

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

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In The  
**Supreme Court of the United States**

**JAMIE CHRISTOPHER HENDERSON,**

*Petitioner,*

v.

**UNITED STATES OF AMERICA,**

*Respondent.*

**On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Fourth Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

Did the Government prove a drug trafficking conspiracy where the evidence the Government offered to corroborate the defendant's statement to law enforcement did not corroborate the essential fact of agreement to a conspiracy, and there was no other independent evidence of the alleged conspiracy?

**PARTIES TO THE PROCEEDINGS BELOW**

Petitioner, who was the Defendant-Appellant below, is Jamie Christopher Henderson. 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 in a published opinion issued on 9 July 2024. The opinion is included in Appendix A.

## **JURISDICTIONAL STATEMENT**

This petition seeks review of an opinion affirming petitioner's conviction and sentence following a conviction of conspiracy to distribute cocaine and cocaine base (crack), possession with intent to distribute crack, possession of firearms in furtherance of drug trafficking crimes, and felon in possession of a firearm. 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 order pursuant to 28 U.S.C. § 1254(1).

## **STATUTORY PROVISION INVOLVED**

Section 846 of Title 21 provides:

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

## **STATEMENT OF THE CASE**

### *Search warrant execution and Mr. Henderson's arrest*

The Robeson County, North Carolina Sheriff's Office obtained a search warrant for a trailer at 297 Folly Drive in Red Springs, North Carolina and executed the warrant on 30 April 2019. JA42. As the law enforcement officers approached that location, the police saw Jamie Christopher Henderson throw a

handgun under a vehicle parked outside the trailer. JA43. The police found a handgun and controlled substances under the vehicle. JA43. The police arrested Mr. Henderson. JA35. Once inside the trailer, the police found and seized drugs and firearms. JA34-35.

The police saw security cameras on the exterior of the residence. JA43. Inside the trailer, the police found and seized a digital video recorder (“DVR”). JA43.

*Mr. Henderson’s post-arrest statement*

Mr. Henderson, who was in custody, was interviewed at the Robeson County Sheriff’s Office on 15 August 2019. JA35, JA56. Mr. Henderson signed a *Miranda* waiver form and a form indicating that he wanted to talk to the police without his attorney present. JA56-57. The interview was recorded. JA36, JA66.

During the interview, Mr. Henderson told the police that he had been distributing cocaine since 2015, and he admitted involvement with various cocaine suppliers between 2015 and 2019. JA 36, JA44.

*Indictment*

A federal grand jury returned an indictment against Mr. Henderson that was filed on 13 May 2020. JA4. In a superseding indictment filed 11 November 2020, Mr. Henderson was charged with conspiracy to distribute and possess with intent to distribute five kilograms or more of cocaine and a quantity of cocaine base from 2015 until 30 April 2019 (Count 1); possession of a firearm on 27 April 2019 in furtherance of the alleged drug conspiracy (Count 2); possession with intent to

distribute a quantity of cocaine and a quantity of cocaine base on 30 April 2019 (Count 3); possession of a firearm in furtherance of the drug trafficking crime alleged on 30 April 2019 (Count 4); and felon in possession of a firearm on 30 April 2019 (Count 5). JA23-26.

*Arraignment and trial*

Mr. Henderson pleaded not guilty to all charges and proceeded to trial. JA14, JA120.

*The search inside 297 Folly Drive*

At trial, the Government offered evidence that Robeson County Sheriff's Office personnel executed a search warrant at 297 Folly Drive in Red Springs, North Carolina, on 30 April 2019. JA145. As the police approached that location, Lieutenant Terry Dimery, JA144, JA165-166, Detective Jeremy Hunt, JA226, JA228-229, and Lieutenant Duron Burney, JA237, JA239, saw Mr. Henderson throw a firearm under a vehicle parked in front of the residence. The police recovered a loaded .45 caliber Glock handgun under the vehicle. JA164-165, JA172. The police also recovered a plastic bag with 2.61 grams of powder cocaine and 3.37 grams of crack cocaine from under the vehicle. JA175-177, JA258-261. The police found a lighter and a crack pipe under the vehicle. JA206-207. When the police searched Mr. Henderson, he had a key, a knife, and a lighter. JA195-196. Lieutenant Dimery testified that the key fit the front door of the trailer. JA197.

