, including one who fell or jumped overboard during the pursuit. The vessel eventually stopped when the chase boat fired a warning shot across its bow.

Once the suspect vessel had stopped, the chase boat went to rescue the overboard man, later identified as Alexander, from the water. Meanwhile, the two men who remained on the vessel began throwing packages, or “bales,” into the water. The chase boat made its way back to the vessel and recovered three of the bales, which smelled of marijuana.

Because the vessel did not identify its nationality, Mills began asking a series of “right of approach” questions to determine the master of the vessel, the nationality of the vessel, and its destination, among other things. According to the vessel's master, the vessel was of Jamaican origin and was bound for Antigua to deliver the packages in the bow of the boat. Mills observed that these packages were wrapped similarly to the bales recovered from the water. Mills relayed this information to the *Richard Dixon*, which used the information to contact Jamaican authorities about the suspect vessel.

*2 While the chase-boat crew waited for permission from the *Richard Dixon* to board, the vessel began to take on water. The chase-boat crew received orders to remove some of the packages from the vessel and to bring its three crewmembers to the cutter. The chase-boat crew transferred eleven or twelve bales from the vessel to the chase boat and then returned to the cutter with Alexander and the other two men. The crew also brought the vessel and attached it to the cutter. After about an hour, however, the vessel again began to take on water, so the remaining bales were removed and brought on board the *Richard Dixon*. Some of the bales slid into the water during this recovery effort.

Chief Petty Officer Wesley Stigsell testified that he conducted an inventory of the items recovered from the vessel. Stigsell counted a total of 49 bales of suspected marijuana. Mills estimated that each bale he lifted weighed around 50 pounds. Another member of the chase-boat crew, Engineering Officer of the Watch Michael Lagasca, estimated that each bale weighed around 40 to 50 pounds. Thereafter, the contraband and vessel crewmembers were transferred to the United States Coast Guard cutter *Resolute*.

On September 29, 2015, the Coast Guard delivered a shipment of marijuana to the DEA in Miami, Florida. DEA Special Agent Peter David Yates testified that he received 49 bales of marijuana from the Coast Guard and then weighed them on an electronic scale. He recorded a

total weight of 1,251 kilograms, which included the weight of the packaging. After he had weighed the bales, Yates took what he described as a “representative sample” from the bales for testing by the DEA laboratory.

According to Yates, each bale was composed of multiple compressed “bricks” of marijuana that were wrapped in a black trash bag and then taped with “packing tape.” The stacked bricks were then wrapped in a white “burlap plastic sack.” Yates testified that the white sacks encasing the bales were “very, very light” and did not weigh more than a “Publix trash bag,” and that the black bags and tape encasing each brick were “very light” and weighed only “slightly more” than the white sacks. Yates's description of the packaging was consistent with the descriptions provided by other witnesses, including Peter Imbriale, the Executive Officer of the *Richard Dixon*. The jury also saw several pictures of the bales. Yates did not weigh the packaging materials separately.

II.

After his arrest, Alexander and two codefendants, Garth Forrest and Derrick Findely, were indicted on one count of conspiracy to possess with intent to distribute 1,000 kilograms or more of marijuana while on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. §§ 70503(a)(1) and 70506(a) and (b), and 21 U.S.C. § 960(b)(1)(G), and one count of possession with intent to distribute 1,000 kilograms or more of marijuana while on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. §§ 70503(a)(1) and 70506(a), 21 U.S.C. § 960(b)(1)(G), and 18 U.S.C. § 2. Forrest, who was identified as the master of the vessel, was also charged with failure to heave to, in violation of 18 U.S.C. § 2237(a)(1). Forrest pled guilty to the conspiracy charge and agreed to cooperate with the government by testifying at Alexander's trial. Findely pled guilty but did not testify at trial.

Before trial, Alexander moved to dismiss the indictment on grounds that the MDLEA was unconstitutional as applied to him. The district court denied the motion, concluding that Alexander's arguments were foreclosed by binding circuit precedent. Also before trial, the government filed a certification that the vessel was “without nationality,” and therefore subject to the

jurisdiction of the United States. See 46 U.S.C. § 70502(c)(1), (d).

*3 Trial began on August 9, 2016. During the trial, the prosecutor read the following stipulation to the jury:

The United States, Defendant Desmond Alexander, and his undersigned counsel hereby stipulate and agree to the following facts which the jury must accept as having been proved beyond a reasonable doubt:

[T]he substance recovered from international waters on September 20, 2015 [...] by the United States Coast Guard Cutters Richard Dixon and Resolute is, in fact, marijuana.

At the close of the government's case-in-chief, Alexander moved for a judgment of acquittal under Rule 29, Fed. R. Crim. P., which the district court denied. Alexander then presented his defense, offering, among other evidence, video-recorded deposition testimony from Kellion Martin Campbell and Errol Dawson. The gist of this evidence was that Alexander had boarded the vessel out of desperation to leave Jamaica and return to his home in Antigua because he had been threatened by a suitor of Campbell, Alexander's girlfriend.

During the government's rebuttal case, the district court allowed the government to elicit testimony from two crewmembers of the *Richard Dixon* about Alexander's failure to mention that innocent explanation after he had been taken into custody but before he had been given *Miranda* warnings. The prosecutor referenced this testimony during closing arguments.

Following the close of all the evidence, Alexander made a renewed motion for judgment of acquittal, arguing that the government's evidence failed to prove drug quantity beyond a reasonable doubt. The district court denied the motion, stating that the issues regarding drug weight were factual ones for the jury. Alexander was convicted on both charges. The jury specifically found that he was responsible for 1,000 kilograms or more of marijuana. The district court sentenced Alexander to concurrent terms of 120 months of imprisonment, the statutory minimum penalty for his offenses. Alexander now appeals.

