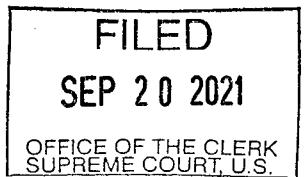


No. 21-5794



IN THE  
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Fred M. Cunningham — PETITIONER  
(Your Name)

vs.

Harold W. Clarke, Dept. of Com. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, For The Fourth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Fred M. Cunningham #1096252  
(Your Name)  
Coffeywood Corn. Center  
P.O. Box 500  
(Address)

Mitchells, Va. 22729  
(City, State, Zip Code)

—  
(Phone Number)

**QUESTION(S) PRESENTED**

- 1.) Did the Lower Courts Violate Petitioner's Constitutional rights against The 5<sup>th</sup> Amendment Double Jeopardy Clause of Multipious / Duplicious.
- 2) Did the Lower Courts Error when they refuse to make the Commonwealth select either the Lower offense or greater Offense.
- 3) Does this case meet the U.S. v Blockburger same element test, and Lesser included offense ruling.
- 4) If the Petitions conduct happen on the same date, time, and location, and was one transaction, Wouldn't that constitute only one offense under the statute of 18.2 - 248.

Appendix A.

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

- 1). Fred M. Carrington v. Harold W. Clarke, No. 3:19-cv-805 (AJN). U.S. District Court for the Eastern District of Virginia. Judgment entered Sept 14, 2020
- 2). Fred M. Carrington v. Harold W. Clarke. No. 20-7592. (3:19-cv-00805-AJN-RCY) U.S. Court of Appeals for the Fourth Circuit. Judgment entered July 14, 2021
- 3). Fred M. Carrington v. Harold W. Clarke. No. 20- 7592. (3:19-cv-00805-AJN-RCY) U.S. Court of Appeals for the Fourth Circuit. Judgment entered August 24, 2021

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## TABLE OF AUTHORITIES CITED

### CASES

CASES	PAGE NUMBER
Ahbar v. Clarke U.S. District Lexis 102089 (2016)	Page # 3
U.S. v. Reftant, 341 F.3d 338, 347-48 (4 <sup>th</sup> Circuit 2003).	" "
U.S. v. White, 240 F.3d 132-33 (2 <sup>nd</sup> Cir 2001)	" "
U.S. v. Swafford, 512 F.3d 833, 845-46 (6 <sup>th</sup> Cir. 2008)	" "
Blockburger U.S. 284, 45 U.S. 299 (1932)	" "

### STATUTES AND RULES

18.2-248. Any person who manufactures, sells, give, distributes, or possess with the intent to manufacture, sell, give, or distribute. Will be guilty of a felony.

### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

**[ ] For cases from federal courts:**

The opinion of the United States court of appeals appears at Appendix D to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

**[ ] For cases from state courts:**

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 14, 2021.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Aug 24, 2021, and a copy of the order denying rehearing appears at Appendix D.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

(2)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1). Amendment V. No person shall be subject for the same offence to be twice put in jeopardy of life, or limb.
- 2) Statute 18.2-248-A. Any person who manufactures, sells, give, distribute, or possess with the intent to manufacture, sell, give, or distribute, will be guilty of a felony

### STATEMENT OF THE CASE

Petitioner was charged with Distribution of Schedule 1 or 11 Controlled Substance 3rd or subsequent. (CK15001643-00)

Possession with the intent of Schedule 1 or 11 Controlled Substance (CK15001643-01).

All under Va. Code. 18.2-248-A arising from one incident.

In Virginia Possession is a lesser included offense of Distribution. Austin v. Comm. 33 Va. App., 124, 531 S.E. 2d. 637 (2000).

Respondent concedes that all of the charged offenses arose from the same incident. See Respondent's Brief in Support of Rule 5 Answer and Motion to Dismiss at paragraph 3.

Petitioner claims that his conviction of the two offenses under Va. Code 18.2-248 violated the 5<sup>th</sup> Amendment Double Jeopardy Clause and is Multiplicitous or Duplicitous. Please see Appendix 7.

### REASONS FOR GRANTING THE PETITION

Petitioner Plea with Court to grant his Writ of Certiorari, because the Lower Courts Blantly disregard the fact that the decisions that was handed down Conflicts with a decision of the U.S. Supreme Court or another Court of Appeals and the Conflict was overlooked. And this Case is in line with the Rule 10(A) and (C). of the Supreme Court of the United States. It is very important that this Court utilize its Authority in the Case, because the decision of the other Court decided that Possession, and, Distribution require the same element, and Possession is a lesser included offence. The lower Courts totally disregarded the U.S. Court ruling and opinion in Blockburger v. United State, regarding the same element test and the lesser offence ruling. The state Court totally does not regard the ruling of this Court and other Court of Appeals.

Because of the evidence and the rulings of this Court I patiently and humbly ask this Writ of Certiorari be granted.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

J. M. Corrington

Date: 9-16-21