

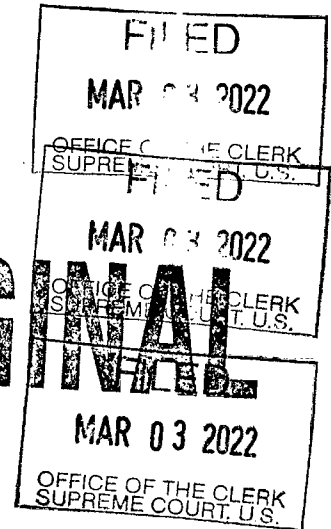
22-5198

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

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL



Akeem M. Rogers — PETITIONER  
(Your Name)

Northampton County vs.  
Circuit Court of Virginia RESPONDENT(S)  
Jack Thornton  
ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals of Virginia

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Akeem M. Rogers #1452937

(Your Name)

Dillwyn Correctional Center  
1522 Prison Rd

(Address)

Dillwyn, VA 23936

(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

### QUESTION(S) PRESENTED

- 1) How did any evidence presented prove to show presence in the home within days of the search?
- 2) How did any evidence presented, show proof of direct proof of possession of the drugs found during the search?
- 3) How did any evidence presented, prove to be sufficient of finding the dibutylone that was allegedly found consistent with distribution?

## 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

Rogers v. Commonwealth of Virginia, No. CB18000120-01,  
CB18000120-02, CB18000120-03. 2019 Circuit Court

Rogers v. Commonwealth of Virginia, No. 210147.  
Court of Appeals No. 0486-20-1. Nov. 5, 2021

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## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Scerret v. Commonwealth 296 Va. 204, 288 (2018)	
Yerling v. Commonwealth, 71 Va. App. 527, 532 (2020)	
Drew v. Commonwealth, 230 Va. 471, 473, 338, S.E. 2d 844 (1985)	
Coward v. Commonwealth, 49 Va. App. 653, 658, 633 S.E. 2d 752 (2006)	
Hunter v. Commonwealth, 213 Va. 569, 570, 193 S.E. 2d 779, 780 (1973)	
Dutton v. Commonwealth, 220 Va. 762, 765, 263 S.E. 2d 52, 54 (1980)	
Servis v. Commonwealth, 6 Va. App. 507, 524, 371 S.E. 156, 165 (1988)	
Patterson, 215 Va. at 699, 213 S.E. 2d at 753	

### STATUTES AND RULES

"In such cases, the court does not ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt."

"In order to convict a person of illegal drug possession, the Commonwealth must prove beyond a reasonable doubt that the accused was aware of the presence and character of the drug and that the accused consciously possessed it."

"Ownership or occupancy of the premises where the drug is found does not create a presumption of possession."

"Mere occupancy and proximity, although factors to be considered among the totality of the circumstances, are insufficient standing alone to prove a defendant guilty knowledge of illegal drugs."

"When the proof of intent to distribute narcotics rests upon circumstantial evidence, the quantity of which the defendant possess is a circumstance to consider."

### OTHER

## \*Statutes and Rules\*

"Possession of a small quantity creates an inference that the drugs was for personal use of the defendant."

"In cases lacking direct evidence of drug distribution, intent to distribute must be shown by circumstantial evidence."

"The Commonwealth must prove beyond reasonable doubt the specific intent to distribute cocaine, the existence of the intent cannot be based upon surmise or speculation."

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 \_\_\_\_\_ 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 \_\_\_\_\_ 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 A to the petition and is

☒ reported at Supreme Court of Virginia; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the Northampton County Circuit court appears at Appendix B to the petition and is

☒ reported at Supreme Court of Virginia; 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 \_\_\_\_\_.

☐ 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: \_\_\_\_\_, 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was November 5, 2021.  
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: May 25, 2022, and a copy of the order denying rehearing appears at Appendix C.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including May 25, 2022 (date) on July 25, 2022 (date) in Application No. 21 A 432.

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



## STATEMENT OF THE CASE

On April 14, 2017, Northampton County Sheriff's Deputy Glen Bailey and other officers executed a search warrant for drugs and firearms at a single family, two bedroom residence. Later it was stated by the owner, Oliver Bennett, which I rented the house in year 2016 but couldn't state if I was currently renting it during the time of the raid. No one was inside the residence during the search. In the back bedroom of the residence, officers found a Perdue identification card bearing I, the petitioner's, photograph and name, a Perdue box, a UPS invoice containing I, the petitioner's name, and clothing on the floor. They, the officers, also found ammunition for a .9mm handgun and more clothes in the front bedroom.