III.

Alexander challenges his convictions on three main grounds. First, he contends that the government failed to prove beyond a reasonable doubt that the offense involved 1,000 kilograms or more of marijuana. Second, he argues that the district court abused its discretion by admitting his post-arrest, pre-*Miranda* silence. Finally, he maintains that the MDLEA is unconstitutional as applied to him, though he acknowledges that our precedent is to the contrary. We address each argument in turn.

A. Sufficiency of the Evidence of Drug Quantity

Describing the manner in which the government sought to prove the weight of the marijuana as “lackadaisical,” Alexander maintains that the evidence was too speculative to meet the government's burden of proof. He contends that the government failed to prove whether all of the recovered substance was marijuana, whether the marijuana that DEA Special Agent Yates weighed actually came from Alexander's vessel, and whether the marijuana itself, without including the weight of packaging or the potential weight of water, weighed 1,000 kilograms or more.

We review *de novo* whether sufficient evidence in the record supports the jury's verdict in a criminal trial. *United States v. Wilchcombe*, 838 F.3d 1179, 1188 (11th Cir. 2016), *cert. denied*, — U.S. —, 137 S.Ct. 2265, — L.Ed.2d — (June 19, 2017). The evidence, which we view in the light most favorable to the government, “must be such that a reasonable trier of fact could find that the evidence established guilt beyond a reasonable doubt.” *Id.* (internal quotation marks omitted). In reviewing the evidence, we assume that the jury made all credibility choices in support of the verdict, and we accept all reasonable inferences that tend to support the government's case. *Id.*

*4 The government was required to prove beyond a reasonable doubt that the offense involved 1,000 kilograms or more of marijuana because that finding increased the statutory minimum sentence. See *Alleyne v. United States*, 570 U.S. 99, 133 S.Ct. 2151, 2158, 186 L.Ed.2d 314 (2013) (“Facts that increase the mandatory minimum sentence are therefore elements and must be submitted to the jury and found beyond a reasonable doubt.”). Specifically, the jury's finding of 1,000 kilograms or more of marijuana increased Alexander's minimum sentence to ten years of imprisonment. See 21 U.S.C. § 960(b)(1)(G); cf. *id.* § 960(b)(2)(G) (providing for a

statutory minimum of five years of imprisonment for an offense involving 500 to 999 kilograms of marijuana).

Here, sufficient evidence supports the jury's finding beyond a reasonable doubt that the offenses involved 1,000 kilograms or more of marijuana. As to the nature of the substance, Alexander stipulated at trial that the substance recovered by the Coast Guard on September 20, 2015, was "in fact, marijuana." By stipulating to an essential element of the crime charged, Alexander removed the government's burden of proof on that element. *United States v. Hardin*, 139 F.3d 813, 815–16 (11th Cir. 1998). Thus, we do not address Alexander's arguments about the DEA's drug-testing methods because he waived his right to contest whether the substance was marijuana. See *id.*

Next, sufficient evidence supports the jury's finding that the bales that were weighed by DEA Special Agent Yates were from Alexander's vessel as opposed to another interdiction. The evidence reflects that the *Richard Dixon* recovered 49 bales of marijuana from Alexander's vessel and transferred them to the *Resolute*. Then, on September 29, 2015, shortly after the interdiction, Yates received from the Coast Guard the exact same number of bales of marijuana, which weighed 1,251 kilograms. Although the government did not directly establish that the bales recovered by the *Richard Dixon* were the same bales that Yates weighed, there is no evidence that the *Richard Dixon* or the *Resolute* engaged in another interdiction from September 19 through September 29. Plus, the jury was able to compare Yates's description of the bales' packaging with pictures of the bales onboard the *Richard Dixon*. Viewing the evidence in the light most favorable to the verdict, a jury reasonably could have inferred that the 49 bales of marijuana that were recovered from Alexander's vessel were the same 49 bales of marijuana that were delivered to the DEA in Miami and weighed by Yates.

As for the weight of the marijuana, the government produced sufficient, credible evidence to support the jury's finding that the marijuana weighed 1,000 kilograms or more. Yates testified that he weighed the 49 bales of marijuana on an electronic scale and that the total weight was 1,251 kilograms, or around 2,752 pounds (using a conversion rate of 2.2 pounds to 1 kilogram). Although Yates did not weigh the packaging, we disagree with Alexander that the government's evidence was too speculative to support his conviction. See *United States v.*

Villegas, 911 F.2d 623, 628 (11th Cir. 1990) ("In a criminal case, the ultimate burden on the government is the ability to draw a reasonable inference, and not a speculation, of guilt.").

A reasonable jury could have concluded beyond a reasonable doubt that excluding the weight of the packaging from the total weight would not have brought the marijuana weight below 1,000 kilograms. The packaging would have made a material difference only if it weighed a total of around 250 kilograms, or 550 pounds (using the same conversion rate as above), or more. Divided by 49 bales, that works out to just over 11 pounds of packaging per bale. Yates's testimony, however, reflects that the weight of the packaging was minimal.

