

No.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

OCTOBER TERM 2022

JON CHARLES VANCE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

6<sup>th</sup> Circuit Case Nos. 5819/5820

MARK E. BROWN (TN. BPR #021851)\*  
*Attorney for the Petitioner Jon Charles Vance  
appointed under the provisions of the  
Criminal Justice Act, 18 U.S.C. §30064*  
MENEFEE & BROWN, P.C.  
9724 Kingston Pike, Ste. 505  
Knoxville, Tennessee 37922  
Phone: (865) 357-9800  
Fax: (865) 357-9810  
e-mail: [mbrown@menefeebrown.com](mailto:mbrown@menefeebrown.com)

\*Counsel of Record

## **QUESTION PRESENTED**

### **I.**

Whether the Petitioner Jon Charles Vance was denied his fundamental right under the Fifth Amendment to Due Process when the Jury failed to find him Guilty beyond a reasonable doubt on every element of the crimes charged against him.

## **PARTIES TO THE PROCEEDING**

Pursuant to United States Supreme Court Rule 14(1)(b), your Petitioner states that the parties to this Petition are:

*Petitioner:* Jon Charles Vance

*Respondent:* United States of America

The Petitioner Jon Charles Vance is not aware of any other petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit seeking review of the Sixth Circuit opinion that is the subject of this appeal.

## TABLE OF CONTENTS

QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDING.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv
OPINIONS BELOW.....	1
STATEMENT OF JURISDICTION.....	2
CONSTITUTIONAL PROVISIONS INVOLVED.....	2,3
STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	3
REASON FOR GRANTING THE WRIT.....	8
I.    Vance was Denied his Fundamental Right of Due Process to Have a Jury Prove Each Element of the Crime and Guilt beyond a Reasonable Doubt.....	8
CONCLUSION.....	11
CERTIFICATE OF SERVICE.....	12
APPENDICIES	

\*Appendix 1 – Judgment in a Criminal Case (July 17, 2020)

\*Appendix 2 – Opinion of the United States Court of Appeals for the Sixth Circuit  
(November 4, 2021)

\*Appendix 3 – Order Denying Petition for Rehearing with Suggestion of Rehearing  
En Banc (December 8, 2021)

CASES CITED:

<u>Apprendi v. New Jersey,</u> 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000).....	9
<u>In re Winship,</u> 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).....	9, 10
<u>Johnson v. United States,</u> 520 U.S. 461, 466 – 467, 117 S. Ct. 1544, 137 L. Ed. 2d 718 (1997).....	8
<u>United States v. Gaudin,</u> 515 U.S. 506, 510, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995).....	10
<u>United States v. Richardson,</u> 526 U.S. 813, 817, 119 S. Ct. 1707, 143 L. Ed. 2d 985 (1999).....	10

RULES CITED:

Supreme Court Rule 10(c).....	7
Supreme Court Rule 14(1)(b).....	11
Fed. R. Crim. P. 30(d).....	8
Fed. R. Crim. P. 52(b).....	8

CONSTITUTION CITED:

U.S. Const., amend V.....	2, 3
---------------------------	------

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

OCTOBER TERM 2022

JON CHARLES VANCE,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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

The Petitioner Jon Charles Vance respectfully prays that a Writ of Certiorari issue to review the Judgement and Opinion of the United States Court of Appeals for the Sixth Circuit entered in the above-styled proceeding on November 4, 2021, and an Order denying petition for rehearing with suggestion of rehearing en banc, entered on December 8, 2021.

**OPINIONS BELOW**

(1) Judgment in a Criminal Case, United States v. Jon Charles Vance, Case No. 1:18-CR-00114-TRM-CHS(5), United States District Court for the Eastern District of Tennessee, July 17, 2020. (Appendix 1).

(2) Opinion, United States v. Jon Charles Vance, Case No. 5819/5820, Untied States Court of Appeals for the Sixth Circuit, November 4, 2021. (Appendix 2).