As the police were in the yard outside the trailer, they saw two individuals run from the back of the trailer and escape. JA198. Once inside the trailer, the police found one man asleep on the couch with an AR-15 style rifle next to him. JA182, JA217-218. Searching the trailer, the police found and seized a Glock handgun in the toilet tank, JA188-189, JA230, and a Browning handgun at the bottom of a trash container, JA194-195. The police found and seized crack cocaine and powder cocaine that was also hidden in the toilet tank. JA184-186, JA231, JA233, JA261-263. In one of the bedrooms, the police found a suitcase that had a letter addressed to Mr. Henderson. JA193. In another bedroom, the police found digital scales with white powder residue consistent with cocaine. JA190-192.

The Government offered, and the court admitted, multiple pictures from the search of 297 Folly Drive, the rifle and handguns seized during the search, and the suspected controlled substances seized during the search. JA170-197.

In the living room of the trailer, Captain Terry Sampson found a DVR that was a part of a video surveillance system. JA275, JA277-278. Lieutenant Dimery viewed all of the video footage on the DVR. JA149. Lieutenant Dimery also downloaded the recordings. JA151. Over Mr. Henderson's objection, JA151-152, the court admitted video recordings from April 24, 25, 27, 28, 29, and 30, 2019 as evidence for the Government, JA158-159, JA161.

#### *Video recordings*

The Government showed a video recording of the events on April 30, and Lieutenant Dimery testified about the video evidence. JA161-169; *see* Gov't

Ex. 2. Lieutenant Dimery identified Mr. Henderson on the video from that date.

JA163. Lieutenant Dimery testified that he was shown on the video driving a truck as the police approached 297 Folly Drive to execute the search warrant.

JA165. Lieutenant Dimery testified that he could see in the video that Mr. Henderson put his left hand in his left pocket, removed his hand from his pocket, and opened his hand. JA166-168. Lieutenant Dimery also testified that he saw Mr. Henderson in the video remove a handgun from his waistband with his right hand and throw it under a vehicle. JA168-169.

Captain Sampson also testified about video recordings from the DVR seized at 297 Folly Drive, and the Government showed clips of the recordings. JA296-323. A video recording from 22 April 2019 showed Mr. Henderson engaging in hand-to-hand transactions at the back door of 297 Folly Drive, and Captain Sampson testified that he observed that Mr. Henderson had a handgun in his back pocket. JA298, JA301; *see* Gov't Ex. 16A. A video recorded on 24 April 2019 showed Mr. Henderson in the yard in front of the trailer and on the porch of the trailer with handguns and with an AR-15 style rifle. JA302, JA305, JA307, JA309-313; *see* Gov't Ex. 16B. A video recording from 25 April 2019 showed Mr. Henderson walking up the driveway from the trailer holding a handgun, while another individual has an AR-15 style rifle. JA314; *see* Gov't Ex. 16C. On 27 April 2019, Mr. Henderson was recorded on the porch with a handgun engaging in hand-to-hand transactions. JA315; *see* Gov't Ex. 16D. Video from 28 April 2019 showed Mr. Henderson at the back door to the trailer with another individual

entering and leaving the back door. *See* Gov't Ex. 16E. On 29 April 2019, Mr. Henderson was recorded at the back door of the trailer after an individual entered and exited the back door; Mr. Henderson appears to have a firearm in his back pocket. JA323; *see* Gov't Ex. 16F.

*Mr. Henderson's interview with law enforcement and letter*

Captain Sampson testified that he and Major Damien McLean interviewed Mr. Henderson. JA279-280. The Government introduced in evidence parts of an audio/video recording and used a transcript of the interview during its presentation of the recording. JA281-282, JA481-489 (Gov't Ex. 19T); *see* Gov't Ex. 19. Captain Sampson testified that during the interview Mr. Henderson described himself as a drug trafficking middleman for a cocaine supplier named Red Cloud. JA284-285, JA336. Mr. Henderson told the police that he distributed kilograms of cocaine between 2015 and 2019. JA285-287, JA484-485. After the Government played clips from the interview where Mr. Henderson described distributing cocaine to various other individuals, Captain Sampson testified that he knew that some of those individuals were drug dealers. JA289.

Before trial, while he was detained at the Bladen County Detention Center, Mr. Henderson sent a letter that was intercepted by jail personnel. JA246-248. Captain Sampson said that the letter was addressed to Mr. Henderson's brother. JA291. Captain Sampson testified that the letter contained documents produced to Mr. Henderson in discovery, on which Mr. Henderson had made handwritten notes. JA292-296. Captain Sampson read some of the handwritten notes. JA293-296.