*5 Yates testified that the white sacks that encased the bales were "very, very light" and did not weigh more than a "Publix trash bag," and that the black bags and tape that encased each brick in the bale were also "very light" and weighed only "slightly more" than each of the white sacks. Although Yates did not provide a concrete number for the weight of the packaging, he provided a common reference point—the weight of a plastic trash bag—from which the jury could have drawn a reasonable inference that the packaging did not add over ten pounds to each bale. See *United States v. Gainey*, 111 F.3d 834, 836 (11th Cir. 1997) ("In evaluating the facts of a case, the law permits jurors to apply their common knowledge, observations and experiences in the affairs of life." (internal quotation marks omitted)). We therefore conclude that Yates's testimony was sufficiently definite to support the jury's finding that excluding the weight of the packaging did not bring the weight of the marijuana itself below 1,000 kilograms.

Alexander also contends that Yates's testimony is insufficient because he relied on his knowledge from other cases and stated that he did "not recall specifically" what the packaging looked like in this case. However, Yates's description of the packaging was entirely consistent with the description provided by Executive Officer Imbriale, among others, and the jury was able to compare Yates's description with the pictures admitted into evidence. Based on the evidence as a whole, the jury reasonably could have credited Yates's testimony about the weight of the packaging material.

As for the possibility of the marijuana bales being waterlogged, the jury reasonably could have concluded from the evidence that the bales were packaged in such a way as to make them waterproof, or nearly so. The jury saw and heard evidence of the bales' packaging. And it is reasonable to infer that drug-traffickers transporting product over open water in a vessel like the one in this case, which began to take on water once stopped, would attempt to make the packaging water-tight. While some of the bales in this case were recovered from the water, the bales remained buoyant, suggesting that they had not taken on water. Plus, there was no evidence that any of the marijuana was wet when the bales were weighed. From this evidence, a jury reasonably could have found that any potential water weight was negligible.

While the government clearly could have done more to prove drug quantity with greater specificity, we cannot conclude that the evidence was insufficient to support a finding beyond a reasonable doubt that the offenses involved 1,000 kilograms or more of marijuana. Accordingly, we affirm the denial of Alexander's motion for judgment of acquittal.

B. Post-Arrest, Pre-Miranda Silence

Alexander next argues that the district court abused its discretion by allowing government witnesses to testify as to his silence after his arrest but before *Miranda* warnings were given. We review evidentiary rulings for an abuse of discretion. *United States v. Blake*, 868 F.3d 960, 975 (11th Cir. 2017).

The Supreme Court has held that a defendant's post-arrest, pre-*Miranda* silence is admissible for impeachment purposes. See *Brecht v. Abrahamson*, 507 U.S. 619, 628, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993) (“[T]he Constitution does not prohibit the use for impeachment purposes of a defendant's silence prior to arrest, or after arrest if no *Miranda* warnings are given.” (citations omitted)); *United States v. Robinson*, 485 U.S. 25, 32, 108 S.Ct. 864, 99 L.Ed.2d 23 (1988) (holding that prosecutorial references to a defendant's silence are permissible when they are a “fair response to a claim made by defendant or his counsel”); *Wilchcombe*, 838 F.3d at 1190 (“[T]he Constitution does not prohibit the use for impeachment purposes of a defendant's silence ... after arrest if no *Miranda* warnings are given.”). According to the Supreme Court, such silence may be probative “and does not rest on any implied assurance by law enforcement

authorities that it will carry no penalty.” *Brecht*, 507 U.S. at 628, 113 S.Ct. 1710.

*6 This Circuit “goes a step further. We permit the prosecution to use a defendant's post-arrest, pre-*Miranda* silence as direct evidence that may tend to prove the guilt of the defendant.” *Wilchcombe*, 838 F.3d at 1190; see *United States v. Rivera*, 944 F.2d 1563, 1568 (11th Cir. 1991) (“[T]he government may comment on a defendant's silence when it occurs after arrest, but before *Miranda* warnings are given.”).

Alexander argues that the government's use of his post-arrest, pre-*Miranda* silence violated his Fifth Amendment rights to due process and against self-incrimination. As he acknowledges, however, his argument is foreclosed by *Wilchcombe* and *Rivera*, which, though troubling, are nonetheless binding on us as a panel. See *United States v. Vega-Castillo*, 540 F.3d 1235, 1236 (11th Cir. 2008) (“Under the prior precedent rule, we are bound to follow a prior binding precedent unless and until it is overruled by this court en banc or by the Supreme Court.” (internal quotation marks omitted)). In light of those decisions, we cannot find that the district court abused its discretion by permitting the government to introduce limited evidence of Alexander's pre-*Miranda* silence in order to rebut defense evidence. That is true even if Alexander is correct that the evidence was admitted as substantive evidence of his guilt rather than as impeachment evidence.³

³ We decline Alexander's request to refer this case for *en banc* review, though we note that he is free to move for rehearing *en banc* under Rule 35, Fed. R. App. P.

C. Constitutionality of the MDLEA

Alexander next argues that the MDLEA is unconstitutional as applied to him. He argues that Congress's power to punish felonies on the high seas does not extend to drug-trafficking offenses with no nexus to the United States, particularly offenses involving marijuana, which is no longer universally condemned. He further asserts that it violates due process for courts to exercise jurisdiction over conduct without such a nexus. He also maintains that the MDLEA violates his rights under the Fifth and Sixth Amendments because it removes the factual basis of the jurisdictional requirement from the jury. Acknowledging contrary circuit precedent, Alexander seeks to preserve these issues for further review.