(3) Order Denying Petition for Rehearing with Suggestion of Rehearing En Banc, United States v. Jon Charles Vance, Court of Appeals for the Sixth Circuit, December 8, 2021. (Appendix 3).

## **STATEMENT OF JURISDICTION**

The Judgment of the United States Court of Appeals for the Sixth (6<sup>th</sup>) Circuit was entered on November 4, 2021, affirming the Petitioner Jon Charles Vance's sentence of three hundred (300) months following his conviction by a jury on charges of Conspiracy to Distribute and Possession with Intent to Distribute fifty (50) grams or more of actual methamphetamine and five hundred (500) grams or more of methamphetamine mixture in violation of 21 U.S.C. §§846, 841(b)(1)(A), 841(a)(1), and 851. (Indictment Count 1); Aiding and Abetting, Possession with Intent to Distribute actual methamphetamine in violation of 18 U.S.C. §2, 21 U.S.C. §841(a)(1), §841(b)(1)(c) and §851 (Indictment Count 19); and Aiding and Abetting, Possession with Intent to Distribute fifty (50) grams or more of actual methamphetamine in violation of 21 U.S.C. §841(a)(1), §841(b)(1)(A), and §851. (Indictment Count 20).

A Final Judgment was entered by the United States District Court for the Eastern District of Tennessee on July 17, 2020. A Petition for Rehearing with Suggestion for Rehearing En Banc was denied by an Order entered by the Sixth Circuit Court of Appeals on December 8, 2021.

The United States Court of Appeals for the Sixth Circuit had jurisdiction over Vance's appeal pursuant to 28 U.S.C. §1291, which confers on a Court of Appeals jurisdiction from all final decisions of District Courts of the United States.

Jurisdiction of this Court is involved pursuant to 28 U.S.C. §1254(1), which provides that cases in Courts of Appeal may be reviewed by the Supreme Court by Writ of Certiorari granted upon the petition of any party. Jurisdiction is also invoked by the United States Supreme Court Rules 10 and 13.

The Fifth (5<sup>th</sup>) Amendment to the United States Constitution provides –

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval

forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

(U.S. Const. Amend. V).

### **STATUTORY PROVISIONS INVOLVED**

None are at issue.

### **STATEMENT OF THE CASE**

#### **A.**

1. The Petitioner Jon Charles Vance was indicted on August 8, 2018, along with six (6) co-defendants, as part of a multi-count Indictment. Vance was charged in three (3) counts; Count 1 – Conspiracy to Distribute and Possess with Intent to Distribute fifty (50) grams or more of actual methamphetamine and five hundred (500) grams of methamphetamine mixture in violation of 21 U.S.C. §§841(a)(1), 841(b)(1)(A) and 846.

In Count 19 Vance was charged, along with co-defendants Derek Kitchens and Megan Beatty with aiding and abetting one another in the possession with intent to distribute five (5) grams or more of actual methamphetamine into the Hamilton County Tennessee jail on February 13, 2018. And in Count 20, Vance and another co-defendant Connie Beltran were charged with aiding and abetting each other to possess with intent to distribute fifty (50) grams of actual methamphetamine seized from a pick-up truck in Collegedale, Tennessee on March 29, 2018.

2. Vance filed a Motion to Suppress all drug evidence obtained as the result of a seizure and subsequent search of a white GMC pick-up truck he drove to the Collegedale, Tennessee Walmart on March 29, 2018. Vance argued the search and seizure of the vehicle was

not based on probable cause and, as a result, the subsequent search conducted by the Collegedale police was also tainted.

