

14-378 McFADDEN V. UNITED STATES

DECISION BELOW: 753 F.3d 432

LOWER COURT CASE NUMBER: 13-4349

QUESTION PRESENTED:

Federal law criminalizes "knowingly or intentionally" manufacturing, distributing, or dispensing "a controlled substance." 21 U.S.C. § 841(a). Prohibited "controlled substance[s]" ordinarily are listed in schedules updated through notice-and-comment rulemaking. *See id.* §§ 802(6), 811-12. However, the Controlled Substance Analogue Enforcement Act of 1986 provides that a "controlled substance analogue" also shall be treated as a Schedule I controlled substance. 21 U.S.C. § 813. A "controlled substance analogue" is defined as a substance with a chemical structure that is "substantially similar" to a schedule I or II drug and has a "substantially similar" effect on the user (or is believed or represented by the defendant to have such a similar effect). *Id.* § 802(32)(A). The Government does not publish lists of controlled substance analogues; instead, it prosecutes individuals who sell what prosecutors believe to be substances meeting the statutory definition, leaving lay juries to decide whether any given alleged analogue is substantially similar in chemical structure and effect to a scheduled controlled substance, often on the basis of conflicting expert testimony.

The Question Presented is:

Whether, to convict a defendant of distribution of a controlled substance analogue, the government must prove that the defendant knew that the substance constituted a controlled substance analogue, as held by the Second, Seventh, and Eighth Circuits, but rejected by the Fourth and Fifth Circuits.

CERT. GRANTED 1/16/2015