

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**  
ROBBIE CATCHINGS,

*Petitioner,*

v.

**UNITED STATES OF AMERICA,**

*Respondent*

On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

Whether sufficient evidence supported the jury's verdict that petitioner knowingly possessed a firearm, in violation of 18 U.S.C. § 922(g).

## STATEMENT OF RELATED PROCEEDINGS

United States District Court (C.D. Cal.):

*United States v. Robbie Catchings*, No. 2:17-cr-00692-SVW (Jan. 22, 2020)

United States Court of Appeals (9th Cir.):

*United States v. Robbie Catchings*, No. 20-50005 (Dec. 22, 2021).

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Robbie Catchings respectfully petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit in his case.

**OPINION BELOW**

The opinion of the court of appeals is not published in the Federal Reporter. It is provided in the Appendix. (App. 1a.)

**JURISDICTION**

The judgment of the court of appeals was entered on December 22, 2021. (App. 1a.) This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

## STATUTORY PROVISION INVOLVED

### 18 U.S.C. § 922(g). Unlawful Acts.

It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

## STATEMENT OF THE CASE

Petitioner was convicted, after a jury trial, of one count of being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1). (ER 2.) He was sentenced on January 13, 2020 to 46 months imprisonment, to be followed by 3 years of supervised release. (ER 2.)

1. This case began with a traffic stop. Police officers pulled over a U-Haul containing three people. (ER 344-49.) The officers had the driver, Mr. Catchings, and his two passengers step out of the vehicle. (ER 344, 352-53, 374.) The police then searched the vehicle. (ER 353-55.) On the driver's seat, an open purse, belonging to one of the passengers, was found on its side, next to a pink lotion container, a cable, and a piece of red cardboard, all of which appeared to have spilled from the purse. (ER 378-79, 415, 600.) Also on the seat, beside these items, was a handgun. (ER 355, 378-79, 395, 600.)

The gun, forensic examination showed, lacked Mr. Catchings' fingerprints, but had some of his DNA on it, which, unlike fingerprints, could easily transfer to a

gun from other surfaces, such as the seat of a car. (App. 4a; ER 477, 485, 519-22, 534.) One of the police officers testified that he saw Mr. Catchings make a brief shoulder-dip movement “that suggested he put something behind his back.” (App. 4a; ER 390.) The gun’s muzzle was facing the passenger seat. (ER 563, 600.) On the driver’s seat, as noted, was also an open purse, belonging to one of Mr. Catchings’ two passengers. The contents of the purse had spilled out onto the passenger seat, suggesting that the gun may have spilled out of the purse as well. The government argued to the jury that this evidence showed that Mr. Catchings knowingly possessed the gun. (ER 554-56.)

2. The defense made an oral Federal Rule of Criminal Procedure 29 motion for a judgment of acquittal at the close of all the evidence, which the district court denied. (ER 542-45.) The jury returned a guilty verdict. (App. 1a.)

#### **REASONS FOR GRANTING THE PETITION**

The court of appeals held that under this Court’s *Jackson v. Virginia*, 443 U.S. 307 (1979), standard, the evidence was sufficient for a “rational juror to find beyond a reasonable doubt that Catchings knowingly possessed a firearm.” (App. 3a.) This was error, which this Court should grant review to correct.

There was no direct evidence that Mr. Catchings ever possessed the handgun found on the U-Haul’s seat. No witness testified that he or she saw Mr. Catchings hold or control the gun. The government introduced no documents, such as purchase records, connecting Mr. Catchings to the gun. Nor were Mr. Catchings’ fingerprints on the gun. Instead, the government’s case that Mr. Catchings knowingly possessed

a gun stood on three circumstantial pieces of evidence: (1) that Mr. Catchings' DNA was on the gun; (2) that a police officer saw, as he approached the vehicle from the passenger side, Mr. Catchings' right shoulder dip down; and (3) that the gun was found wedged into the driver's seat of the U-Haul. (App. 4a.)

These pieces of evidence, individually and taken together, were not enough to enable a rational juror to find that the knowing-possession element had been proven beyond a reasonable doubt. Yet the court of appeals held that “[t]ogether, this evidence establishes a ‘sufficient connection’ between Catchings and the weapon.” (App. 4a.) The court of appeals did not explain why that was the case. Its conclusion was erroneous for three reasons.

*First*, the DNA evidence, central to the government's case, should have had no purchase to the court of appeals. To be sure, if there were no DNA match, that would exonerate Mr. Catchings. But the converse is not true: the presence of DNA does not inculpate him. The most the presence of Mr. Catchings' DNA can show is that the gun contacted something Mr. Catchings' body had at some point touched. And of course, Mr. Catchings drove the U-Haul. The gun was found on the U-Haul's driver's seat. And so it's nearly inevitable—whether or not Mr. Catchings ever held the gun—that DNA transferred from Mr. Catchings to the gun via that seat. The DNA evidence thus makes it no more likely that Mr. Catchings ever held the gun.