The Constitution permits Congress to “define and punish Piracies and Felonies committed on the high Seas.” U.S. const. Art. I, § 8, cl. 10. The MDLEA prohibits individuals from “knowingly or intentionally ... manufactur[ing] or distribut[ing], or possess[ing] with intent to manufacture or distribute, a controlled substance” on board “a vessel of the United States or a vessel subject to the jurisdiction of the United States.” 46 U.S.C. § 70503(a), (e); see also *United States v. Campbell*, 743 F.3d 802, 805 (11th Cir. 2014). Under the MDLEA, a “vessel subject to the jurisdiction of the United States” includes “a vessel without nationality,” a term which includes “a vessel aboard which the master or individual in charge makes a claim of registry that is denied by the nation whose registry is claimed.” 46 U.S.C. § 70502(c)(1)(A), (d)(1)(A).

In 1996, Congress amended the MDLEA to provide that “[j]urisdiction of the United States with respect to a vessel subject to this chapter is not an element of an offense.” 46 U.S.C. § 70504(a); see *Campbell*, 743 F.3d at 805. Instead, jurisdictional issues under the MDLEA “are preliminary questions of law to be determined solely by the trial judge.” 46 U.S.C. § 70504(a).

*7 Alexander's challenges to the MDLEA are foreclosed by our prior precedent. See, e.g., *Wilchcombe*, 838 F.3d at 1186; *United States v. Cruickshank*, 837 F.3d 1182, 1187–88 (11th Cir. 2016), *Campbell*, 743 F.3d at 809–12; *United States v. Rendon*, 354 F.3d 1320, 1324–28 (11th Cir. 2003); *United States v. Tinoco*, 304 F.3d 1088, 1108–12 (11th Cir. 2002). In *Campbell*, for example, we affirmed the constitutionality of the MDLEA as applied to an unregistered vessel trafficking marijuana on the high seas. *Campbell*, 743 F.3d at 809–12. We held that (1) the MDLEA is a valid exercise of Congress's power under the Felonies Clause as applied to offenses without a nexus to the United States, *id.* at 810; (2) a conviction under the MDLEA does not violate a defendant's right to due process under the Fifth Amendment even when the offense lacks such a nexus, *id.* at 812; and (3) the Fifth and Sixth Amendments do not require a jury to determine whether extraterritorial jurisdiction exists under the MDLEA, *id.* at 809. *Campbell* remains good law. See, e.g., *Cruickshank*, 837 F.3d at 1188 (concluding that *Campbell* foreclosed a defendant's challenges to the MDLEA).

For these reasons, the district court properly denied Alexander's motion to dismiss the indictment.

IV.

Finally, Alexander argues that his sentence should be vacated because, in his view, denying safety-valve relief to defendants convicted under the MDLEA violates equal protection. We ordinarily review *de novo* the constitutionality of a statute, because it presents a question of law, but we review for plain error only where a defendant raises his challenge for the first time on appeal. *United States v. Wright*, 607 F.3d 708, 715 (11th Cir. 2010). Because Alexander did not raise this specific issue before the district court, we review for plain error.⁴

4 We are not persuaded by Alexander's assertion that the district court violated *United States v. Jones*, 899 F.2d 1097 (11th Cir. 1990), overruled on other grounds by *United States v. Morrill*, 984 F.2d 1136 (11th Cir. 1993) (*en banc*), such that *de novo* review applies. *Jones* requires district courts to give parties an opportunity, following the imposition of sentence, “to object to the district court's ultimate findings of fact and conclusions of law and to the manner in which the sentence is pronounced.” *Jones*, 899 F.2d at 1103. Here, the court did so. After imposing sentence, the court asked defense counsel if he “object [ed] to the Court's finding of fact or the manner in which sentence was pronounced?” The fact that the court did not specifically mention “legal” objections does not mean that the court failed to elicit “fully articulated objections.” Indeed, defense counsel clearly “understood the court to be eliciting objections,” including legal ones. *United States v. Campbell*, 473 F.3d 1345, 1348 (11th Cir. 2007). In fact, in response to the court's question, defense counsel re-raised a legal objection to the constitutionality of the MDLEA, which flatly contradicts Alexander's current claim that counsel did not understand the court to be eliciting legal objections. We review for plain error.

“To find plain error, there must be: (1) error, (2) that is plain, and (3) that has affected the defendant's substantial rights.” *United States v. Hesser*, 800 F.3d 1310, 1324 (11th Cir. 2015) (quoting other sources). If those three conditions are met, we may correct the error if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.* For an error to be “plain,” it must be “obvious and clear under current law.” *United States v. Eckhardt*, 466 F.3d 938, 948 (11th Cir. 2006). Unless the explicit language of a statute or rule specifically resolves

an issue, there can be no plain error without precedent from the Supreme Court or this Court directly resolving the issue. *Hesser*, 800 F.3d at 1325.

*8 The “safety valve” permits a district court to sentence certain drug offenders below any applicable statutory minimum sentence. *See* 18 U.S.C. § 3553(f). Specifically, “in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963),” the court shall sentence the defendant “without regard to any statutory minimum sentence” if the court finds at sentencing that the defendant has met five listed criteria. *Id.*

In *United States v. Pertuz-Pertuz*, 679 F.3d 1327 (11th Cir. 2012), we held that, under the plain language of § 3553(f), defendants convicted under the MDLEA are not eligible for safety-valve relief. *Id.* at 1328. We explained that, by its terms, the safety valve applies only to convictions under the five listed statutes—21 U.S.C. §§ 841, 844, 846, 960, and 963. *Id.* Reasoning that the express selection of five statutes reflects an intent to exclude others, we held that a conviction under 46 U.S.C. § 70503 does not qualify for the safety valve because “no Title 46 offense appears in the safety-valve statute.” *Id.*

Alexander argues that the exclusion of the MDLEA from the safety valve violates equal protection because there is no rational basis to deny safety-valve relief to offenders who commit wholly foreign drug offenses

while making it available to offenders who commit the same offenses within the territorial United States. In short, Alexander maintains that geography alone is not a good enough reason to exclude MDLEA defendants from the safety valve. The government responds that Alexander cannot show plain error and that there are, in fact, good reasons apart from geography to distinguish between international drug trafficking and domestic drug trafficking for purposes of the safety valve.