*Defense evidence*

Mr. Henderson presented two witnesses: his mother, Sheila Locklear, and his daughter, Jamee Sampson. JA352-370. Both Ms. Locklear, JA353, and Ms. Sampson, JA365, testified that at the time of his arrest, Mr. Henderson resided in a home owned by his father a short distance from the Folly Drive location where the police arrested Mr. Henderson. The trailer on Folly Drive was owned by Nate Locklear. JA355, JA366-367. Both Ms. Locklear, JA353-354, and Ms. Sampson, JA365, confirmed that Mr. Henderson was a long-time drug user, particularly using crack cocaine. Both Ms. Locklear and Ms. Sampson testified that Mr. Henderson was not a truthful person. JA355, JA366. Ms. Locklear testified that Mr. Henderson was not a drug dealer, JA354; Ms. Sampson testified that her father could not sell drugs “because he does them.” JA366.

*Verdict*

The jury found Mr. Henderson guilty on all counts. JA490-492. In finding Mr. Henderson guilty of conspiracy as alleged in Count 1 of the superseding indictment, the jury found that Mr. Henderson was accountable for less than 500 grams of cocaine and an amount of crack cocaine. JA490. In finding Mr. Henderson guilty of possession with intent to distribute as alleged in Count 3 of the superseding indictment, the jury found that Mr. Henderson possessed crack cocaine with intent to distribute, but did not find that he possessed powder cocaine with intent to distribute. JA491.

### *Sentencing*

The Probation Office determined that the advisory guidelines range for Counts 1, 3, and 5 was 324 to 405 months on the grouped counts. JA592. The mandatory minimum term of imprisonment on each of Counts 2 and 4 was five years, and the sentences for those offenses must be imposed consecutively to the term of imprisonment for other counts. JA591. Therefore, the total Guidelines range for all counts was 444 to 525 months' imprisonment. *See* JA591. The district court overruled Mr. Henderson's guidelines objections and concluded that Mr. Henderson's guidelines sentencing range on the grouped counts was 324 to 405 months, and he was also subject to two consecutive five-year sentences. JA537.

The court sentenced Mr. Henderson to a total term of 324 months' imprisonment and concurrent supervised release terms of three years and five years. JA548; *see* JA553-561, JA624-627.

### *Appeal*

On appeal, Mr. Henderson argued that the Government introduced insufficient evidence to prove the conspiracy charge in Count 1 and insufficient evidence to prove the possession with intent to distribute charge in Count 3. App. 3. He also challenged his sentence as procedurally and substantively unreasonable. *Id.* The Fourth Circuit affirmed. *Id.*

Mr. Henderson argued that the Government could not rely on his confession to having served as a middleman to Red Cloud as proof of the conspiracy charge because there was not substantial independent corroborating evidence. App. 8-11.

The Fourth Circuit rejected this argument, ruling that “there was abundant independent evidence that Henderson was engaged in a large-scale drug trade, which supported the trustworthiness of his confessions.” *Id.* at 10. The Fourth Circuit reasoned that Detective Sampson testified that he was personally familiar with several of the drug dealers that Mr. Henderson named, and that Mr. Henderson had accurately described their locations. *Id.* The Fourth Circuit also found that evidence from the video recordings and from the search at the Folly Drive location supported the trustworthiness of Mr. Henderson’s confession. *Id.* at 10-11.

The Fourth Circuit also rejected Mr. Henderson’s argument that the Government proved only that he possessed controlled substances, not that he intended to distribute them. *Id.* at 11-12. The Fourth Circuit ruled, drawing all reasonable inferences in favor of the Government, that the evidence was sufficient to prove that Mr. Henderson intended to sell the crack cocaine in his pocket to an occupant in the blue car on April 30. *Id.* at 12.

The Fourth Circuit also held that the district court did not abuse its discretion in sentencing Mr. Henderson, ruling that the district court did not commit procedural error and that the sentence the district court imposed was substantively reasonable. *Id.* at 13-17.

## **MANNER IN WHICH THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW**

The questions presented were argued and reviewed in Mr. Henderson's appeal. Mr. Henderson's claim is appropriate for this Court's consideration.

