

# SUPREME COURT OF THE UNITED STATES

No. 92-1441

HAROLD E. STAPLES, III, PETITIONER v. UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT  
[May 23, 1994]

JUSTICE GINSBURG, with whom JUSTICE O'CONNOR joins, concurring in the judgment.

The statute petitioner Harold E. Staples is charged with violating, 26 U. S. C. §5861(d), makes it a crime for any person to “receive or possess a firearm which is not registered to him.” Although the word “knowingly” does not appear in the statute's text, courts generally assume that Congress, absent a contrary indication, means to retain a *mens rea* requirement. *Ante*, at 5; see *Liparota v. United States*, 471 U. S. 419, 426 (1985); *United States v. United States Gypsum Co.*, 438 U. S. 422, 437-438 (1978).<sup>1</sup> Thus, our holding in *United States v. Freed*, 401 U. S. 601 (1971), that §5861(d) does not require proof of knowledge that the firearm is unregistered, rested on the premise that the defendant indeed knew the items he possessed were hand grenades. *Id.*, at 607; *id.*, at 612 (Brennan, J., concurring in judgment) (“The Government and the Court agree that the prosecutor must prove knowing possession of the items and also knowledge that the items possessed were hand grenades.”).

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<sup>1</sup>Contrary to the dissent's suggestion, we have not confined the presumption of *mens rea* to statutes codifying traditional common law offenses, but have also applied the presumption to offenses that are “entirely a creature of statute,” *post*, at 3, such as those at issue in *Liparota*, *Gypsum*, and, most recently, *Posters 'N' Things v. United States*, \_\_\_ U. S. \_\_\_ (1994) (slip op., at 10).

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Conviction under §5861(d), the Government accordingly concedes, requires proof that Staples “knowingly” possessed the machinegun. Brief for United States 23. The question before us is not *whether* knowledge of possession is required, but what level of knowledge suffices: (1) knowledge simply of possession of the object; (2) knowledge, in addition, that the object is a dangerous weapon; (3) knowledge, beyond dangerousness, of the characteristics that render the object subject to regulation, for example, awareness that the weapon is a machinegun.<sup>2</sup>

Recognizing that the first reading effectively dispenses with *mens rea*, the Government adopts the second, contending that it avoids criminalizing “apparently innocent conduct,” *Liparota, supra*, at 426, because under the second reading, “a defendant who possessed what he thought was a toy or a violin case, but which in fact was a machinegun, could not be convicted.” Brief for United States 23. The Government, however, does not take adequate account of the “widespread lawful gun ownership” Congress and the States have allowed to persist in this country. See *United States v. Harris*, 959 F. 2d 246, 261 (CADDC) (*per curiam*), cert. denied, 506 U. S. \_\_\_ (1992). Given the notable lack of comprehensive regulation, “mere unregistered possession of certain types of [regulated weapons]—often [difficult to distinguish] from other, [non-regulated] types,” has been held inadequate to establish the requisite

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<sup>2</sup>Some Courts of Appeals have adopted a variant of the third reading, holding that the Government must show that the defendant knew the gun was a machinegun, but allowing inference of the requisite knowledge where a visual inspection of the gun would reveal that it has been converted into an automatic weapon. See *United States v. O'Mara*, 963 F. 2d 1288, 1291 (CA9 1992); *United States v. Anderson*, 885 F. 2d 1248, 1251 (CA5 1989) (en banc).

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knowledge. See 959 F. 2d, at 261.

The Nation's legislators chose to place under a registration requirement only a very limited class of firearms, those they considered especially dangerous. The generally "dangerous" character of all guns, the Court therefore observes, *ante*, at 11-12, did not suffice to give individuals in Staples' situation cause to inquire about the need for registration. Compare *United States v. Balint*, 258 U. S. 250 (1922) (requiring reporting of sale of strictly regulated narcotics, opium and cocaine). Only the third reading, then, suits the purpose of the *mens rea* requirement—to shield people against punishment for apparently innocent activity.<sup>3</sup>

The indictment in Staples' case charges that he

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<sup>3</sup>The *mens rea* presumption requires knowledge only of the facts that make the defendant's conduct illegal, lest it conflict with the related presumption, "deeply rooted in the American legal system," that, ordinarily, "ignorance of the law or a mistake of law is no defense to criminal prosecution." *Cheek v. United States*, 498 U. S. 192, 199 (1990). Cf. *Freed*, 401 U. S., at 612 (Brennan, J., concurring in judgment) ("If the ancient maxim that 'ignorance of the law is no excuse' has any residual validity, it indicates that the ordinary intent requirement—*mens rea*--of the criminal law does not require knowledge that an act is illegal, wrong, or blameworthy."). The maxim explains why some "innocent" actors—for example, a defendant who knows he possesses a weapon with all of the characteristics that subject it to registration, but was unaware of the registration requirement, or thought the gun was registered—may be convicted under §5861(d), see *post*, at 17. Knowledge of whether the gun was registered is so closely related to knowledge of the registration requirement that requiring the Government to prove the former would in effect require it to prove knowledge of the law. Cf. *Freed, supra*, at 612-614 (Brennan, J., concurring in judgment).

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“knowingly received and possessed firearms.” App. to Brief for Appellant in No. 91-5033 (CA10), p. 1.<sup>4</sup> “Firearms” has a circumscribed statutory definition. See 26 U. S. C. §5845(a). The “firear[m]” the Government contends Staples possessed in violation of §5861(d) is a machinegun. See §5845(a)(6). The indictment thus effectively charged that Staples *knowingly possessed a machinegun*. “Knowingly possessed” logically means “possessed and knew that he possessed.” The Government can reconcile the jury instruction<sup>5</sup> with the indictment only on the implausible assumption that the term “firear[m]” has two different meanings when used once in the same charge—simply “gun” when referring to what

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<sup>4</sup>The indictment charged Staples with possession of two unregistered machineguns, but the jury found him guilty of knowingly possessing only one of them. Tr. 477.

<sup>5</sup>The trial court instructed the jury:

“[A] person is knowingly in possession of a thing if his possession occurred voluntarily and intentionally and not because of mistake or accident or other innocent reason. The purpose of adding the word ‘knowingly’ is to insure that no one can be convicted of possession of a firearm he did not intend to possess. The Government need not prove the defendant knows he’s dealing with a weapon possessing every last characteristic [which subjects it] to the regulation. It would be enough to prove he knows that he is dealing with a dangerous device of a type as would alert one to the likelihood of regulation. If he has such knowledge and if the particular item is, in fact, regulated, then that person acts at his peril. Mere possession of an unregistered firearm is a violation of the law of the United States, and it is not necessary for the Government to prove that the defendant knew that the weapon in his possession was a firearm within the meaning of the statute, only that he knowingly possessed the firearm.” Tr. 465.

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petitioner knew, and “machinegun” when referring to what he possessed. See Cunningham, Levi, Green, & Kaplan, Plain Meaning and Hard Cases, 103 Yale L. J. 1561, 1576-1577 (1994)); cf. *Ratzlaf v. United States*, 510 U. S. \_\_\_ (1994) (slip op., at 8) (construing statutory term to bear same meaning “each time it is called into play”).

For these reasons, I conclude that conviction under §5861(d) requires proof that the defendant knew he possessed not simply a gun, but a machinegun. The indictment in this case, but not the jury instruction, properly described this knowledge requirement. I therefore concur in the Court's judgment.