Apart from citing the district court's statements at the sentencing hearing, Alexander has pointed us to no authority on this issue. Our own research reflects that neither the Supreme Court nor this Court has addressed whether Congress's decision to exclude offenses under the MDLEA from the safety-valve statute violates equal protection. Accordingly, Alexander has not shown that any error, if one occurred, was “plain.” *See Hesser*, 800 F.3d at 1325. We therefore affirm Alexander's 120-month sentence.

V.

For the reasons stated, we **AFFIRM** Alexander's convictions and total sentence.

All Citations

--- Fed.Appx. ----, 2017 WL 5438869

UNITED STATES DISTRICT COURT
Southern District of Florida
Miami Division

UNITED STATES OF AMERICA
v.
DESMOND ALEXANDER

JUDGMENT IN A CRIMINAL CASE

Case Number: **113C 1:15-20800-CR-WILLIAMS-2**
 USM Number: **06396-104**

Counsel For Defendant: **Katherine Carmon, AFPD**
 Counsel For The United States: **Kurt K. Lunkenheimer, AUSA**
 Court Reporter: **Glenda Powers**

The defendant was found guilty on count(s) 1 and 2 of the Indictment.

The defendant is adjudicated guilty of these offenses:

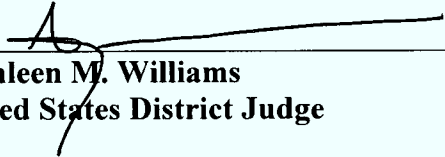
<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
46 U.S.C. 20506(b)	Conspiracy to Possess with Intent to Distribute Marihuana on Board a Vessel	09/20/2015	1
46 U.S.C. 70503(a)(1)	Possession with Intent to Distribute Marihuana on Board a Vessel	09/20/2015	2

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

All remaining counts are dismissed on the motion of the government.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence: **10/26/2016**


Kathleen M. Williams
United States District Judge

Date: 10/31/16

DEFENDANT: **DESMOND ALEXANDER**
CASE NUMBER: **113C 1:15-20800-CR-WILLIAMS-2**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **120 Months as to each of Counts 1 and 2 of the Indictment, all terms to run concurrently.**

The court makes the following recommendations to the Bureau of Prisons: that the Defendant be designated close to South Florida.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: **DESMOND ALEXANDER**
CASE NUMBER: **15-20800-CR-WILLIAMS-2**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Five (5) Years as to Counts 1 and 2 of the Indictment with the following special conditions imposed .**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **DESMOND ALEXANDER**
CASE NUMBER: **15-20800-CR-WILLIAMS-2**

SPECIAL CONDITIONS OF SUPERVISION

Surrendering to Immigration for Removal After Imprisonment:

At the completion of the Defendant's term of imprisonment, the Defendant shall be surrendered to the custody of the U.S. Immigration and Customs Enforcement for removal proceedings consistent with the Immigration and Nationality Act. If removed, the Defendant shall not reenter the United States without the prior written permission of the Undersecretary for Border and Transportation Security. The term of supervised release shall be non-reporting while the Defendant is residing outside the United States. If the Defendant reenters the United States within the term of supervised release, the Defendant is to report to the nearest U.S. Probation Office within 72 hours of the Defendant's arrival.

DEFENDANT: **DESMOND ALEXANDER**
CASE NUMBER: **15-20800-CR-WILLIAMS-2**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$200.00	\$0.00	\$0.00

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>NAME OF PAYEE</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>
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* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: **DESMOND ALEXANDER**
CASE NUMBER: **15-20800-CR-WILLIAMS-2**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. Lump sum payment of \$200.00 due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

<u>CASE NUMBER</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL</u>
<u>DEFENDANT AND CO-DEFENDANT NAMES</u>		<u>AMOUNT</u>
<u>(INCLUDING DEFENDANT NUMBER)</u>		

The Government shall file a preliminary order of forfeiture within 3 days.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

United States Code Annotated
Title 46. Shipping (Refs & Annos)
Subtitle VII. Security and Drug Enforcement (Refs & Annos)
Chapter 705. Maritime Drug Law Enforcement

46 U.S.C.A. § 70501
Formerly cited as 46 App. USCA § 1902

§ 70501. Findings and declarations

Effective: October 13, 2008

[Currentness](#)

Congress finds and declares that (1) trafficking in controlled substances aboard vessels is a serious international problem, is universally condemned, and presents a specific threat to the security and societal well-being of the United States and (2) operating or embarking in a submersible vessel or semi-submersible vessel without nationality and on an international voyage is a serious international problem, facilitates transnational crime, including drug trafficking, and terrorism, and presents a specific threat to the safety of maritime navigation and the security of the United States.

CREDIT(S)

([Pub.L. 109-304](#), § 10(2), Oct. 6, 2006, 120 Stat. 1685; [Pub.L. 110-407, Title II, § 201](#), Oct. 13, 2008, 122 Stat. 4299.)

46 U.S.C.A. § 70501, 46 USCA § 70501

Current through P.L. 115-90. Also includes P.L. 115-92 to 115-117, 115-119, and 115-122. Title 26 current through 115-122.