The government's DNA forensic expert acknowledged that “secondary transfer” is both real, likely, and prevents a professional forensic analyst from determining *how* DNA found its way onto a gun. Indeed, she acknowledged that

academic research showed that secondary transfer occurred in 85 percent of samples tested, and that secondary transfer of DNA could falsely link someone to a crime if one were to rely on the presence of DNA alone. (ER 535-36.)

To be sure, if Mr. Catchings' *fingerprints* were on the gun, *then* a rational juror could easily conclude that it was his gun. But his prints were not found on the gun. (ER 477, 485.) And DNA, because of the way it transfers, is different. Thus the DNA evidence cannot serve the purpose the government expressly assigned to it—to provide a substitute for fingerprints in showing that Mr. Catchings knowingly possessed the gun. In its closing, the government stated, “[W]e'd submit to you that defendant's DNA is on the gun because it's his gun.” (ER 555.) That's not plausible. The government asked the jury to make an irrational inference based on the presence of Mr. Catchings' DNA, even though it is hard to think of a scenario where his DNA would not be on the gun given the reality of secondary transfer and the fact that both Mr. Catchings and the gun spent time, at some point, on the same seat.

And so the DNA evidence is not something a rational juror could rely on in assessing whether Mr. Catchings knowingly possessed the gun beyond a reasonable doubt. Yet the court of appeals held, incorrectly, that the DNA established a meaningful connection between Mr. Catchings and the gun. (App. 4a.)

*Second*, the court of appeals violated principles of kinesiology when it found sufficient the fact that “the arresting officer saw Catchings move in a way that suggested he put something behind his back.” (App. 4a.) The Officer's testimony was

that Mr. Catchings' shoulder made a "dip." (ER 390.) But the shoulder-dip claim suffers from mechanical implausibility, in two separate respects.

The shoulder-dip theory is mechanically implausible, first, because one's shoulder rises rather than falls when one moves an object behind his back.

And it is implausible for a second reason. Assume for the moment that Mr. Catchings were to have picked up the loaded gun and to have placed it behind his back. Precisely because the gun was loaded, he would have picked it up the usual way—by the handle—not by the trigger or muzzle. The trouble is that when one's palm is facing upward, the wrist can easily turn inward—but it cannot turn outward. So if, as the court of appeals concluded, Mr. Catchings placed the gun behind his back, slightly tucked into the back of the driver's seat, the muzzle end of the gun would have been pointing toward the *driver's* door—not as it was found, pointing toward the *passenger* side of the vehicle. (ER 600 (photograph of gun on seat).) Indeed, Mr. Catchings would have had to twist his wrist in a highly unnatural motion—outward—to have secured a gun behind his back with the muzzle pointing toward the passenger area, as it was found, rather than toward the driver's door. So to credit the government's "shoulder dip" testimony, the jury would have had to believe, contrary to kinesiology, that the human wrist could fluidly turn in both directions.

In short, the government's explanation for how the gun wound up on the driver's seat required jurors to make inferences contrary to the way wrists and

shoulders move. The court of appeals should not have found this explanation sufficient to support the knowing-possession element of the offense.

*Third*, the fact that the gun was found on the driver's seat also does not provide enough for a rational jury to conclude that Mr. Catchings knowingly possessed the gun. After all, a purse and its spilled contents were also, the government showed in making its case, on that same seat. It is implausible to think that Mr. Catchings was sitting on a purse (as well as a cable and tube of lotion) while driving. Yet the picture of the driver's seat the government showed to the jury—with the purse, some of its contents, and the gun spilled onto it (ER 600)—would require the jury to believe just that: that Mr. Catchings drove not only with a gun behind his back, but also while sitting on a purse.

\* \* \*

In sum, the DNA evidence the government introduced cannot show that Mr. Catchings ever held, and thus knowingly possessed, the gun, given the likelihood of secondary transfer. The testimony about a shoulder-dipping movement cannot do so either, given the way human wrists and shoulders move. Nor can the fact that the gun was on the driver's seat, given that a purse was there too, and it's inconceivable that Mr. Catchings was driving while sitting on a purse. As a result, the government introduced insufficient evidence to prove beyond a reasonable doubt to a rational jury that Mr. Catchings knowingly possessed the gun found in the U-Haul. Because the Ninth Circuit still held this evidence sufficient, it erred, and this Court should consequently grant the writ.

## CONCLUSION

For these reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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DATED: March 21, 2022

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