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

Mr. Henderson respectfully contends that the Fourth Circuit's decision conflicts with relevant decisions of this Court. *See* S. Ct. R. 10(c).

### **DISCUSSION**

**THE GOVERNMENT DID NOT PROVE THE CONSPIRACY CHARGE AGAINST MR. HENDERSON WHERE IT OFFERED NO SUBSTANTIAL INDEPENDENT EVIDENCE TO ESTABLISH THE TRUSTWORTHINESS OF MR. HENDERSON'S CONFESSION OR PROVE THE CONSPIRACY.**

To convict Mr. Henderson of the crime of conspiracy to distribute and possess with intent to distribute cocaine and crack, in violation of 21 U.S.C. § 846, the Government had to prove beyond a reasonable doubt three elements: “(1) an agreement to distribute and possess cocaine [or cocaine base] with intent to distribute existed between two or more persons; (2) [Henderson] knew of the conspiracy; and (3) [Henderson] knowingly and voluntarily became a part of the conspiracy.” App. 7 (quoting *United States v. Hackley*, 662 F.3d 671, 678 (4th Cir. 2011) (alterations in Appendix)). As this Court has made clear, the “gist of the crime of conspiracy as defined by the statute is the agreement or confederation of the conspirators to commit one or more unlawful acts.” *Braverman v. United States*, 317 U.S. 49, 53 (1942); *see United States v. Laughman*, 618 F.2d 1067, 1074

(4th Cir. 1980) (“[T]he gist or gravamen of the crime of conspiracy is an agreement to effectuate a criminal act.”).

Mr. Henderson was charged with conspiracy beginning in 2015 to distribute and possess with intent to distribute five kilograms or more of cocaine and a quantity of cocaine base, and the only evidence supporting that allegation was Mr. Henderson’s statement to law enforcement. Mr. Henderson told law enforcement that he served as a middleman linking Red Cloud as the seller with buyers of kilogram quantities of cocaine. *See supra* p. 6; App. 4-5. The Government’s proof of the alleged drug trafficking agreement was Mr. Henderson’s statement to law enforcement; the Government offered no testimony from any witness who bought powder cocaine or crack from Mr. Henderson, sold powder cocaine or crack to Mr. Henderson, saw Mr. Henderson sell or buy powder cocaine or crack, or otherwise had any knowledge that Mr. Henderson sold or bought, or agreed to sell or buy, powder cocaine or crack. Where the Government did not present substantial independent evidence to establish the trustworthiness of his statement that he agreed to serve as a middleman for Red Cloud distributing multiple kilograms of cocaine, Mr. Henderson’s statement was not sufficient evidence to support the conspiracy conviction.

- A. The Government Could Not Prove The Conspiracy Charge Based On Mr. Henderson’s Statement To Law Enforcement Because The Government Did Not Submit Sufficient Independent Evidence To Corroborate The Statement.

“It is a settled principle of the administration of criminal justice in the federal courts that a conviction must rest upon firmer ground than the

uncorroborated admission or confession of the accused.” *Wong Sun v. United States*, 371 U.S. 471, 488-89 (1963). “The rule requiring corroboration of confessions protects the administration of the criminal law against errors in convictions based upon untrue confessions alone.” *Warzower v. United States*, 312 U.S. 342, 347 (1941). The reliability of a defendant’s confession “may be suspect if it is extracted from one who is under the pressure of a police investigation—whose words may reflect the strain and confusion attending his predicament rather than a clear reflection of his past.” *Smith v. United States*, 348 U.S. 147, 153 (1954). An “uncorroborated confession . . . does not as a matter of law establish beyond a reasonable doubt the commission of a crime.” *Warzower v. United States*, 312 U.S. at 347-48.

The question in this case is “the extent of the corroboration of admissions necessary as a matter of law for a judgment of conviction.” *Opper v. United States*, 348 U.S. 84, 92 (1954). When considering evidence that corroborates a defendant’s confession, this Court has clarified that “the corroborative evidence does not have to prove the offense beyond a reasonable doubt, or even by a preponderance, as long as there is substantial independent evidence that the offense has been committed, and the evidence as a whole proves beyond a reasonable doubt that defendant is guilty.” *Smith v. United States*, 348 U.S. at 155. The Court determined “the better rule to be that the corroborative evidence need not be sufficient, independent of the statements, to establish the corpus delicti.” *Opper v. United States*, 348 U.S. at 93. From that “better rule,” the Court held “[i]t is necessary, therefore, to require the

Government to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement.” *Id.*

Under *Opper*, “[i]t is sufficient if the corroboration supports the *essential facts admitted* sufficiently to justify a jury inference of their truth.” *Id.* (emphasis added). But where the crime—here, conspiracy to distribute and possess with intent to distribute cocaine and crack—involves “no tangible corpus delicti,” the corroborative evidence “must implicate the accused in order to show that a crime has been committed.” *Smith v. United States*, 348 U.S. at 154; *see Wong Sun v. United States*, 371 U.S. at 489 n.15.