Northampton County Sheriff's Sergeant Steve Lewis allegedly found on the kitchen counter a battery box containing an orange pill bottle bearing no label and with thirteen small baggies of cocaine inside. The battery box was described as a box for a nine volt power sport battery that could have been used in an ATV or motorcycle. The box contained another clear, plastic baggie of cocaine, a clear plastic baggie of a pink substance that Lewis believed was bath salts, and thirty four baggies of marijuana inside another bag. Lewis testified that the marijuana packaged into thirty four bags and the cocaine

packaged into multiple bags were consistent with distribution. The pink substance was analyzed as Dibutylone, an illegal psychedelic drug.

Lewis also found on the kitchen counter beside the battery box, a box of fold top sandwich baggies and a digital scale. Lewis stated that the sandwich baggies and digital scale were consistent with drug packaging materials and drug distribution. Lewis found a loaded Springfield .9mm handgun, with a magazine in the gun, on the top of the microwave in the kitchen. Lewis

stated that the gun was within reach of the drugs.

Neal Baldwin, a Virginia Department of Forensic Science expert witness in latent fingerprint analysis, compared fourteen latent fingerprints recovered from the battery box to 1, the petitioner's fingerprints and determined that seven latent fingerprints on the battery box matched 1, the petitioner's, fingerprints. Two of the latent fingerprints matched Boquan Rogers, who was also charged and later dropped from the case.

The total amount of recovered cocaine was 20.14 grams, including the packaging material. Lewis testified that the bags of cocaine appeared to contain about .2 grams each, worth \$20 per bag. The total amount of marijuana recovered was 16.4237 grams. The total

of recovered Dibutylone was 6.36 grams, including the packaging.

United States Drug Enforcement Administration Special Agent Brian Ford, and expert in the use, packaging, sale, and distribution of drugs, testified that the thirty four small baggies of marijuana were indicative of drug distribution. He also opined that each of the baggies would sell for \$10 or \$20, depending on quality of the marijuana. Ford testified that the numerous small baggies of cocaine, weighing a total of just over twenty grams, were indicative of distribution and not personal use. Ford was not personally familiar with Dibutylone.

## REASONS FOR GRANTING THE PETITION

1.) I, the petitioner, contend that the evidence was insufficient to prove that I, the petitioner, possessed with intent to distribute cocaine, marijuana, and Dibutylone because the evidence failed to prove that I, the petitioner, possessed any of the drugs.

In 2016 I, the petitioner, rented the house in which the officers found the drugs and drug paraphernalia on the kitchen counter. Not knowing if I, the petitioner, was still renting the house at the time testified, Oliver Bennett, the owner. In one bedroom of the house, officers found a Perdue identification card bearing I, the petitioner's, name and photograph, a Perdue boat, and an invoice containing I, the petitioner's, name which was dated in 2016. I, the petitioner's, fingerprints along with other unidentified and identified prints were on the battery box that contained all of the recovered drugs, something I, the petitioner, could have touched. Another suspect was eliminated from the case while having fingerprints on the box that contained the drugs. Insufficient evidence proving that I, the petitioner, knew about the drugs being in my control of the house.

2.) I, the petitioner, argue that the evidence was insufficient to prove that I, the petitioner, possessed with the intent to distribute Dibutylone because the evidence did not show that the quantity of Dibutylone was consistent with distribution and not personal use.

Lewis found the 6.36 grams of Dibutylone in the same battery box as the fourteen baggies of cocaine and the thirty four small baggies of marijuana. The two expert witnesses stated that the quantity and packaging of the cocaine and marijuana were indicative of drug distribution, but could not do the same for the Dibutylone. The Dibutylone that was found was very small in quantity and it also was all in one package only, while the other drugs were separate. Neither expert witness testified about any inferences that could be drawn from the quantity of Dibutylone recovered. The Commonwealth's evidence was insufficient to prove beyond a reasonable doubt that I, the petitioner, was guilty of possession with the intent to distribute Dibutylone. The Commonwealth's evidence was insufficient to prove beyond reasonable doubt that I, the petitioner, possessed the recovered drugs with the intent to distribute them.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Akeem Rogers

Date: 7.19.22