SUPREME COURT OF THE UNITED STATES

No. 96–8422

SILLASSE BRYAN, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June 15, 1998]

JUSTICE SCALIA, with whom THE CHIEF JUSTICE and JUSTICE GINSBURG join, dissenting.

Petitioner Sillasse Bryan was convicted of "willfully" violating the federal licensing requirement for firearms dealers. The jury apparently found, and the evidence clearly shows, that Bryan was aware in a general way that some aspect of his conduct was unlawful. See *ante*, at 4–5 and n. 8. The issue is whether that general knowledge of illegality is enough to sustain the conviction, or whether a "willful" violation of the licensing provision requires proof that the defendant knew that his conduct was unlawful specifically because he lacked the necessary license. On that point the statute is, in my view, genuinely ambiguous. Most of the Court's opinion is devoted to confirming half of that ambiguity by refuting Bryan's various arguments that the statute clearly requires specific knowledge of the licensing requirement. *Ante*, at 7–15. The Court offers no real justification for its implicit conclusion that either (1) the statute unambiguously requires only general knowledge of illegality, or (2) ambiguously requiring only general knowledge is enough. Instead, the Court curiously falls back on "the traditional rule that ignorance of the law is no excuse" to conclude that "knowledge that the conduct is unlawful is all that is required." *Ante*, at 11. In my view, this case calls for the application of a different

canon– "the familiar rule that, 'where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant.'" *Adamo Wrecking Co.* v. *United States*, 434 U. S. 275, 284–285 (1978), quoting *United States* v. *Bass*, 404 U. S. 336, 348 (1971).

Section 922(a)(1)(A) of Title 18 makes it unlawful for any person to engage in the business of dealing in firearms without a federal license. That provision is enforced criminally through §924(a)(1)(D), which imposes criminal penalties on whoever "willfully violates any other provision of this chapter." The word "willfully" has a wide range of meanings, and "'its construction [is] often . . . influenced by its context.'" *Ratzlaf* v. *United States*, 510 U. S. 135, 141 (1994), quoting *Spies* v. *United States*, 317 U. S. 492, 497 (1943). In some contexts it connotes nothing more than "an act which is intentional, or knowing, or voluntary, as distinguished from accidental." *United States* v. *Murdock*, 290 U. S. 389, 394 (1933). In the present context, however, inasmuch as the preceding three subparagraphs of §924 specify a *mens rea* of "knowingly" for *other* firearms offenses, see §§924(a)(1)(A)–(C), a "willful" violation under §924(a)(1)(D) must require some mental state more culpable than mere intent to perform the forbidden act. The United States concedes (and the Court apparently agrees) that the violation is not "willful" unless the defendant knows in a general way that his conduct is unlawful. Brief for United States 7–9; *ante*, at 9 ("The jury must find that the defendant acted with an evil-meaning mind, that is to say, that he acted with knowledge that his conduct was unlawful").

That concession takes this case beyond any useful application of the maxim that ignorance of the law is no excuse. Everyone agrees that §924(a)(1)(D) requires some knowledge of the law; the only real question is *which* law? The Court's answer is that knowledge of *any* law is enough– or, put another way, that the defendant must be ignorant

of *every* law violated by his course of conduct to be innocent of willfully violating the licensing requirement. The Court points to no textual basis for that conclusion other than the notoriously malleable word "willfully" itself. Instead, it seems to fall back on a presumption (apparently derived from the rule that ignorance of the law is no excuse) that even where ignorance of the law *is* an excuse, that excuse should be construed as narrowly as the statutory language permits.

I do not believe that the Court's approach makes sense of the statute that Congress enacted. I have no quarrel with the Court's assertion that "willfully" in §924(a)(1)(D) requires only "general" knowledge of illegality– in the sense that the defendant need not be able to recite chapter and verse from Title 18 of the United States Code. It is enough, in my view, if the defendant is generally aware that the *actus reus* punished by the statute– dealing in firearms without a license– is illegal. But the Court is willing to accept a *mens rea* so "general" that it is entirely divorced from the *actus reus* this statute was enacted to punish. That approach turns §924(a)(1)(D) into a strange and unlikely creature. Bryan would be guilty of "willfully" dealing in firearms without a federal license even if, for example, he had never heard of the licensing requirement but was aware that he had violated the law by using straw purchasers or filing the serial numbers off the pistols. *Ante*, at 5, n. 8. The Court does not even limit (for there is no rational basis to limit) the universe of relevant laws to federal *firearms* statutes. Bryan would also be "act[ing] with an evil-meaning mind," and hence presumably be guilty of "willfully" dealing in firearms without a license, if he knew that his street-corner transactions violated New York City's business licensing or sales tax ordinances. (For that matter, it ought to suffice if Bryan knew that the car out of which he sold the guns was illegally double-parked, or if, in order to meet the appointed time for the

sale, he intentionally violated Pennsylvania's speed limit on the drive back from the gun purchase in Ohio.) Once we stop focusing on the conduct the defendant is actually charged with (*i.e.*, selling guns without a license), I see no principled way to determine *what* law the defendant must be conscious of violating. See, *e.g.*, *Lewis* v. *United States*, 523 U. S. ___, ___ (1998) (slip op., at 2–3) (SCALIA, J., concurring in judgment) (pointing out a similar interpretive problem potentially raised by the Assimilative Crimes Act).