The *essential fact admitted* in Mr. Henderson’s statement was his claim that he agreed to serve as a middleman for Red Cloud in cocaine transactions with other drug dealers. *See Braverman v. United States*, 317 at 53 (gist of conspiracy is agreement); *United States v. Laughman*, 618 at 1074 (same). The only evidence connecting Mr. Henderson to this drug trafficking conspiracy was his statement to law enforcement. But through Captain Sampson or otherwise, the Government offered no independent evidence connecting Mr. Henderson to Red Cloud, or even evidence connecting Red Cloud to any of the other drug dealers Mr. Henderson named.

The Fourth Circuit ruled that Captain Sampson’s testimony was corroborating evidence that supported the trustworthiness of Mr. Henderson’s confession where Captain Sampson testified that he “was personally familiar with many of the named dealers and corroborated the accuracy of Henderson’s

descriptions of the dealers and their locations.” App. 10. But Captain Sampson’s testimony that he recognized some of the names in Mr. Henderson’s statement as drug traffickers does not implicate Mr. Henderson, as was required “to show that a crime has been committed.” *See Smith v. United States*, 348 U.S. at 154; *Wong Sun v. United States*, 371 U.S. at 489 n.15.

The Fourth Circuit’s precedents before this case cited and followed the law in *Smith* and *Opper*, but the Fourth Circuit panel in this case did not follow these precedents. App. 9-10 (discussing *United States v. Stephens*, 482 F.3d 669 (4th Cir. 2007)); *see United States v. Rodriguez-Soriano*, 931 F.3d 281 (4th Cir. 2019). In *Stephens*, the defendant was convicted by a jury of conspiracy to distribute cocaine and using, carrying, and discharging a firearm in relation to a drug trafficking crime. *Id.* at 670. The defendant was arrested after a police officer heard gunshots, and he told ATF agents that he had fired shots at a local drug dealer named “Red,” who had fronted him 1.5 ounces of cocaine. *Id.* at 671. At trial, the defendant testified that he lied in his interview and a later proffer. *Id.* One of the ATF agents testified that he knew a suspected drug dealer named Red who drove the kind of car that the defendant told the ATF agents that Red was driving when the defendant shot at Red. *Id.* The district court denied the defendant’s motion for judgment of acquittal, and the jury convicted the defendant. *Id.*

On appeal, the defendant argued the district court erred in denying his motion for judgment of acquittal because the evidence was insufficient to sustain the jury’s verdict. *Id.* at 670, 672. Specifically, the defendant argued that his

convictions were impermissibly based on his uncorroborated statement to the ATF agents. *Id.* at 672. The Fourth Circuit held that the evidence was insufficient to sustain the convictions. *Id.* at 673. The court reasoned that although the ATF agent testified that he knew of a suspected drug dealer named Red who drove the kind of car the defendant described, “the corroboration of these details does not establish the necessary link” to prove that the defendant and Red engaged in a conspiracy to sell cocaine. *Id.* The “corroborating evidence was lacking” because the agent admitted he had no other information about any connection between the defendant and “Red” other than the defendant’s statement:

Q: Okay. Any independent investigation of this case, have you been able to locate any connection between Red and Mr. Stephens?

A: Nothing other than Mr. Stephens’ statement.

*See Stephens*, 482 F.3d at 673.

In this case, Captain Sampson’s testimony parallels the testimony of the ATF agent in *Stephens* that the Fourth Circuit held was lacking because there was no evidence other than the defendant’s statement connecting the defendant to the co-conspirator. According to Captain Sampson, Mr. Henderson named known drug traffickers and Mr. Henderson correctly described where some of them lived; according to the ATF agent in *Stephens*, the defendant named a known drug dealer, and the defendant correctly described the car the drug dealer drove. The ATF agent in *Stephens* offered “[n]othing other than Mr. Stephens’ statement”; likewise here, Captain Sampson offered nothing other than Mr. Henderson’s statement.

