

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RONNIE LEE HIGHTOWER,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Respectfully submitted,

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QUESTION PRESENTED FOR REVIEW

Whether the District Court denied the Petitioner's constitutional right to a substantive due process under the Fifth Amendment by the lower court's interpretation of constructive possession contra to Henderson v. United States, 575 U.S. 622 (2015).

IN THE SUPREME COURT OF THE UNITED STATES

RONNIE LEE HIGHTOWER,

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v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT:

The Petitioner, RONNIE LEE HIGHTOWER, Appellant in the United States Court of Appeals for the Fifth Circuit and the Defendant in Case No. MO-20-CR-204 submits this Petition for Writ of Certiorari and respectfully prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on October 04, 2021.

OPINION BELOW

On October 04, 2021, the United States Court of Appeals for the Fifth Circuit entered its Opinion affirming the guilty verdict returned against Petitioner. A copy of the Opinion is attached as Appendix A. The District Court's Criminal Judgment is attached as Appendix B.

JURISDICTION

Jurisdiction of this Court is invoked under Title 28, United States Code sec. 1254(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution states, in pertinent part to the Case *sub judice*:

No person...shall be deprived of life, liberty, or property, without due process of law...

STATEMENT OF THE CASE

The Government obtained a single-count indictment against Ronnie Lee Hightower, Petitioner, alleging he conspired with an Ashley Daniels to possess with intent to distribute five grams or more of Actual methamphetamine.

Petitioner entered a plea of “not guilty”.

The case was tried before a jury before the Hon. David Counts, U.S. District Judge, Western District of Texas. The jury returned a verdict of guilty (ROA.585). Thereafter, on August 11, 2020, the District Judge sentenced Petitioner to 137 months incarceration, among other things (ROA.585-590).

Petitioner appealed to the United States Court of Appeals, for the Fifth Circuit. On or about October 04, 2021, the United States Court of Appeals affirmed the conviction of the District Court, the United States District Court for the Western District of Texas.

REASON FOR GRANTING THE WRIT

Hightower, hereafter referred to herein as the “Petitioner” urges that this case comes within the orbit of Henderson v. United States, 575 U.S. 622 (2015) and warrants reversal for acquittal.

The District Court erred, as a matter of law, by denying the Petitioner’s motion for acquittal at the conclusion of the Government’s case in chief. This error was further compounded by the United States Court of Appeals for the Fifth Circuit affirming the lower court.

The Government failed, as a matter of law, to prove that Petitioner had a casual connection of care, custody or control of the narcotics found in a small trailer and him.

The case arose from the execution of a search warrant at a trailer in a rural portion of Midland County, Texas, on March 05, 2020 (ROA.274). The warrant was based off of a controlled buy on March 03, 2020.

On March 03, 2020, a cooperating source traveled to 5100 East County Road 58 in Midland County, Texas and transacted for a firearm and methamphetamine. The transaction occurred in a RV trailer, a fifth wheel, on the party, according to the testifying agent and involved Hightower and Daniels. Under cross-examination though, the agent testified that the confidential informant had been in the home of a Larry Snodgrass, who lived on the property.

The property in question had at least four transitory residential structures located on it, including a long mobile home, occupied by a Cassidy Snodgrass; a mobile home, occupied by Larry Snodgrass; a small trailer occupied by a Ricky Jenkins and another trailer occupied by Aimee Vigil (ROA.267).

On March 05, 2020, officers executed a search warrant on a RV trailer adjacent to Vigil's. The warrant described the trailer as small, with a bed and couch inside (ROA.278).

On March 05, 2020, the date and time in issue, Hightower and Daniels had driven from this property to a convenience store located roughly two to three miles away. Officers found Hightower and Daniels at the convenience store and brought them back to the 5100 East County Road property.

At the completion of the Government's case at trial, Petitioner moves for acquittal under

Fed.R.Crim.P. 29. That motion for “instructed” verdict was denied by the District Court.

Petitioner raised a sufficiency of the evidence point in the United States Court of Appeals, who likewise turned down Petitioner. Petitioner now seeks redress in the Supreme Court.