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United States Code Annotated

Title 46. Shipping (Refs & Annos)

Subtitle VII. Security and Drug Enforcement (Refs & Annos)

Chapter 705. Maritime Drug Law Enforcement

46 U.S.C.A. § 70502

Formerly cited as 46 App. USCA § 1903

§ 70502. Definitions

Effective: October 13, 2008

[Currentness](#)

(a) Application of other definitions.--The definitions in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 ([21 U.S.C. 802](#)) apply to this chapter.

(b) Vessel of the United States.--In this chapter, the term “vessel of the United States” means--

(1) a vessel documented under chapter 121 of this title or numbered as provided in chapter 123 of this title;

(2) a vessel owned in any part by an individual who is a citizen of the United States, the United States Government, the government of a State or political subdivision of a State, or a corporation incorporated under the laws of the United States or of a State, unless--

(A) the vessel has been granted the nationality of a foreign nation under article 5 of the 1958 Convention on the High Seas; and

(B) a claim of nationality or registry for the vessel is made by the master or individual in charge at the time of the enforcement action by an officer or employee of the United States who is authorized to enforce applicable provisions of United States law; and

(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was sold to a person not a citizen of the United States, placed under foreign registry, or operated under the authority of a foreign nation, whether or not the vessel has been granted the nationality of a foreign nation.

(c) Vessel subject to the jurisdiction of the United States.--

(1) **In general.**--In this chapter, the term “vessel subject to the jurisdiction of the United States” includes--

(A) a vessel without nationality;

(B) a vessel assimilated to a vessel without nationality under paragraph (2) of article 6 of the 1958 Convention on the High Seas;

(C) a vessel registered in a foreign nation if that nation has consented or waived objection to the enforcement of United States law by the United States;

(D) a vessel in the customs waters of the United States;

(E) a vessel in the territorial waters of a foreign nation if the nation consents to the enforcement of United States law by the United States; and

(F) a vessel in the [contiguous zone of the United States, as defined in Presidential Proclamation 7219](#) of September 2, 1999 ([43 U.S.C. 1331](#) note), that--

(i) is entering the United States;

(ii) has departed the United States; or

(iii) is a hovering vessel as defined in section 401 of the Tariff Act of 1930 ([19 U.S.C. 1401](#)).

(2) Consent or waiver of objection.--Consent or waiver of objection by a foreign nation to the enforcement of United States law by the United States under paragraph (1)(C) or (E)--

(A) may be obtained by radio, telephone, or similar oral or electronic means; and

(B) is proved conclusively by certification of the Secretary of State or the Secretary's designee.

(d) Vessel without nationality.--

(1) In general.--In this chapter, the term “vessel without nationality” includes--

(A) a vessel aboard which the master or individual in charge makes a claim of registry that is denied by the nation whose registry is claimed;

(B) a vessel aboard which the master or individual in charge fails, on request of an officer of the United States authorized to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel; and

(C) a vessel aboard which the master or individual in charge makes a claim of registry and for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality.

(2) Response to claim of registry.--The response of a foreign nation to a claim of registry under paragraph (1)(A) or (C) may be made by radio, telephone, or similar oral or electronic means, and is proved conclusively by certification of the Secretary of State or the Secretary's designee.

(e) Claim of nationality or registry.--A claim of nationality or registry under this section includes only--

(1) possession on board the vessel and production of documents evidencing the vessel's nationality as provided in article 5 of the 1958 Convention on the High Seas;

(2) flying its nation's ensign or flag; or

(3) a verbal claim of nationality or registry by the master or individual in charge of the vessel.

(f) Semi-submersible vessel; submersible vessel.--In this chapter:

(1) Semi-submersible vessel.--The term "semi-submersible vessel" means any watercraft constructed or adapted to be capable of operating with most of its hull and bulk under the surface of the water, including both manned and unmanned watercraft.

(2) Submersible vessel.--The term "submersible vessel" means a vessel that is capable of operating completely below the surface of the water, including both manned and unmanned watercraft.

CREDIT(S)

(Pub.L. 109-304, § 10(2), Oct. 6, 2006, 120 Stat. 1685; Pub.L. 109-241, Title III, § 303, July 11, 2006, 120 Stat. 527; Pub.L. 110-181, Div. C, Title XXXV, § 3525(a)(6), (b), Jan. 28, 2008, 122 Stat. 601; Pub.L. 110-407, Title II, § 203, Oct. 13, 2008, 122 Stat. 4300.)

46 U.S.C.A. § 70502, 46 USCA § 70502

Current through P.L. 115-90. Also includes P.L. 115-92 to 115-117, 115-119, and 115-122. Title 26 current through 115-122.



KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version Held Unconstitutional as Applied by [U.S. v. Bellaizac-Hurtado](#), 11th Cir.(Fla.), Nov. 06, 2012

[United States Code Annotated](#)

[Title 46. Shipping \(Refs & Annos\)](#)

[Subtitle VII. Security and Drug Enforcement \(Refs & Annos\)](#)

[Chapter 705. Maritime Drug Law Enforcement](#)

46 U.S.C.A. § 70503

Formerly cited as 46 App. USCA § 1903

§ 70503. Prohibited acts

Effective: February 8, 2016

[Currentness](#)

(a) Prohibitions.--While on board a covered vessel, an individual may not knowingly or intentionally--

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

(2) destroy (including jettisoning any item or scuttling, burning, or hastily cleaning a vessel), or attempt or conspire to destroy, property that is subject to forfeiture under section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 ([21 U.S.C. 881\(a\)](#)); or

(3) conceal, or attempt or conspire to conceal, more than \$100,000 in currency or other monetary instruments on the person of such individual or in any conveyance, article of luggage, merchandise, or other container, or compartment of or aboard the covered vessel if that vessel is outfitted for smuggling.