Congress is free, of course, to make criminal liability under one statute turn on knowledge of another, to use its firearms dealer statutes to encourage compliance with New York City's tax collection efforts, and to put judges and juries through the kind of mental gymnastics described above. But these are strange results, and I would not lightly assume that Congress intended to make liability under a federal criminal statute depend so heavily upon the vagaries of local law– particularly local law dealing with completely unrelated subjects. If we must have a presumption in cases like this one, I think it would be more reasonable to presume that, when Congress makes ignorance of the law a defense to a criminal prohibition, it ordinarily means ignorance of the unlawfulness of the specific conduct punished *by that criminal prohibition*.

That is the meaning we have given the word "willfully" in other contexts where we have concluded it requires knowledge of the law. See, *e.g.*, *Ratzlaf*, 510 U. S., at 149 ("To convict Ratzlaf of the crime with which he was charged, . . . the jury had to find he knew the structuring in which he engaged was unlawful"); *Cheek* v. *United States*, 498 U. S. 192, 201 (1991) ("'[T]he standard for the statutory willfullness requirement is the 'voluntary, intentional violation of a known legal duty.'. . . [T]he issue is whether the defendant knew of the duty purportedly imposed by the provision of

the statute or regulation he is accused of violating"). The Court explains these cases on the ground that they involved "highly technical statutes that presented the danger of ensnaring individuals engaged in apparently innocent conduct." *Ante*, at 10-11. That is no explanation at all. The complexity of the tax and currency laws may explain why the Court interpreted "willful" to require some awareness of illegality, as opposed to merely "an act which is intentional, or knowing, or voluntary, as distinguished from accidental." *Murdock*, 290 U. S., at 394. But it *in no way* justifies the distinction the Court seeks to draw today between knowledge of the law the defendant is actually charged with violating and knowledge of *any* law the defendant could conceivably be charged with violating. To protect the pure of heart, it is not necessary to forgive someone whose surreptitious laundering of drug money violates, unbeknownst to him, a technical currency statute. There, as here, regardless of how "complex" the violated statute may be, the defendant would have acted "with an evil-meaning mind."

It seems to me likely that Congress had a presumption of offense-specific knowledge of illegality in mind when it enacted the provision here at issue. Another section of the Firearms Owners' Protection Act, Pub. L. No. 99–308, 100 Stat. 449, prohibits licensed dealers from selling firearms to out-of-state residents unless they fully comply with the laws of both States. 18 U. S. C. §922(b)(3). The provision goes on to state that all licensed dealers "shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States." *Ibid*. Like the dealer-licensing provision at issue here, a violation of §922(b)(3) is a criminal offense only if committed "willfully" within the meaning of §924(a)(1)(D). The Court is quite correct that this provision does not establish beyond doubt that "willfully" requires knowledge of the particular prohibitions violated: the fact that knowledge

(attributed knowledge) of those prohibitions will be *sufficient* does not demonstrate conclusively that knowledge of *other* prohibitions will *not* be sufficient. *Ante*, at 14–15. But though it does not *demonstrate*, it certainly *suggests*. To say that only willful violation of a certain law is criminal, but that knowledge of the existence of that law is presumed, fairly reflects, I think, a presumption that willful violation requires knowledge of the law violated.

If one had to choose, therefore, I think a presumption of statutory intent that is the opposite of the one the Court applies would be more reasonable. I would not, however, decide this case on the basis of any presumption at all. It is common ground that the statutory context here requires some awareness of the law for a §924(a)(1)(D) conviction, but the statute is simply ambiguous, or silent, as to the precise contours of that *mens rea* requirement. In the face of that ambiguity, I would invoke the rule that "'ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity,'" *United States* v. *Bass*, 404 U. S., at 347, quoting *Rewis* v. *United States*, 401 U. S. 808, 812 (1971).

> "The rule that penal laws are to be construed strictly, is, perhaps, not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department." *United States* v. *Wiltberger*, 5 Wheat. 76, 95 (1820).

In our era of multiplying new federal crimes, there is more reason than ever to give this ancient canon of construction consistent application: by fostering uniformity in the interpretation of criminal statutes, it will reduce the occasions on which this Court will have to produce judicial havoc by resolving in defendants' favor a circuit conflict regarding the substantive elements of a federal crime, see, *e.g.*, *Bousley* v. *United States*, 523 U. S. ___ (1998).

I respectfully dissent.