Captain Sampson’s corroborative testimony did not “must implicate [Mr. Henderson]” and, therefore, did not “show that a crime has been committed.” *Smith v. United States*, 348 U.S. at 154; *see Wong Sun v. United States*, 371 U.S. at 489 n.15.

*United States v. Rodriguez-Soriano*, 931 F.3d 281 (4th Cir. 2019), is in accord.<sup>1</sup> In that case, the defendant was found guilty as a straw purchaser of firearms—falsely stating that he was the actual purchaser when he was in fact acquiring the firearms for another individual. 931 F.3d at 284. Two ATF agents had interviewed the defendant, and the defendant confessed that he had purchased the firearms for someone else. *Id.* at 285. The Fourth Circuit reversed the defendant’s conviction, holding that “[t]he government presented no evidence other than Rodriguez-Soriano’s uncorroborated confession that his statement to a licensed firearms dealer regarding the identity of the actual buyer of the firearms was false.” *Id.* at 286. The *Rodriguez-Soriano* court concluded that there was “no corroboration demonstrating that the transaction was a straw purchase” because “all of the evidence the government claims corroborates Rodriguez-Soriano’s confession arises from his own statement to law enforcement.” *Id.* at 288, 289-90. Likewise here, the Government cannot rely on Captain Sampson’s testimony to corroborate Mr. Henderson’s statement, because this evidence arises from Mr. Henderson’s statement.

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<sup>1</sup> Mr. Henderson cited and relied on *Rodriguez-Soriano*, but the Fourth Circuit’s opinion did not discuss this case.

The Fourth Circuit did not follow this Court’s rulings in *Smith* and *Opper* and did not follow circuit precedent that cited and followed *Smith* and *Opper*. Mr. Henderson respectfully requests that the Court grant his petition and review the Fourth Circuit’s opinion affirming his conspiracy conviction.

B. The Evidence From Folly Drive Was Not Sufficient To Prove The Conspiracy Charge Against Mr. Henderson.

In addition to Captain Sampson’s testimony, the Fourth Circuit ruled that “six days of video leading up to the April 30 search and arrest involving multiple acts [] also supported the trustworthiness of Henderson’s admissions.” App. 10. Under applicable Fourth Circuit law, “mere knowledge, acquiescence or approval without cooperation or agreement to cooperate is not enough to constitute one part of a conspiracy.” *United States v. Manback*, 744 F.2d 360, 390 (4th Cir. 1984) (quotation omitted). Likewise, mere presence at the scene of illegal drug trafficking is not sufficient to prove participation in a conspiracy. *E.g., United States v. Pupo*, 841 F.2d 1235, 1238 (4th Cir. 1988); *United States v. Dominguez*, 604 F.2d 304, 309 (4th Cir. 1979). “[E]vidence of continuing relationships and repeated transactions can support the finding that there was a conspiracy, especially when coupled with substantial quantities of drugs.” App. 7-8 (quoting *United States v. Reid*, 523 F.3d 310, 317 (4th Cir. 2008)). A simple buyer-seller relationship is not sufficient to prove a drug distribution conspiracy, *see, e.g., United States v. Hackley*, 662 F.3d at 679; but “such evidence is relevant and probative ‘on the issue of whether a conspiratorial relationship exists.’” App. 8 (quoting *United States v. Howard*, 773 F.3d 519, 525-26 (4th Cir. 2014)).

1. The Government cannot rely on the Folly Drive evidence to prove the alleged conspiracy.

First, none of the evidence from Folly Drive has any connection to Mr. Henderson's alleged conspiracy with Red Cloud to serve as his middleman in trafficking kilograms of cocaine to other drug traffickers. The Government presented no testimony that anyone at Folly Drive other than Mr. Henderson was connected to Red Cloud. Although Mr. Henderson named multiple drug traffickers in his statement, the Government offered no testimony at the trial that anyone Mr. Henderson named in his statement was present at the Folly Drive trailer at the time of the search. Moreover, Lieutenant Dimery reviewed all the video evidence from nine days in April 2019, paused when he saw a person or vehicle, and downloaded what he felt needed to be downloaded, JA214-215; and Captain Sampson spent five to seven hours carefully reviewing the video clips the Government had selected to use at trial, JA297; but neither Lieutenant Dimery or Captain Sampson identified in the videos Red Cloud or any of the other drug traffickers that Captain Sampson said he recognized in Mr. Henderson's statement, JA142-219 (complete testimony from Lieutenant Dimery), JA274-338 (complete testimony from Captain Sampson).

