

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DARYL LEE GODETTE, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Government proved beyond a reasonable doubt that Mr. Godette possessed the heroin found in the apartment.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner, who was the Defendant-Appellant below, is Daryl Lee Godette, Jr.

Respondent, who was the Plaintiff-Appellee below, is the United States of America.

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CITATION OF PRIOR OPINION

The United States Court of Appeals for the Fourth Circuit decided this case by unpublished opinion issued 6 January 2023, in which it affirmed the judgment of the trial court. A copy of the Fourth Circuit's opinion is included in the Appendix to this petition.

JURISDICTIONAL STATEMENT

This petition seeks review of an opinion affirming Mr. Godette's conviction, following a jury verdict of guilty of one count of conspiracy to distribute heroin, in violation of 21 U.S.C. § 846, four counts of distribution of heroin, in violation of 21 U.S.C. § 841(a)(1), and one count of possession with intent to distribute heroin, in violation of § 841(a)(1). J.A. 6, 42-47. The petition is being filed within the time permitted by the Rules of this Court. *See* S. Ct. R. 13. This Court has jurisdiction to review the Fourth Circuit's opinion pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Charges

In 2019, Daryl Godette was charged by a superseding indictment with one count of conspiracy to distribute and possess with intent to distribute one kilogram or more of a mixture or substance containing a detectable amount of heroin, in violation of 21 U.S.C. §§ 841(a)(1) and 846 (Count 1); four counts of distribution of a mixture or substance containing a detectable amount of heroin, and aiding and abetting, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (Counts 2 through 5); and one count of possession with intent to distribute one kilogram or more of a

mixture or substance containing a detectable amount of heroin, in violation of 21 U.S.C. § 841(a)(1) (Count 6). J.A. 6, 42-47. He pleaded not guilty to all charges and proceeded to trial. J.A. 8, 67-70.

Investigation and trial evidence

The Havelock, North Carolina, police used an informant, Mike Steeves, to make a series of controlled buys from Bobbie Jean Hoover. App. 3; J.A. 168, 297. Ms. Hoover testified that she got the drugs from Mr. Godette. App. 4-5.

The police had previously arrested Ms. Hoover after seeing her engaged in what appeared to be a drug transaction at a Bojangles restaurant. J.A. 381-86. Ms. Hoover was a drug addict, using heroin and Percocet daily. J.A. 402-05. Ms. Hoover started selling drugs to support her habit. J.A. 407. She testified that Mr. Godette was her supplier, initially through another person, but then she started dealing directly with Mr. Godette. J.A. 412, 414-15.

Ms. Hoover testified that she took the money and drug orders from her customers, and she paid Mr. Godette for heroin ordered by her customers. J.A. 415-16. According to Ms. Hoover, Mr. Godette prepared the drug amounts based on the amount ordered by her customers. J.A. 417-18. Ms. Hoover would contact Mr. Godette to place the order, and he would tell her where to go and when to be there. J.A. 420-21. Ms. Hoover would meet Mr. Godette where he directed, she would give him the money, and he would give her the drugs. J.A. 422.

The informant, Mr. Steeves, knew Ms. Hoover. J.A. 173. The Havelock police had Mr. Steeves make controlled purchases of heroin from Ms. Hoover on

July 17, 22, 25, and 31, 2019. J.A. 134, 492.

July 17 controlled buy

On July 17, 2019, Mr. Steeves picked up Ms. Hoover at a Jersey Mike's restaurant and drove across Havelock. J.A. 138, 229, 243. After Mr. Steeves dropped her off, Ms. Hoover walked through an apartment complex, where the police lost sight of her movements. J.A. 202-03, 279. After Ms. Hoover emerged from the apartment complex, the police saw her get into a silver Toyota Camry driven by Mr. Godette. J.A. 279. Mr. Godette drove to a Kangaroo gas station with Ms. Hoover in the Toyota. J.A. 203. Ms. Hoover got out of Mr. Godette's car at the gas station, and shortly thereafter, Mr. Steeves picked her up. J.A. 144-45, 203, 204. Ms. Hoover testified that she got the one gram of heroin she sold to Mr. Steeves that day from Mr. Godette. J.A. 433.