The Collegedale Police had been dispatched to the Walmart on a shoplifting charge. Walmart loss prevention had detained Vance and Beltran for skip-scanning; scanning some of the items they were going to purchase, while putting others into shopping bags without first scanning those. Three (3) officers arrived at the scene. Vance and Beltran fled on foot. When they were finally apprehended, Vance was evasive in answering officers questions and told them a friend dropped them off at the Walmart. Beltran told officers they arrived in a white pick-up truck. Officers also found a partial key in Vance's possession, and they began searching for the vehicle. As part of the search for the vehicle, officers viewed Walmart surveillance video. The video showed Vance and Beltran get out of the truck, go into the Walmart, go back to the truck, and back to the Walmart. Officers theorized there were stolen items in the vehicle. Officers took the partial key, located the truck and one of the officers got into the truck and started the engine. Officers towed it to the police impound lot and obtained a search warrant.

3. The Magistrate Judge conducted an evidentiary hearing and entered a Report and Recommendation, recommending denial of Vance's Motion. The Magistrate Judge concluded officers had probable cause to seize the vehicle, and subsequently apply for a search warrant. Even if officers lacked probable cause, the Magistrate Judge ruled that Vance abandoned any interest he had in the truck. Vance filed objections to the Magistrate Judge's Report and Recommendation on July 19, 2019, The District Judge overruled Vance's objections and adopted the Report and Recommendation as the Order of the Court.

**B.**

1. Vance's case proceeded to trial on March 2 and 3, 2020. Nine (9) government witnesses testified and twenty-six (26) exhibits were introduced. Vance rested his case without presenting any proof. Two (2) of the Government's witnesses testified regarding the search and seizure of the white pick-up truck. Officer Gienapp of the Collegedale Police Department testified regarding Vance's arrest, the location of the truck, opening the door and starting it.

Officer Holloway admitted that he had no knowledge that methamphetamine was in the truck until after it was impounded and searched –

“Q: Sure. I guess the point I'm getting to - -

A: Yeah.

Q: - - is that you would not have known about the methamphetamine in the vehicle until you actually conducted the search.

A: Oh, that's correct, yes, sir.

Q: Okay.

A: I had no idea.

Q: That would be the first time you ever saw it.

A: Oh, yeah. Yes, sir.

Q: You would have never seen the methamphetamine at the Walmart?

A: No, sir.

Q: Okay. Because - -

A: I didn't approach the vehicle at Walmart.”

2. On March 3, 2020, the Jury found Vance guilty of Counts 1, 19 and 20. Vance renewed his Motion for Judgment of Acquittal, along with a request for a new trial. The major part of Vance's post-trial Fed. R. Crim. P. 29 Motion focused on an error on the jury verdict form which Vance asserted required all three (3) counts against him be dismissed with prejudice as the jury failed to find an essential element of the crimes charged beyond a reasonable doubt. Vance also argued the jury verdict was either arbitrary or irrational.

The verdict form error was raised by the prosecution. Essentially the jurors found two (2) inconsistent amounts of drugs in the conspiracy as a whole. In Count 1, jurors found the conspiracy

as a whole was fifty (50) grams or more, while finding just five (5) grams or more in the conspiracy as a whole in response to Count 19.

**VERDICT FORM** (reproduced from original – District Court Doc. 300).

*Question 1:*

With respect to the charge in Count One of the Indictment for conspiracy to distribute and/or to possess with intent to distribute methamphetamine, we the jury unanimously find the Defendant Jon Charles Vance:

GUILTY       NOT GUILTY

If you answered “guilty” in response to Question 1, proceed to Question 1(a).

If you answered “not guilty” in response to Question 1, skip Question 1(a).

*Question 1(a):*

With respect to Count One, the amount of methamphetamine (actual) or a mixture and substance containing a detectable amount of methamphetamine involved in the conspiracy as a whole (indicate answer by checking one line below):

fifty grams or more of methamphetamine (actual) or five hundred grams or more of a mixture or substance containing a detectable amount of methamphetamine.

five grams or more of methamphetamine (actual) or fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine but less than fifty grams of methamphetamine (actual) or five hundred grams of a mixture or substance containing a detectable amount of methamphetamine.

less than five grams of methamphetamine (actual) or fifty grams of a mixture or substance containing a detectable amount of methamphetamine.