(b) Extension beyond territorial jurisdiction.--Subsection (a) applies even though the act is committed outside the territorial jurisdiction of the United States.

(c) Nonapplication.--

(1) **In general.**--Subject to paragraph (2), subsection (a) does not apply to--

(A) a common or contract carrier or an employee of the carrier who possesses or distributes a controlled substance in the lawful and usual course of the carrier's business; or

(B) a public vessel of the United States or an individual on board the vessel who possesses or distributes a controlled substance in the lawful course of the individual's duties.

(2) Entered in manifest.--Paragraph (1) applies only if the controlled substance is part of the cargo entered in the vessel's manifest and is intended to be imported lawfully into the country of destination for scientific, medical, or other lawful purposes.

(d) Burden of proof.--The United States Government is not required to negative a defense provided by subsection (c) in a complaint, information, indictment, or other pleading or in a trial or other proceeding. The burden of going forward with the evidence supporting the defense is on the person claiming its benefit.

(e) Covered vessel defined.--In this section the term “covered vessel” means--

(1) a vessel of the United States or a vessel subject to the jurisdiction of the United States; or

(2) any other vessel if the individual is a citizen of the United States or a resident alien of the United States.

CREDIT(S)

([Pub.L. 109-304](#), § 10(2), Oct. 6, 2006, 120 Stat. 1687; [Pub.L. 114-120, Title III, § 314\(a\), \(b\), \(e\)\(1\)](#), Feb. 8, 2016, 130 Stat. 59.)

46 U.S.C.A. § 70503, 46 USCA § 70503

Current through P.L. 115-90. Also includes P.L. 115-92 to 115-117, 115-119, and 115-122. Title 26 current through 115-122.



KeyCite Red Flag - Severe Negative Treatment

Enacted Legislation Amended by [PL 115-91, December 12, 2017, 131 Stat 1283](#),



KeyCite Yellow Flag - Negative Treatment Proposed Legislation

[United States Code Annotated](#)

[Title 46. Shipping \(Refs & Annos\)](#)

[Subtitle VII. Security and Drug Enforcement \(Refs & Annos\)](#)

[Chapter 705. Maritime Drug Law Enforcement](#)

46 U.S.C.A. § 70504

Formerly cited as 46 App. USCA § 1903

§ 70504. Jurisdiction and venue

Effective: October 13, 2008

[Currentness](#)

(a) Jurisdiction.--Jurisdiction of the United States with respect to a vessel subject to this chapter is not an element of an offense. Jurisdictional issues arising under this chapter are preliminary questions of law to be determined solely by the trial judge.

(b) Venue.--A person violating [section 70503](#) or [70508](#) of this title shall be tried in the district court of the United States for--

(1) the district at which the person enters the United States; or

(2) the District of Columbia.

CREDIT(S)

([Pub.L. 109-304](#), § 10(2), Oct. 6, 2006, 120 Stat. 1688; [Pub.L. 110-407, Title II, § 202\(b\)\(2\)](#), Oct. 13, 2008, 122 Stat. 4300.)

46 U.S.C.A. § 70504, 46 USCA § 70504

Current through P.L. 115-90. Also includes P.L. 115-92 to 115-117, 115-119, and 115-122. Title 26 current through 115-122.

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United States Code Annotated

Title 46. Shipping (Refs & Annos)

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Chapter 705. Maritime Drug Law Enforcement

46 U.S.C.A. § 70505

Formerly cited as 46 App. USCA § 1903

§ 70505. Failure to comply with international law as a defense

Effective: October 13, 2008

[Currentness](#)

A person charged with violating [section 70503](#) of this title, or against whom a civil enforcement proceeding is brought under [section 70508](#), does not have standing to raise a claim of failure to comply with international law as a basis for a defense. A claim of failure to comply with international law in the enforcement of this chapter may be made only by a foreign nation. A failure to comply with international law does not divest a court of jurisdiction and is not a defense to a proceeding under this chapter.

CREDIT(S)

([Pub.L. 109-304](#), § 10(2), Oct. 6, 2006, 120 Stat. 1688; [Pub.L. 110-407](#), Title II, § 202(b)(3), Oct. 13, 2008, 122 Stat. 4300.)

46 U.S.C.A. § 70505, 46 USCA § 70505

Current through P.L. 115-90. Also includes P.L. 115-92 to 115-117, 115-119, and 115-122. Title 26 current through 115-122.

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KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version Held Unconstitutional as Applied by [U.S. v. Bellaizac-Hurtado](#), 11th Cir.(Fla.), Nov. 06, 2012

[United States Code Annotated](#)

[Title 46. Shipping \(Refs & Annos\)](#)

[Subtitle VII. Security and Drug Enforcement \(Refs & Annos\)](#)

[Chapter 705. Maritime Drug Law Enforcement](#)

46 U.S.C.A. § 70506

Formerly cited as 46 App. USCA § 1903

§ 70506. Penalties

Effective: February 8, 2016

[Currentness](#)

(a) Violations.--A person violating [paragraph \(1\) of section 70503\(a\)](#) of this title shall be punished as provided in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 ([21 U.S.C. 960](#)). However, if the offense is a second or subsequent offense as provided in section 1012(b) of that Act ([21 U.S.C. 962\(b\)](#)), the person shall be punished as provided in section 1012 of that Act ([21 U.S.C. 962](#)).