Based on a records search, the police determined that the Toyota was registered to Kimberly Nolan with an address of 213 Foxhall Road in Newport, North Carolina. J.A. 146. Mr. Godette was listed as the owner of the property at 213 Foxhall Road. J.A. 249. The police went to the Foxhall Road address and saw the Toyota parked at that location. J.A. 163, 176. Ms. Nolan had a prior address of the apartment at 105B Kim Avenue in Havelock. J.A. 147.

July 22 controlled buy

The Havelock police set up another controlled buy for Mr. Steeves to buy heroin from Ms. Hoover on July 22. J.A. 134, 149, 150. Mr. Steeves picked up Ms. Hoover in west Havelock and drove to east Havelock, where he dropped her off. J.A.

149. The police observed Mr. Godette come out of the apartment at 105B Kim Avenue and get into the silver Toyota. J.A. 205, 185-86. Ms. Hoover met Mr. Godette, and Mr. Godette dropped Ms. Hoover off at the Cherry Point Bay Nursing Home. J.A. 149, 206. Mr. Steeves picked Ms. Hoover up at that location and paid \$370 for an 8-ball of heroin. J.A. 150. Ms. Hoover testified that she got the heroin she sold to Mr. Steeves that day from Mr. Godette. J.A. 433.

July 25 controlled buy

The Havelock police again set up a controlled buy for Mr. Steeves to buy heroin from Ms. Hoover on July 25. J.A. 134, 152. Mr. Steeves picked up Ms. Hoover at her residence and drove her across Havelock. J.A. 153.

The police saw Mr. Godette arrive at the 105B Kim Avenue apartment riding in a dark colored Toyota that a woman was driving. J.A. 208-09. The woman was later identified as Choirtia George. J.A. 263-64. Mr. Godette went inside the apartment using a key to open the door. J.A. 208-09, 210. Mr. Godette opened the blinds inside the apartment, and then closed the blinds when he left the apartment. J.A. 210-11.

After Mr. Steeves let Ms. Hoover out of the car, Ms. Hoover got into the back seat of the car with Ms. George and Mr. Godette. J.A. 153, 267, 282. When Mr. Steeves picked Ms. Hoover up at that location, he paid \$470 for an 8-ball of heroin. J.A. 153, 155-56. Ms. Hoover testified that she got the heroin she sold to Mr. Steeves that day from Mr. Godette. J.A. 433.

July 31 controlled buy

The Havelock police set up another controlled buy for Mr. Steeves to buy seven grams of heroin from Ms. Hoover on July 31. J.A. 134, 160. Mr. Steeves picked up Ms. Hoover at her residence and drove her to east Havelock. J.A. 159.

The police saw Mr. Godette arrive at 105B Kim Avenue driving a silver pickup truck. J.A. 353-54. Mr. Godette went inside the apartment and opened the blinds. J.A. 354. Mr. Godette was inside for several minutes, and when he exited the apartment, he closed the blinds. J.A. 354-55.

Mr. Godette drove the pickup truck to the parking lot of a day care center where he got out of the truck and into a dark colored Toyota driven by Ms. George. J.A. 356-57, 365-66. They drove back to 105B Kim Avenue and both went inside the apartment. J.A. 357. The blinds were opened while the two were inside the apartment for a short time; both Mr. Godette and Ms. George exited the apartment, closing the blinds, and got into the Toyota, with Ms. George driving. J.A. 357.

Ms. Hoover got out of Mr. Steeves's vehicle, and she got into the Toyota with Mr. Godette and Ms. George. J.A. 159, 285. Ms. Hoover then got out of the Toyota and walked back to where Mr. Steeves was parked. J.A. 286. Mr. Steeves paid Ms. Hoover \$750 for seven grams of heroin. J.A. 160, 399. Ms. Hoover testified that she got the heroin she sold to Mr. Steeves that day from Mr. Godette. J.A. 433.