In general, litigants are entitled to a fair and impartial verdict based solely on the evidence adduced at trial. Jordan v. Massachusetts, 225 U.S. 167, 176 (1912); Smith v. Phillips, 455 U.S. 209, 217 (1982). Further, the United States Supreme Court has recognized that due process implies a tribunal both impartial and mentally competent to afford a hearing with a factfinder capable and willing to decide the case solely on the evidence before it. Tanner v. United States, 483 U.S. 107, 117 (1987).

The Government failed to prove, as a matter of law, that Petitioner possessed the narcotic, on the ground that there was lacking evidence of a causal connection between the narcotic found inside a safe inside a trailer and Petitioner.

To obtain a conviction under 18 U.S.C. Sec. 841, the Government must prove that

- (1) An agreement between two or more persons
- (2) to possess a narcotic with intent to distribute;
- (3) and participation in the conspiracy.

See Jones v. United States, 526 U.S. 227 (1999); United States v. Mitchell, 484 F.3d 762, 768 (5th Cir. 2007).

The Government can prove possession by showing that a defendant exercised either direct physical control over a thing, that is actual possession; or dominion or control over the thing itself or the area in which it was found. United States v. DeLeon, 170 F.3d 494, 496 (5th Cir. 1999). A person is in constructive possession of an item, knowingly, when he holds the power and ability to exercise dominion and control over it. United States v. Massey, 687 F.2d 1348,

1354 (10th Cir. 1982). However, mere presence at the scene plus association with illegal possession is not enough to establish constructive possession. United States v. Wright, 24 F.3d 732, 735 (5th Cir. 1994); United States v. Birmley, 529 F.2d 103, 107 (6th Cir. 1976).

The United States Court of Appeals erred in affirming the conviction. The opinion omits a requirement that the Government prove a link of control between Petitioner, the narcotic in the safe and Petitioner, per Henderson. As such, the Court of Appeals for the Fifth Circuit is contra to Henderson. Buttressing this argument are those convictions reversed where the Government insufficiently connected the Defendant to the weapon allegedly possessed. In United States v. Blue, 957 F.2d 106 (4th Cir. 1992), the court of appeals reversed a conviction where the evidence showed only that the gun found in the car was under defendant's seat and no other evidence linked the gun to the defendant other than a police officer's testimony that he saw defendant's shoulder dip down after stopping the car. In United States v. Beverly, 750 F.2d 34 (6th Cir. 1984), the court reversed the conviction due to insufficient evidence of possession despite the fact a gun with defendant's fingerprints was found in the wastebasket located near the defendant. In United States v. Evans, 950 F.2d 187, 192 (5th Cir. 1991), the court of appeals held that evidence of knowledge was insufficient where the defendant drove a car that had been driven immediately before by other drug dealers, and a gun was found on the rear floorboard and the officer observed him lean into the floorboard.

Thus, the Court of Appeals erred here by concluding the guilty finding was supported by substantial evidence. Gordon v. United States, 438 F.2d 858, 868, n. 30 (5th Cir. 1971), cert. denied 404 U.S. 828 (1971).

In sum, this is a circumstantial evidence case that fails on the evidentiary ground that the

Government did not prove dominion or control over the subject narcotic, which was located in a safe in a small trailer. Petitioner prays for reversal of the conviction.