*Question 2:*

With respect to the charge in Count Nineteen of the Indictment for possession of methamphetamine (actual) with the intent to distribute or aiding and abetting possession of methamphetamine with the intent to distribute, we the jury unanimously find the Defendant Jon Charles Vance:

GUILTY       NOT GUILTY

If you answered “guilty” in response to Question 2, proceed to Question 2(2).

If you answered “not guilty” in response to Question 2, skip Question 2(a).

*Question 2(a):*

With respect to Count Nineteen, the amount of methamphetamine (actual) involved in the conspiracy as a whole was (indicate answer by check one line below):

five grams or more of methamphetamine (actual).

less than five grams of methamphetamine (actual).

The Court denied Vance’s Rule 29 Motion/Rule 33 Motion on July 14, 2020.

**C.**

1. Probation disclosed Vance’s Pre-Sentence Report on May 22, 2020. Vance’s total offense level was forty (40), and his criminal history score place him in Category V, resulting in a guideline range of three hundred sixty (360) months to life.

2. Vance objected to his base offense level and several enhancements added by probation. On July 17, 2020, the court overruled Vance’s objections to the Pre-Sentence Report, but did depart sixty (60) months and sentenced Vance to three hundred (300) months.

**D.**

The Petitioner now seeks review by the United States Supreme Court for the following reason:

1. Pursuant to Supreme Court Rule 10(c),<sup>1</sup> the Sixth Circuit Court of Appeals decided an important federal question – the defendant’s due process right to have a jury prove him guilty of each element of a crime beyond a reasonable doubt – in a way that conflicts with that principal

---

<sup>1</sup> Supreme Court Rule 10(c) – “a state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this court.

and this Court's long-standing case law. An error in the jury verdict form meant the jury failed to find one of the essential elements of the crime charged beyond a reasonable doubt and the Sixth Circuit erred in denying Vance relief.

### **REASONS FOR GRANTING THE WRIT**

#### **II. Vance was Denied his Fundamental Right of Due Process to Have a Jury Prove Each Element of the Crime and Guilt beyond a Reasonable Doubt.**

Vance appealed the error in the jury verdict form under a plain-error review standard for the Sixth Circuit. Vance did not object to the verdict form at the District Court level and neither did the Government as no one noticed the error until the Government brought it to the Court's attention post-trial.

Fed. R. Crim. P. 30(d) provides –

“(d) Objections to Instructions. A party who objects to any portion of the instructions or to a failure to give a requested instruction must inform the court of the specific objection and the grounds for the objection before the jury retires to deliberate. An opportunity must be given to object out of the jury’s hearing and, on request, out of the jury’s presence. Failure to object in accordance with this rule precludes appellate review, except as permitted under Rule 52(b).”

Fed. R. Crim. P. 30(d) (West 2021).

Likewise, Fed. R. Crim. P. 52(b) provides –

“(b) Plain Error. A plain error that affects substantial rights may be considered even though it was not brought to the court’s attention.”

Fed. R. Crim. P. 52(b) (West 2021).

Before an error can be corrected that was not raised at trial there must be (1) error, (2) that is plain, and (3) that affects substantial rights. Johnson v. United States, 520 U.S. 461, 466-467, 117 S. Ct. 1544, 137 L. Ed. 2d 718 (1997). “Where all three of these conditions are met an appellate court may then exercise its discretion to notice a forfeited error, but only if (4) the error substantially affects the fairness, integrity, or public reputation of judicial proceedings.” Id.

In denying Vance's appeal, the Sixth Circuit held:

"The error in the verdict form does not entitle Vance to any relief. The error only affected the drug quantity for Count 19, and Vance received a windfall because the district court reduced Vance's conviction on that count to the lesser-included offense under 21 U.S.C. §841(b)(1)(C)."