August 1 surveillance

The Havelock Police conducted surveillance at 105B Kim Avenue on August 1, 2019. Mr. Godette arrived in a silver pickup truck and then entered the

apartment after unlocking the door. J.A. 319-20. Mr. Godette was inside for about ten minutes, opening the blinds when he entered the apartment. J.A. 320. After exiting the apartment, Mr. Godette drove to a restaurant, and Ms. Hoover arrived there and got into the truck with Mr. Godette. J.A. 320-21. Ms. Hoover got out of the truck, walked to a silver sedan, and got into the passenger seat of that vehicle. J.A. 321. Ms. Hoover rode in the silver sedan to a shopping center parking lot, where she got out of that vehicle and into the passenger seat of another vehicle. J.A. 321. Mr. Godette drove back to 105B Kim Avenue, unlocked the door to the apartment and went inside, opening the blinds. J.A. 321.

Search warrants executed at Kim Avenue and Foxhall Road

The Havelock police obtained search warrants for 105B Kim Avenue and 213 Foxhall Road. J.A. 211, 252. On occasions other than when the police saw Mr. Godette go into and out of the apartment at 105B Kim Avenue, the police never saw a light on, and they saw no other indication that anyone was living there. J.A. 163-64, 179. Ms. Hoover testified that she had been inside the apartment with Mr. Godette twice. J.A. 444. She had sex with Mr. Godette on those occasions. J.A. 444. According to Ms. Hoover, Mr. Godette went upstairs on both occasions, but she did not see him holding anything when he came back downstairs. J.A. 446.

The police executed the warrants on August 2, 2019. J.A. 211-12, 252. Before the police executed the warrant at 105B Kim Avenue, Mr. Godette arrived driving the silver Toyota. J.A. 322-23. He went inside the apartment, opening the door with a key, and he opened the blinds. J.A. 323, 360. He came out of the

apartment after just a few minutes and got into the Toyota. J.A. 287, 323, 350-51.

The police arrested Mr. Godette as he drove away from the apartment. J.A. 288. The police did not find any controlled substances in the car or on Mr. Godette's person. J.A. 182, 219-20. Mr. Godette's wallet, found inside the vehicle, contained currency that included bills that were used by Mr. Steeves for controlled purchases from Ms. Hoover. J.A. 223-27, 346. Inside the vehicle the police found AT&T, Duke Energy, and Spectrum bills addressed to Ms. Nolan at the Foxhall Road address. J.A. 221. The police seized an insurance card for the Toyota with Ms. Nolan's name and the Foxhall Road address. J.A. 221. The police also found a utility bill addressed to Ms. Nolan for the Kim Avenue address. J.A. 222.

The police then searched the apartment. The police found a trash can in the kitchen area that had discarded blue gloves and masks in it. J.A. 215, 292, 325. Inside a kitchen cabinet the police found plastic baggies and gloves. J.A. 293, 327-28. The police found heroin in a Quaker Oats container in one of the kitchen cabinets. J.A. 293-94, 310, 327-28, 399. The police found digital scales in a cabinet above the stove. J.A. 294, 326. There were cabinets under the island in the kitchen, and the police found sweetener, digital scales, and red wax paper packaging material inside the cabinets. J.A. 294-95, 330. The box with the sweetener had a label addressed to Choirtia George in Beaufort, North Carolina. J.A. 345. There was an N95 mask in one of the kitchen drawers. J.A. 295, 329. The police found a blender with white residue inside a trash bag in the laundry area. J.A. 296, 331-32.

Upstairs there was little furniture. J.A. 215. There was a disassembled bed or air mattress in one of the bedrooms. J.A. 291, 371-72. Officers found clothing and children's toys in the bedrooms. J.A. 361, 372. The police found digital scales inside a dresser drawer in one bedroom. J.A. 372. The police found heroin inside a large stuffed animal in the closet in one of the bedrooms. J.A. 292, 361, 399. The police also located heroin along with clothing inside a trunk in one of the bedrooms. J.A. 295-96, 312, 372, 400.

In the search at 213 Foxhall Road, the police found nothing of evidentiary value and did not seize anything at that location. J.A. 248.