Second, nothing from the search of the Folly Drive trailer or the video evidence supports Mr. Henderson's statement that he was trafficking kilogram quantities of cocaine beginning in 2015. Viewing the evidence in the light most favorable to the Government, *see Glasser v. United States*, 315 U.S. 60, 80 (1942), the video evidence showed Mr. Henderson involved in small, hand-to-hand

transactions, not kilogram quantity sales. The police recovered 2.61 grams of powder cocaine and 3.37 grams of crack under the vehicle outside the trailer that the Government says Mr. Henderson had in his pocket, JA175-177, JA258-261, App. 3; and the police found 12.76 grams of crack and 7.58 grams of cocaine in a Crown Royal bag in the toilet tank inside the trailer, JA231, JA262-263, App. 3.

Third, Mr. Henderson's statement to law enforcement was the only evidence of his alleged involvement in a drug trafficking conspiracy in 2015, 2016, 2017, 2018, or 2019 prior to April of that year. Evidence of hand-to-hand sales years after he told law enforcement he began serving as middleman for Red Cloud's multiple kilogram sales of cocaine to other drug dealers, none of whom were present at Folly Drive, does not support "the essential facts admitted" in Mr. Henderson's statement and, therefore, is not sufficient corroborating evidence. *See Opper v. United States*, 348 U.S. at 93.

"The government cannot use multiple conspiracies as evidence to support an indictment for a single conspiracy; the evidence at trial may not vary impermissibly from the allegations of the indictment." *United States v. McLean*, Nos. 96-4789, 97-4775, 1998 WL 879497, at \*3 (4th Cir. Dec. 17, 1998). *McLean* shows why the video evidence and evidence from the Folly Drive search does not corroborate Mr. Henderson's confession to an agreement to serve as a middleman for Red Cloud's sales of kilogram quantities of cocaine.

In *McLean*, the defendants were charged in a conspiracy from 1970 to January 1996 to sell cocaine, crack, and marijuana. 1998 WL 879497, at \*1.

McLean argued that the Government's evidence showed at most multiple conspiracies, and the Fourth Circuit explained that "the failure to prove the existence of a single conspiracy, as opposed to multiple smaller conspiracies, may be viewed as a failure to prove an essential element of the crime of conspiracy." *Id.* at \*3. The evidence at trial showed that McLean sold drugs in the early 1970s, but the Government identified no co-conspirators in this period. *Id.* at \*4. Between 1980 and 1983, the evidence showed that McLean conspired with two men to sell drugs, but there was no evidence that the two were later involved with McLean or with any of the other alleged co-conspirators. *Id.* at \*5. The Government offered evidence for the period from 1987 to 1996 that the *McLean* court said was sufficient to establish McLean's involvement in a conspiracy to distribute crack during that period, but "[t]he amount of evidence supporting conspiratorial activity after 1987 cannot, however, offset the paucity of evidence offered for the earlier time periods at issue." *Id.* The *McLean* court held that "no rational trier of fact could have found that the government proved the existence of a 26-year conspiracy" and reversed McLean's conviction. *Id.* at \*8.

Where Mr. Henderson's uncorroborated confession was the only evidence supporting the charge that he was involved in a drug trafficking conspiracy in 2015, 2016, 2017, 2018, and 2019 before April of that year, the Government cannot rely on that statement as proof of the alleged conspiracy. *See supra* pp. 11-14. Thus, as in *McLean*, for the bulk of the time alleged in the conspiracy count, the Government's proof fails. *See McLean*, 1998 WL 879497, at \*4-6. Like in *McLean*,

the Government's evidence was proof, at best, of multiple conspiracies—Mr. Henderson's supposed agreement with Red Cloud to serve as his middleman was one conspiracy, and Mr. Henderson's supposed agreement with others at the Folly Drive trailer, who had no connection to Red Cloud, was another conspiracy. *McLean*, 1998 WL 879497, at \*6 (Government showed “no overlap in the actors (with the exception of McLean), and no unitary scheme or common aim among co-conspirators” (quotations omitted)). And like the defendant in *McLean*, Mr. Henderson is the “common denominator in the conspiracies,” but as the *McLean* court made clear, “this fact does not offset the error.” 1998 WL 879497, at \*5.