(Sixth Cir. Op. p. 15).

In asserting Vance made a leap of logic that the jury's drug quantity findings constitute inconsistent verdicts, the Court wrote:

"The death knell for Vance's challenge is that the district court treated Question 2(a) as unanswered, meaning that on Count 19 Vance was convicted for the lesser-included offense under 21 U.S.C. ¶(b)(1)(C) – possession of methamphetamine with intent to distribute an unspecified amount of methamphetamine. Conspicuously missing from Vance's briefs is any argument that this result was impermissible or caused him prejudice. The truth is Vance was not prejudiced by the clerical error – he benefitted. He was merely convicted of a lesser-included offense and all the elements of the former necessarily include those of the latter."

(Op. p. 17).

It's confusing why the Court of Appeals would assert that Vance failed to argue the error in the jury verdict form caused him prejudice, when that was the sole reason for appealing it in the first place. Confusing as that may be, what is even more confusing is the Court of Appeals brushing past the real issue: Was Vance denied his due process right to a fair trial as the jury failed to find all the essential elements of the crime beyond a reasonable doubt?

This Court has long regarded the proscription of any deprivation of liberty without due process of law a constitutional protection of "surpassing importance." Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). This right (and others provided by the Constitution) "indisputably entitle a criminal defendant to a jury determination that he is guilty of every element of the crime with which he is charged beyond a reasonable doubt." Id. See also, In Re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970) ("The Due Process Clause

protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime which he is charged”). And, United States v. Gaudin, 515 U.S. 506, 510, 115 S. Ct. 2310, 132 L. Ed. 2d 444(1995) (“The Fifth Amendment to the United States Constitution guarantees that no one will be deprived of liberty without due process of law and the Sixth that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. We have held that these provisions require criminal court convictions to rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt”).

“Federal crimes are made up of factual elements, which are ordinarily listed in the statute that defines the crime, calling a particular kind of fact an element carries certain legal consequences.” United States v. Richardson, 526 U.S. 813, 817 119 S. Ct. 1707, 143 L. Ed. 2d 985 (1999). “A jury in a federal criminal case cannot convict unless it unanimously finds that the Government has proved each element.” Id.

Here there is no question that the amount of drugs involved in the conspiracy as a whole is an element of the offense. “Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum whether that statute calls it an element or a sentencing factor, must be submitted to a jury and proved beyond a reasonable doubt.” Apprendi, 530 U.S. at 490, 120 S. Ct. at 2362-2363.

As the jury found two different amounts in the conspiracy as a whole, the jury failed to find one of the essential elements beyond a reasonable doubt. Vance was deprived of his right to a fair trial and seeks review by this Court and granting of the Writ of Certiorari.

## CONCLUSION

This case presents an important issue that requires Supreme Court review. Thus the Defendant-Appellant Jon Charles Vance respectfully requests that this Court grant his Petition for Writ of Certiorari.

Respectfully submitted this 3<sup>rd</sup> day of March, 2022.

/s/ Mark E. Brown

Mark E. Brown (Tennessee BPR #021851)

*Court appointed Attorney for Defendant-Appellant*

*Jon Charles Vance under the Criminal Justice Act*

MENEFEE & BROWN, P.C.

9724 Kingston Pike, Ste. 505

Knoxville, Tennessee 37922

Phone: (865) 357-9800

Fax: (865) 357-9810

e-mail: [mbrown@menfeebrown.com](mailto:mbrown@menfeebrown.com)

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of March, 2022, I served a true and exact copy of the foregoing document on the following: SOLICITOR GENERAL OF THE UNITED STATES OF AMERICA, DEPARTMENT OF JUSTICE, ROOM 5614, 950 PENNSYLVANIA AVENUE, N.W., WASHINGTON, D.C. 20530-0001 by placing the same in the United States Mail, first class postage pre-paid.

/s/ Mark E. Brown  
Mark E. Brown