Ms. Hoover's continuing heroin sales

After Mr. Godette was arrested, Ms. Hoover continued to sell heroin. J.A. 245, 433-34, 452. Ms. Hoover was involved in drug transactions with a woman who lived in the apartment complex Ms. Hoover walked through on July 17 before she sold the heroin to Mr. Steeves that day. J.A. 245-47, 465-66. Ms. Hoover sold drugs to Mr. Steeves that she did not get from Mr. Godette, and she also bought drugs from Mr. Steeves. J.A. 433-34, 452.

Verdict

The jury found Mr. Godette guilty on all counts. App. 6. On a special verdict form, the jury attributed one kilogram or more of heroin to Mr. Godette as to the conspiracy and possession with intent to distribute charges. *Id.*

Appeal

Mr. Godette challenged the sufficiency of the evidence to support the jury's

finding for the conspiracy and possession with intent to distribute charges that he possessed one kilogram or more of cocaine. App. 3, 7-10. Mr. Godette also argued that the admission of undisclosed expert testimony was plain error, and that his sentence was procedurally and substantively unreasonable. App. 3, 10-16. The Fourth Circuit affirmed. App. 16.

In its opinion, the Fourth Circuit first summarized the standard of review for a sufficiency of the evidence challenge. App. 7-8. Focusing on the possession with intent to distribute charge, the Fourth Circuit noted that possession “may be actual or constructive, and it may be sole or joint.” App. 8 (quoting *United States v. Moody*, 2 F.4th 180, 189 (4th Cir. 2021)). “Constructive possession requires ‘ownership, dominion, or control over the contraband or the premises or vehicle in which the contraband was concealed’ and ‘knowledge of the presence of the contraband.’” App. 8 (quoting *United States v. Herder*, 594 F.3d 352, 358 (4th Cir. 2010)). The Fourth Circuit confirmed that “dominion and control cannot be established by mere proximity to the contraband, by mere presence on the property where contraband is found or by mere association with the person who does control the contraband.” App. 8.

The Fourth Circuit highlighted Mr. Godette’s reliance on its precedent in *United States v. Blue*, 808 F.3d 226 (4th Cir. 2015). App. 8-10. The Fourth Circuit distinguished *Blue*, stating “multiple law enforcement officers testified that they witnessed Godette, on multiple occasions, arrive at the apartment and use a key to retrieve heroin to give to Hoover to sell to the CI.” App. 10.

The Fourth Circuit also rejected Mr. Godette’s challenge to the Government’s undisclosed expert evidence and his challenges to his sentence. App. 10-16.

CONSTITUTIONAL PROVISION INVOLVED

“No person shall . . . be deprived of life, liberty, or property, without due process of law[.]” U.S. Const. amend. V.

MANNER IN WHICH THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

The question presented was argued and reviewed below because Mr. Godette argued on appeal the Government did not present sufficient evidence to prove him guilty beyond a reasonable doubt that he possessed the heroin underlying the conspiracy and possession with intent to distribute charges. *See* App. 7-10. The Fourth Circuit concluded that there was sufficient evidence to prove that Mr. Godette knew about and constructively possessed the heroin. *See* App. 10.

REASONS FOR GRANTING THE WRIT

Mr. Godette respectfully contends that there are “compelling reasons” for granting his petition for writ of certiorari. *See* S. Ct. R. 10. The requirement that the Government must prove a defendant guilty beyond a reasonable doubt is “a prime instrument for reducing the risk of convictions resting on factual error,” and provides “concrete substance for the presumption of innocence—that bedrock axiomatic and elementary principle whose enforcement lies at the foundation of the administration of our criminal law.” *In re Winship*, 397 U.S. 358, 363 (1970) (quotation omitted).

DISCUSSION

THE GOVERNMENT OFFERED INSUFFICIENT EVIDENCE THAT MR. GODETTE POSSESSED THE HEROIN FOUND IN THE APARTMENT.

This Court has made clear that “the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *In re Winship*, 397 U.S. at 364; *see Clark v. Arizona*, 548 U.S. 735, 766 (2006) (“a defendant is innocent unless and until the government proves beyond a reasonable doubt each element of the offense charged”). “The *Winship* doctrine requires more than simply a trial ritual.” *Jackson v. Virginia*, 443 U.S. 307, 316-17 (1979). On review of the sufficiency of the evidence, “the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* at 319. Mr. Godette respectfully contends that the Government did not prove beyond a reasonable doubt that he possessed the heroin found in the search of the apartment at 105B Kim Avenue, and therefore his conviction for possession with intent to distribute and the drug quantity finding are properly reversed.