CONCLUSION

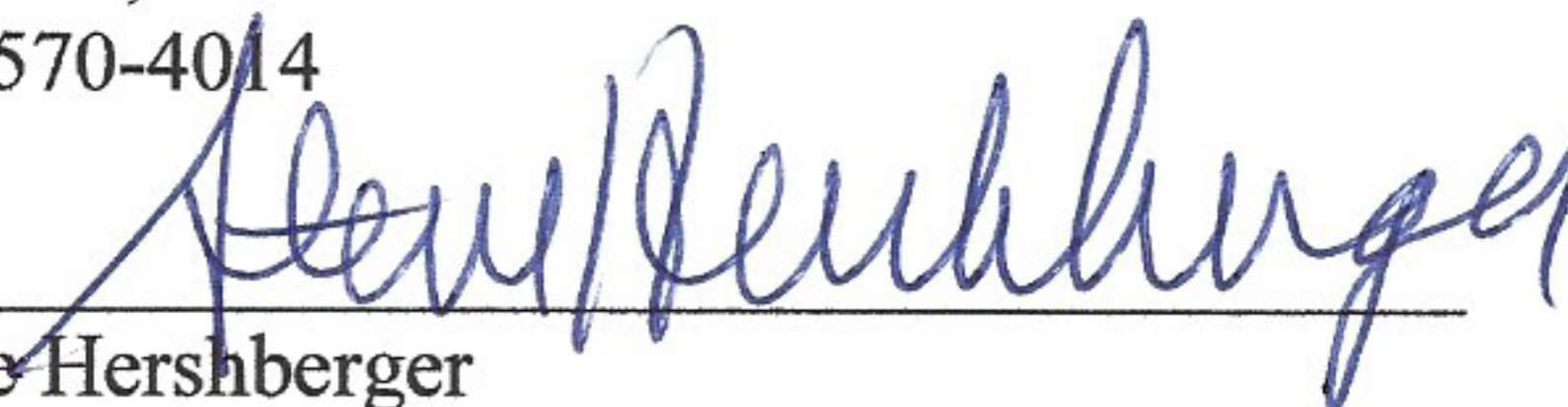
For the foregoing reasons, Petitioner respectfully submits that the Petition for Writ of Certiorari should be granted and prays that the Criminal Judgment be reversed, and the case be remanded to the United States District Court for the Western District of Texas for an entry of a judgment of acquittal. Petitioner further requests such other relief to which he is justly entitled to receive either in law or through equity.

PRAYER FOR RELIEF

Petitioner, RONNIE LEE HIGHTOWER, requests that the Petition for Writ of Certiorari be granted for the reasons stated and that the conviction entered against him be vacated and this case remanded for the entry of a judgment of acquittal, and such other relief to which Petitioner would be entitled to receive in law or in equity.

Respectfully submitted,

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By: 
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Texas State Bar # 09543950

Attorney for Petitioner

APPENDIX A

(Opinion of the United States Court of Appeals, for the Fifth Circuit)

United States Court of Appeals
for the Fifth Circuit

No. 21-50024
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 4, 2021

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ASHLEY NICOLE DANIELS; RONNIE LEE HIGHTOWER,

Defendants—Appellants.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:20-CR-204

Before SMITH, STEWART, and GRAVES, *Circuit Judges.*

PER CURIAM:*

Ashley Nicole Daniels and Ronnie Lee Hightower were convicted after a jury trial of one count of conspiring to possess with the intent to distribute five grams or more of actual methamphetamine. On appeal,

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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Daniels and Hightower challenge the sufficiency of the evidence to support their convictions.

Because Daniels and Hightower preserved their sufficiency challenges in the district court, our review is de novo. *See United States v. Carbins*, 882 F.3d 557, 562-63 (5th Cir. 2018). In reviewing preserved sufficiency claims, we determine whether “after viewing the evidence and all reasonable inferences in the light most favorable to the [Government], *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Vargas-Ocampo*, 747 F.3d 299, 301 (5th Cir. 2014) (en banc) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

To convict Daniels and Hightower of conspiracy to possess with intent to distribute methamphetamine, the Government was required to establish at trial: “(1) the existence of an agreement between two or more persons to possess with intent to distribute [the charged amount of methamphetamine], (2) that [the defendants] knew of the conspiracy and intended to join it, and (3) that [they] participated in the conspiracy.” *United States v. Mitchell*, 484 F.3d 762, 768 (5th Cir. 2007). “The jury may infer any element of conspiracy from circumstantial evidence.” *United States v. Zamora-Salazar*, 860 F.3d 826, 832 (5th Cir. 2017) (internal quotation marks, citation, and brackets omitted).

