

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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ROGERS v. UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

No. 96–1279. Argued November 5, 1997— Decided January 14, 1998

Petitioner was charged with the knowing possession of an unregistered and unserialized firearm in violation of 26 U. S. C. §§5861(d) and (i) as a result of the discovery of a silencer in his truck. A silencer is included within the meaning of “firearm” under §5845(a)(7). Petitioner repeatedly admitted during his arrest and trial that he knew that the item found in his truck was in fact a silencer. The District Court denied petitioner’s request for an instruction that defined the Government’s burden of establishing “knowing possession” as proof that he had willfully and consciously possessed an item he knew to be a “firearm.” Petitioner was convicted. Under *Staples v. United States*, 511 U. S. 600, decided after this case was submitted to the jury, the *mens rea* element of a violation of §5861(d) requires the Government to prove that the defendant knew that the item he possessed had the characteristics that brought it within the statutory definition of a firearm. The Eleventh Circuit affirmed petitioner’s conviction because the omission related to an element admitted by petitioner and, in light of his repeated admissions, the error was harmless beyond a reasonable doubt.

Held: The writ of certiorari is dismissed as improvidently granted.

Reported below: 94 F. 3d 1519.

JUSTICE STEVENS, joined by JUSTICE THOMAS, JUSTICE GINSBURG, and JUSTICE BREYER, concluded that the question on which this Court granted certiorari— whether failure to instruct on an element of an offense is harmless error where, at trial, the defendant admitted that element— is not fairly presented by the record, and that, accordingly, the writ must be dismissed as improvidently granted. The Eleventh Circuit’s conclusion that the denial of petitioner’s requested instruc-

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tion effectively omitted an essential element of the §5861 offenses was unwarranted for two reasons. First, the tendered instruction was ambiguous. It might have been interpreted to require proof that petitioner knew that his silencer was a “firearm” as defined by §5845(a)(7), not merely that the item possessed certain offending characteristics. Second, and more important, a fair reading of the instructions as actually given did require the jury to find that petitioner knew that he possessed a silencer. The trial judge first explained to the jury that the statute defined “firearm” to include a silencer and then instructed that petitioner could not be found guilty without proof beyond a reasonable doubt that he “knowingly possessed a firearm,” as defined above.” Since the term “firearm” had been “defined above” to include a silencer, that instruction required the jury to determine that petitioner knew that the item he possessed was a silencer. The instruction telling the jury that the Government need not prove that petitioner knew that his gun “was a firearm” which the law requires to be registered” is best read as merely explaining that a conviction did not require the jury to find that petitioner knew that the law required registration of the silencer. Under *United States v. Freed*, 401 U. S. 601, the Government was entitled to such an instruction. Pp. 4–7.

JUSTICE O’CONNOR concluded that it is sufficient to dismiss the writ that the instructions tendered by the District Court were ambiguous on whether the jury was asked to find, as is required by *Staples v. United States*, 511 U. S. 600, that petitioner knew that the item he possessed was a silencer. As a result, it is at least unclear whether the question the Court intended to address in this case is squarely presented. P. 1.

STEVENS, J., announced the decision of the Court and delivered an opinion, in which THOMAS, GINSBURG, AND BREYER, JJ., joined. O’CONNOR, J., filed an opinion concurring in the result, in which SCALIA, J., joined. KENNEDY, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SOUTER, J., joined.