“The offense of possession with intent to distribute requires the government to prove beyond a reasonable doubt that the defendant (1) knowingly (2) possessed a controlled substance (3) with the intent to distribute it.” *United States v. Samad*, 754 F.2d 1091, 1096 (4th Cir. 1984) (citing 21 U.S.C. § 841(a)). A conviction of possession with the intent to distribute narcotics may be based on actual or

constructive possession. *E.g.*, *United States v. Rusher*, 966 F.2d 868, 878 (4th Cir.1992); *see Henderson v. United States*, 575 U.S. 622, 626 (2015) (discussing actual and constructive possession). “Actual possession exists when a person has direct physical control over a thing.” *Henderson v. United States*, 575 U.S. at 626. “Constructive possession is established when a person, though lacking such physical custody, still has the power and intent to exercise control over the object.” *Id.*

As the Fourth Circuit noted, “[c]onstructive possession requires ‘ownership, dominion, or control over the contraband or the premises or vehicle in which the contraband was concealed’ and ‘knowledge of the presence of the contraband.’” App. 8 (quoting *United States v. Herder*, 594 F.3d at 358). This Court has recognized that “[p]resence is relevant and admissible evidence in a trial on a possession charge.” *United States v. Romano*, 382 U.S. 136, 141 (1965). “But dominion and control cannot be established by mere proximity to the contraband, by mere presence on the property where the contraband is found or by mere association with the person who does control the contraband.” App. 8 (citing *United States v. Brown*, 3 F.3d 673, 680 (3d Cir. 1993); *United States v. Rusher*, 966 F.2d at 868). Joint tenancy of a residence is insufficient, by itself, to prescribe constructive possession of the residence’s contents to all occupants. *See United States v. Morrison*, 991 F.2d 112, 115 (4th Cir.1993). “In joint tenancy cases, there must be some additional nexus linking the defendant to the contraband.” App. 8 (quoting *United States v. Hall*, 858 F.3d 254, 280 (4th Cir. 2017) (in turn quoting *United States v. Blue*, 808

F.3d at 232)).

Proof of the controlled buys involving Mr. Steeves and Ms. Hoover was not sufficient to prove that Mr. Godette possessed or distributed more than one kilogram of heroin. The Government needed to prove that Mr. Godette possessed the heroin found in the Kim Avenue apartment to establish the one kilogram threshold. The Government presented no evidence that Mr. Godette actually possessed the heroin found at the apartment. And the Government did not establish that Mr. Godette had constructive possession of the heroin where it did not submit sufficient evidence that Mr. Godette had dominion and control over the heroin, or that he had knowledge of the heroin.

Mr. Godette recognizes that “[i]t is often necessary for the trier of fact to determine the existence of an element of the crime—that is, an ultimate or elemental fact—from the existence of one or more evidentiary or basic facts.” *Cnty. Ct. of Ulster Cnty., N.Y. v. Allen*, 442 U.S. 140, 156 (1979) (quotations omitted). The jury is permitted “to draw reasonable inferences from basic facts to ultimate facts.” *See Jackson v. Virginia*, 443 U.S. at 319. Viewing the evidence in the light most favorable to the Government and considering all reasonable inferences, *see id.*, the Government did not prove Mr. Godette’s constructive possession or knowledge of the heroin in the apartment.