2. The Government did not prove any conspiracy with the Folly Drive evidence.

The Fourth Circuit held that “the evidence as a whole was more than sufficient to prove beyond a reasonable doubt that Henderson was guilty of the conspiracy offense,” App. 11, but the Government did not prove Mr. Henderson was involved in a separate conspiracy at the Folly Drive trailer. Three other men at the trailer were arrested, but none were indicted with Mr. Henderson, none testified, and the Government offered no testimony from any witness who bought drugs from Mr. Henderson or the alleged Folly Drive conspirators, or sold drugs to them. When the police entered the trailer pursuant to the search warrant, Jeremy Blanks was present on the couch in possession of an AR-15 style rifle. JA209-210. Dusty Chaves and Chandler Lowrey fled the trailer, but were apprehended. JA210, JA243, JA356-357, JA576. None were charged with Mr. Henderson, *see* JA23-26, and none testified at his trial.

The video evidence showed Mr. Henderson involved in hand-to-hand sales, but the Government did not contend that those it says were buying crack from Mr. Henderson were co-conspirators, and none testified at his trial.

Mr. Henderson's mere presence at the scene of illegal drug trafficking is not sufficient to prove participation in a drug trafficking conspiracy, and that knowledge, acquiescence, or approval of Mr. Henderson's activities without cooperation or agreement to cooperate is likewise not sufficient to prove a drug trafficking conspiracy. *See supra* p. 17. Selecting video clips from a nine-day period, the Government showed that Mr. Henderson was sometimes present with others in or around the trailer, but the video evidence does not support the Government's claim or the Fourth Circuit's conclusion that these men were co-conspirators. Review of the video evidence shows nothing more than knowledge or acquiescence.

The Fourth Circuit said that Mr. Henderson's hand-to-hand transactions were "always under the protection of handguns or an AR-15 rifle, or both, and other men who were present at the residence." App. 10. Mr. Henderson acknowledges that courts describe guns as "tools of the drug trade," *e.g.*, *United States v. Ward*, 171 F.3d 188, 195 (4th Cir. 1999); but guns are also consistent with drug possession, *see United States v. Jenkins*, 566 F.3d 160, 163 (4th Cir. 2009).

According to the Fourth Circuit, "[t]he jury saw an armed Henderson, supported and protected by other armed men, aggressively defending the property—and the drug dealing going on there—against approaching vehicles and

persons.” App. 10. The man the Fourth Circuit says was “positioned strategically to ensure that he is behind the customer” during one of the transactions, App. 4, is the “legally blind” man (App. 3) found inside the trailer when the police served the search warrant. *See JA378* (defense counsel: “They mentioned the lookout. That’s the blind guy.”), JA417 (prosecutor: “Leave the blind guy on the couch with the rifle. He can’t run; he’s legally blind.”). On April 24, Mr. Henderson and another man talk to someone who arrives in a truck; there is no suggestion that any drug sale occurred. The video from April 25 shows Mr. Henderson walking from the trailer to the street and walking back with a dog; the video also shows a man walking toward the street before Mr. Henderson leaves the trailer, then continuing to walk up the street after Mr. Henderson starts to walk back toward the trailer with the dog. Gov’t Ex. 16C. On April 27, when Mr. Henderson walks inside the trailer from the porch where he is conducting an alleged drug sale, the “blind guy” is present on the porch and briefly looks at the table, then walks away before Mr. Henderson walks back onto the porch. Gov’t Ex. 16D.2 at 5:50-5:59. None of this evidence proves that Mr. Henderson was involved in a drug trafficking conspiracy with those at the Folly Drive trailer. To the extent that the jury reasonably could infer that those persons present at the time Mr. Henderson conducted hand-to-hand transactions knew what he was doing and acquiesced in Mr. Henderson making those transactions, such knowledge and acquiescence are not sufficient to prove a drug trafficking conspiracy. *E.g., United States v. Manback*, 744 F.2d at 390. The Fourth Circuit erred in ruling that the Government proved the conspiracy charge.

## CONCLUSION

For the foregoing reasons, Petitioner Jamie Christopher Henderson respectfully requests that the Court grant this petition and issue a writ of certiorari to review the opinion of the Fourth Circuit in this case.

This the 7th day of October, 2024.

/s/ Paul K. Sun, Jr.

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