(b) Attempts and conspiracies.--A person attempting or conspiring to violate [section 70503](#) of this title is subject to the same penalties as provided for violating [section 70503](#).

(c) Simple possession.--

(1) In general.--Any individual on a vessel subject to the jurisdiction of the United States who is found by the Secretary, after notice and an opportunity for a hearing, to have knowingly or intentionally possessed a controlled substance within the meaning of the Controlled Substances Act ([21 U.S.C. 812](#)) shall be liable to the United States for a civil penalty of not to exceed \$5,000 for each violation. The Secretary shall notify the individual in writing of the amount of the civil penalty.

(2) Determination of amount.--In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(3) Treatment of civil penalty assessment.--Assessment of a civil penalty under this subsection shall not be considered a conviction for purposes of State or Federal law but may be considered proof of possession if such a determination is relevant.

(d) Penalty.--A person violating [paragraph \(2\) or \(3\) of section 70503\(a\)](#) shall be fined in accordance with [section 3571 of title 18](#), imprisoned not more than 15 years, or both.

CREDIT(S)

([Pub.L. 109-304](#), § 10(2), Oct. 6, 2006, 120 Stat. 1688; [Pub.L. 111-281, Title III, § 302](#), Oct. 15, 2010, 124 Stat. 2923; [Pub.L. 114-120, Title III, § 314\(c\)](#), Feb. 8, 2016, 130 Stat. 59.)

46 U.S.C.A. § 70506, 46 USCA § 70506

Current through P.L. 115-90. Also includes P.L. 115-92 to 115-117, 115-119, and 115-122. Title 26 current through 115-122.

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United States Code Annotated

Title 46. Shipping (Refs & Annos)

Subtitle VII. Security and Drug Enforcement (Refs & Annos)

Chapter 705. Maritime Drug Law Enforcement

46 U.S.C.A. § 70507

Formerly cited as 46 App. USCA § 1904

§ 70507. Forfeitures

Effective: February 8, 2016

[Currentness](#)

(a) In general.--Property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 ([21 U.S.C. 881\(a\)](#)) that is used or intended for use to commit, or to facilitate the commission of, an offense under [section 70503](#) or [70508](#) of this title may be seized and forfeited in the same manner that similar property may be seized and forfeited under section 511 of that Act ([21 U.S.C. 881](#)).

(b) Prima facie evidence of violation.--Practices commonly recognized as smuggling tactics may provide prima facie evidence of intent to use a vessel to commit, or to facilitate the commission of, an offense under [section 70503](#) of this title, and may support seizure and forfeiture of the vessel, even in the absence of controlled substances aboard the vessel. The following indicia, among others, may be considered, in the totality of the circumstances, to be prima facie evidence that a vessel is intended to be used to commit, or to facilitate the commission of, such an offense:

(1) The construction or adaptation of the vessel in a manner that facilitates smuggling, including--

(A) the configuration of the vessel to ride low in the water or present a low hull profile to avoid being detected visually or by radar;

(B) the presence of any compartment or equipment that is built or fitted out for smuggling, not including items such as a safe or lock-box reasonably used for the storage of personal valuables;

(C) the presence of an auxiliary tank not installed in accordance with applicable law or installed in such a manner as to enhance the vessel's smuggling capability;

(D) the presence of engines that are excessively over-powered in relation to the design and size of the vessel;

(E) the presence of materials used to reduce or alter the heat or radar signature of the vessel and avoid detection;

(F) the presence of a camouflaging paint scheme, or of materials used to camouflage the vessel, to avoid detection; or

- (G) the display of false vessel registration numbers, false indicia of vessel nationality, false vessel name, or false vessel homeport.
- (2) The presence or absence of equipment, personnel, or cargo inconsistent with the type or declared purpose of the vessel.
- (3) The presence of excessive fuel, lube oil, food, water, or spare parts, inconsistent with legitimate vessel operation, inconsistent with the construction or equipment of the vessel, or inconsistent with the character of the vessel's stated purpose.
- (4) The operation of the vessel without lights during times lights are required to be displayed under applicable law or regulation and in a manner of navigation consistent with smuggling tactics used to avoid detection by law enforcement authorities.
- (5) The failure of the vessel to stop or respond or heave to when hailed by government authority, especially where the vessel conducts evasive maneuvering when hailed.
- (6) The declaration to government authority of apparently false information about the vessel, crew, or voyage or the failure to identify the vessel by name or country of registration when requested to do so by government authority.
- (7) The presence of controlled substance residue on the vessel, on an item aboard the vessel, or on an individual aboard the vessel, of a quantity or other nature that reasonably indicates manufacturing or distribution activity.
- (8) The use of petroleum products or other substances on the vessel to foil the detection of controlled substance residue.
- (9) The presence of a controlled substance in the water in the vicinity of the vessel, where given the currents, weather conditions, and course and speed of the vessel, the quantity or other nature is such that it reasonably indicates manufacturing or distribution activity.

CREDIT(S)

(Pub.L. 109-304, § 10(2), Oct. 6, 2006, 120 Stat. 1688; Pub.L. 114-120, Title III, § 314(d), Feb. 8, 2016, 130 Stat. 59.)

46 U.S.C.A. § 70507, 46 USCA § 70507

Current through P.L. 115-90. Also includes P.L. 115-92 to 115-117, 115-119, and 115-122. Title 26 current through 115-122.