The Government’s evidence showed that Kimberly Nolan had resided at 105B Kim Avenue, *see* J.A. 147; the Government presented no evidence that Mr. Godette

owned, rented, or occupied that apartment. In the search of 105B Kim Avenue, the police did not find clothing, paperwork, or any other evidence showing that Mr. Godette stayed at that apartment. *See United States v. Daley*, 107 F. App'x 334, 338-39 (4th Cir. 2004) (per curiam) (insufficient evidence to support conviction for possession of cocaine base found in search of apartment where there was only speculative evidence that defendant resided there, and none of defendant's personal belongings were found in apartment). The Government introduced no fingerprints or other physical evidence linking Mr. Godette to the heroin found in the apartment. *See United States v. Blue*, 957 F.2d 106, 108 (4th Cir. 1992) (holding that Government did not present sufficient evidence that defendant possessed firearm where there were no fingerprints or other physical evidence linking defendant to firearm). The police found the drugs hidden in the kitchen and bedrooms, not out in the open. *See supra* pp. 7-8; *cf. United States v. Cavillo-Rojas*, 510 F. App'x 238, 244 (4th Cir. 2013) (defendants jointly possessed drugs and firearms found in plain view upon execution of search warrant).

According to the Fourth Circuit, "there is ample evidence from which a jury could conclude that Godette both knew about the heroin at the Kim Avenue apartment and had constructive possession of it." App. 10. The court discussed the evidence in the light most favorable to the Government, *see Jackson v. Virginia*, 443 U.S. at 319, but that discussion does not show that a rational jury could have convicted Mr. Godette. First, the Fourth Circuit noted that Ms. Hoover testified that she had sexual relations with Mr. Godette at the apartment, App. 10; however,

Ms. Hoover testified that she did not see Mr. Godette with any drugs, J.A. 446.

Second, the Fourth Circuit noted that the apartment was leased to Ms. Nolan, who lived with Mr. Godette at the Foxhall Avenue residence, App. 10; however, there is no evidence that Mr. Godette lived at the Kim Avenue apartment, and even if he had, joint tenancy is insufficient to establish constructive possession, App. 8; *see United States v. Hall*, 858 F.3d at 280; *United States v. Blue*, 808 F.3d at 232; *United States v. Morrison*, 991 F.2d at 115. The Fourth Circuit also noted that the police found utility bills for the apartment in the car Mr. Godette was driving, App. 10; however, Mr. Godette was driving Ms. Nolan's car, J.A. 258.

The linchpin of the Fourth Circuit's ruling that there was sufficient evidence to support Mr. Godette's conviction of possession with intent to distribute the heroin found at 105B Kim Avenue is its statement that "multiple law enforcement officers testified that they witnessed Godette, on multiple occasions, arrive at the apartment and use a key to retrieve heroin to give to Hoover to sell to the CI." App. 10. There was no such testimony at trial—none of the police officers who testified said that they saw anything suspicious when Mr. Godette came out of the apartment. If the police had observed Mr. Godette with heroin when he came from the apartment, the Government would have argued actual possession; instead, as reflected in the Fourth Circuit's opinion, the Government argued that Mr. Godette had constructive possession of the heroin. On July 22, July 25, and July 31, 2019, the police only observed Mr. Godette enter and exit the apartment before he met with Ms. Hoover, and Ms. Hoover testified that on those occasions, she got heroin

from Mr. Godette to sell to Mike Steeves. *See supra* pp. 3-5.

The testimony that Mr. Godette entered and left the apartment on July 22, July 25, and July 31 could not support a constructive possession theory when the evidence also showed that the police arrested Mr. Godette on August 2 after he left the apartment, but they did not find any drugs on his person or in the vehicle. J.A. 182. On July 22, July 25, and July 31, the police had observed Mr. Godette follow the same pattern as he did on August 2: Mr. Godette arrived at 105B Kim Avenue in a vehicle, he went inside the apartment for a short period of time, and then he came out of the apartment and got back into his vehicle. *See supra* pp. 4-6. The police waited to execute the search warrant for 105B Kim Avenue until they saw Mr. Godette arrive at that location. *See supra* pp. 6-7. The Havelock police officers' plan to catch Mr. Godette with heroin in the apartment or on his person, however, failed. Mr. Godette's visits to 105B Kim Avenue on July 22, 25, and 31 could not support even an inference that he had knowledge of the heroin at 105B Kim Avenue.