The trial record reflects that a confidential informant advised law enforcement that Daniels and Hightower were selling methamphetamine out of their fifth-wheel trailer, and a controlled buy was arranged. Daniels and Hightower were both present and actively participated in the buy, which was recorded and surveilled by law enforcement. During the buy, Daniels and Hightower discussed prior purchases of methamphetamine which suggested their involvement in larger drug trafficking activities. The search of the trailer two days later yielded almost an ounce of actual methamphetamine,

No. 21-50024

baggies, and digital scales, which the Government's expert witness in the field of narcotics testified was indicative of drug trafficking. Contrary to their contentions, there was sufficient evidence for a jury to make a reasonable inference that Daniels and Hightower had exclusive control or custody over the trailer and the floor safe where the methamphetamine was found.

Finally, Daniels asserts that the audio recording of the controlled buy was "hard to hear," and she challenges the sufficiency of Detective Stephen Standage's voice identification. The evidence, here, was sufficient to show that Detective Standage had "some familiarity" with Daniels's voice to form the basis for his identification. *United States v. Jones*, 873 F.3d 482, 495 (5th Cir. 2017) (internal quotation marks and citation omitted). The jury was responsible for determining the weight to accord his identification testimony. *See United States v. Cuesta*, 597 F.2d 903, 915 (5th Cir. 1979).

In light of the foregoing, we conclude that the evidence, viewed in the light most favorable to the Government and with all reasonable inferences made in favor of the verdict, was sufficient to support Daniels's and Hightower's convictions for conspiracy to possess with the intent to distribute five grams or more of actual methamphetamine. *See Vargas-Ocampo*, 747 F.3d at 301.

AFFIRMED.

APPENDIX B

(Criminal Judgment, United States District Court for the Western District
of Texas, Midland Division)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA

v.

Case Number: 7:20-CR-00204(1) DC

USM Number: 47508-480

RONNIE LEE HIGHTOWER

Alias(es):

AKA Ronnie Lee Hightower, Jr; AKA Ronnie Hightower;;
Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, Ronnie Lee Hightower, was represented by Steve Hershberger.

The defendant was found guilty to Count(s) 1, of the Indictment on October 14, 2020 by jury trial. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count(s)</u>
21 U.S.C. § 846, 21 U.S.C. § 841(b)(1)(B) and 21 U.S.C. § 841(a)(1)	Conspiracy to Possess With Intent to Distribute Five Grams or More of Actual Methamphetamine	March 5, 2020	1

As pronounced on January 14, 2021, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this 19th day of January, 2021.



David Counts
United States District Judge

DEFENDANT: RONNIE LEE HIGHTOWER
CASE NUMBER: 7:20-CR-00204(1) DC

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of **One Hundred Thirty-Seven (137) months** with credit for time served while in custody for this federal offense pursuant to 18 U.S.C. § 3585(b).

The Court makes the following recommendations to the Bureau of Prisons:

That if eligible, the defendant participate in the 500 Hour Intensive Drug Abuse Education Program.

That the defendant participate in the Bureau of Prisons' Job Training Program while incarcerated.

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of the Judgment.

United States Marshal

DEFENDANT: RONNIE LEE HIGHTOWER
CASE NUMBER: 7:20-CR-00204(1) DC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Five (5) years**.

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court and shall comply with the following additional conditions:

The defendant shall submit his or her person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search shall be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: RONNIE LEE HIGHTOWER
CASE NUMBER: 7:20-CR-00204(1) DC

- [5] The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [6] The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.
- [7] The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [8] The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- [9] If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
- [10] The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified, for the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- [11] The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- [12] If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
- [13] The defendant shall follow the instructions of the probation officer related to the conditions of supervision.
- [14] If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.
- [15] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.
- [16] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.
- [17] If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

AO 245B (Rev. TXW 11/19) Judgment in a Criminal Case

DEFENDANT: RONNIE LEE HIGHTOWER
CASE NUMBER: 7:20-CR-00204(1) DC

CRIMINAL MONETARY PENALTIES/ SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 200 E. Wall St. Room 222, Midland, TX 79701.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTAL:	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of **\$100.00**.

Fine

The fine is waived because of the defendant's inability to pay.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.