The Fourth Circuit concluded on similar facts that the Government did not offer sufficient evidence to sustain a possession with intent to distribute charge in *United States v. Blue*. In that case, the police observed the defendant enter an apartment building empty-handed and exit the building no more than five minutes later holding a sandwich-sized, cloudy white plastic container in his hand. 808 F.3d at 229. The police did not see the defendant enter any specific apartment in the building. *Id.* The police followed the defendant and saw the defendant involved in

what they thought was a narcotics transaction. *Id.* The police arrested the defendant later that day, and in their search of his person, found a key to an apartment in the building the police had observed the defendant enter earlier that day. *Id.* at 230. The police secured a search warrant for the apartment; upon executing the search warrant, the police found 108.6 grams of heroin, two scales with heroin residue, and numerous empty sandwich bags hidden in a footstool in a bedroom in the apartment. *Id.* The police found no evidence linking the defendant to the apartment in their search, no evidence linking him to the contents of the footstool, and no evidence linking him to either the person found in the apartment or the person named on mail found in the apartment. *Id.*

Reviewing the defendant's conviction for possession with intent to distribute the heroin found in the apartment, the Fourth Circuit said the "two critical issues" were whether the defendant knew the heroin was in the footstool, and whether he had the power to exercise dominion and control over the heroin. *Id.* at 232. The Fourth Circuit held that the Government did not introduce sufficient evidence to sustain the conviction. *Id.* at 232-36. The Fourth Circuit reasoned that the defendant's possession of a key to the apartment, and the fact that he entered the apartment building and exited the building after five minutes with a suspicious package, was insufficient evidence of constructive possession. *Id.* at 232-33. The Fourth Circuit rejected the Government's argument that the lack of personal effects at the apartment was consistent with the defendant using the apartment as a stash

house where there was no evidence that the defendant had any connection to any of the occupants of the apartment. *Id.* at 233-34. The Fourth Circuit also rejected the Government's argument that the defendant's false denial of having been at the apartment was sufficient to lead to an inference of constructive possession of the heroin at the apartment. *Id.* at 234-35.

Like the defendant in *United States v. Blue*, Mr. Godette had a key to the apartment at 105B Kim Avenue. J.A. 323, 360. As in *United States v. Blue*, the Government offered no evidence that Mr. Godette leased or resided at the apartment in question. *See* 808 F.3d at 233. And as in *United States v. Blue*, the Government offered no evidence that the heroin seized from the apartment was connected to heroin seized in an arrest following a drug transaction involving the defendant. *See id.* at 234.

The Fourth Circuit said that the "ample evidence" discussed above was sufficient to distinguish this case from *United States v. Blue*. App. 10. Mr. Godette acknowledges that the evidence in his case showed more of a connection to the apartment than the evidence showed in *United States v. Blue*. Viewing that evidence in the light most favorable to the Government and drawing all reasonable inferences in its favor, the Government offered more evidence of dominion or control in this case as compared to *United States v. Blue*. The Fourth Circuit made clear, however, that the Government must prove not only dominion and control over the drugs, but also knowledge of the drugs. 808 F.3d at 232. As in *United States v.*

Blue, there was not sufficient evidence that Mr. Godette knew the heroin was in the apartment. Mr. Godette was not the owner or renter of the apartment and did not reside there; the heroin and paraphernalia were hidden inside the apartment; there was no physical evidence linking Mr. Godette to the heroin or paraphernalia; Bobbie Jean Hoover, who testified that she got heroin from Mr. Godette for personal use and to sell, was inside the apartment twice, but said she did not see Mr. Godette with any drugs; and the police expected to find drugs when they arrested Mr. Godette upon his exit from the apartment, but they found no drugs on his person or in the vehicle he was driving.

Because the Government did not prove beyond a reasonable doubt that Mr. Godette possessed the heroin found in the Kim Avenue apartment, he is entitled to reversal of his conviction of possession with intent to distribute heroin and remand for resentencing based on a drug quantity finding consistent with the evidence. *See United States v. Blue*, 808 F.3d at 236.

CONCLUSION

For the foregoing reasons, Petitioner Daryl Lee Godette respectfully requests that the Court grant his petition for writ of certiorari, reverse the decision of the Fourth Circuit, and remand for further proceedings.

This the 6th day of April, 2023.

/s/ Paul K. Sun, Jr.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Petition for Writ of Certiorari was served on the Respondent herein by depositing a copy thereof in the United States mail, postage prepaid, first class, addressed as follows:

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