

No. _____

In The
Supreme Court of the United States

MARGARET ANN SUTTON,

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

Patricia A. René, Esq.
Counsel of Record
Virginia Bar No. 38300
THE RENÉ LAW FIRM
P. O. Box 6367
Williamsburg, VA 23188
(757) 345-1391

Counsel for Petitioner
Margaret Ann Sutton

QUESTIONS PRESENTED

- I. Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction for Drug Traffic Conspiracy.
- II. Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction for Maintaining a Drug-Involved Premises.
- III. Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction for Possession with Intent to Distribute Methamphetamine.
- IV. Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction for Possession with Intent to Distribute Marijuana.
- V. Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction for Possession of a Firearm in Furtherance of a Drug Traffic Crime.
- VI. Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction for Convicted Felon in Possession of a firearm.
- VII. Whether the sentence imposed is longer than necessary to achieve the goals of sentencing, in violation of Sutton's right to due process.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner, who was the Defendant-Appellant below, is Margaret Ann Sutton.

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

TABLE OF CONTENTS

| | Page: |
|--|-------|
| QUESTIONS PRESENTED | i |
| PARTIES TO THE PROCEEDINGS BELOW | ii |
| TABLE OF CONTENTS..... | iii |
| TABLE OF AUTHORITIES | v |
| PETITION FOR A WRIT OF CERTIORARI..... | 1 |
| OPINIONS BELOW | 1 |
| JURISDICTION..... | 1 |
| CONSTITUTIONAL PROVISIONS INVOLVED..... | 1 |
| STATEMENT OF THE CASE..... | 2 |
| REASONS FOR GRANTING PETITION..... | 9 |
| I. Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction for Drug Traffic Conspiracy | 9 |
| Argument..... | 9 |
| II. Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction or Maintaining a Drug-Involved Premises..... | 12 |
| Argument..... | 12 |
| III. Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction for Possession with Intent to Distribute Meth..... | 14 |
| Argument..... | 14 |
| IV. Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction for Possession with Intent to Distribute Marijuana | 15 |
| Argument..... | 15 |

| | | |
|--|---|----|
| V. | Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction for Possession of a Firearm in Furtherance of a Drug Traffic Crime | 18 |
| | Argument..... | 18 |
| VI. | Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction for Convicted Felon in Possession of a firearm | 20 |
| | Argument..... | 20 |
| VII. | Whether the sentence imposed is longer than necessary to achieve the goals of sentencing, in violation of Sutton's right to due process..... | 20 |
| | Argument..... | 20 |
| | A. Procedural Reasonableness | 21 |
| | B. Substantive Reasonableness | 22 |
| | CONCLUSION..... | 24 |
| | APPENDIX | |
| Opinion | | |
| U.S. Court of Appeals for the Fourth Circuit | | |
| filed January 22, 2025 | A1 | |
| Order | | |
| U.S. Court of Appeals for the Fourth Circuit | | |
| filed February 19, 2025..... | A19 | |

TABLE OF AUTHORITIES

| | Page(s): |
|---|------------|
| Cases: | |
| <u>Gall v. United States</u> , 552 U.S. 38 (2007) | 20, 21, 23 |
| <u>Rehaif v. United States</u> , — U.S. —, 139 S. Ct. 2191 (2019) | 20 |
| <u>United States v. Bell</u> , 954 F.2d 232 (4th Cir. 1992) | 15, 16 |
| <u>United States v. Blue</u> , 957 F.2d 106 (4th Cir. 1992) | 17 |
| <u>United States v. Booker</u> , 543 U.S. 220 (2005) | 20 |
| <u>United States v. Burgos</u> , 94 F.3d 849 (4th Cir. 1996) | 10 |
| <u>United States v. Diosdado-Star</u> , 630 F.3d 359 (4th Cir. 2011) | 20-21 |
| <u>United States v. Green</u> , 599 F.3d 360 (4th Cir. 2010) | 9 |
| <u>United States v. Laughman</u> , 618 F.2d 1067 (4th Cir.), <u>cert. denied</u> , 447 U.S. 925 (1980) | 14-15, 16 |
| <u>United States v. Lavell Dean</u> , 414 F.3d 725 (7th Cir. 2005) | 21 |
| <u>United States v. Lomax</u> , 293 F.3d 701 (4th Cir. 2002) | 19 |
| <u>United States v. Moreland</u> , 437 F.3d 424 (4th Cir. 2006) | 21 |
| <u>United States v. Onick</u> , 889 F.2d 1425 (5th Cir. 1989) | 12 |
| <u>United States v. Perry</u> , 560 F.3d 246 (4th Cir. 2009) | 19 |

| | |
|--|------------|
| <u>United States v. Robinson</u> , 60 F.3d 826 (4th Cir. 1995) | 15, 16 |
| <u>United States v. Russell</u> , 595 F.3d 633 (6th Cir.), <u>cert. denied</u> , __ S. Ct. __, (2010) | 12 |
| <u>United States v. Santiago</u> , 96 F.4th 834 (5th Cir. 2024) | 12, 13, 14 |
| <u>United States v. Soto</u> , 779 F.2d 558 (9th Cir. 1986) | 17-18 |
| <u>United States v. Stevens</u> , 549 F.3d 459 (6th Cir. 2008) | 21 |
| <u>United States v. Verners</u> , 53 F.3d 291 (10th Cir. 1995) | 12 |
| <u>United States v. Wilson</u> , 135 F.3d 291 (4th Cir. 1998) | 9 |
| Statutes: | |
| 18 U.S.C. § 3553(a) | 21, 22 |
| 21 U.S.C. § 856..... | 12 |
| 28 U.S.C. § 1254..... | 1 |
| 28 U.S.C. § 1291..... | 1 |
| Constitutional Provisions: | |
| U.S. Const. amend. V..... | 1 |
| Sentencing Guidelines: | |
| U.S.S.G. § 3B1.2..... | 22 |
| U.S.S.G. § 3E1.1..... | 21 |
| Other Authorities: | |
| <u>Oxford Languages Dictionaries</u> , Oxford University Press (2025) | 13 |

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Margaret Ann Sutton, respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

By published opinion, dated January 22, 2025, the United States Court of Appeals for the Fourth Circuit affirmed Petitioner's convictions. That Order can be found at Appendix A1. On February 19, 2025, the United States Court of Appeals for the Fourth Circuit filed an order denying Petitioner's Petition for Rehearing *En Banc*. That Order can be found at Appendix A19.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254, as this Petition for Writ of Certiorari arises from a decision by published opinion of the U.S. Court of Appeals for the Fourth Circuit, dated January 22, 2025; and, denial of a Petition for Rehearing *en banc* to the same Court, dated February 19, 2025. The U.S. Court of Appeals for the Fourth Circuit acquired jurisdiction over the appeal, pursuant to 28 U.S.C. §1291.

CONSTITUTIONAL PROVISIONS INVOLVED

The questions presented in this case involve the guarantees set forth in the Fifth Amendment to the United States Constitution.

STATEMENT OF THE CASE

The record in this case presented the following facts¹:

On April 21, 2021, the Government executed a search warrant at 3053 Danwood Drive [herein “the house”] in the City of Norfolk. Vincente Alejo Andres, Jr. [herein Andres], Katherine Marie Moore, [herein Moore], and Margaret Ann Sutton [herein Sutton], were arrested and charged with various drug distribution offenses (JA142). Moore, who had just sold three ounces of methamphetamine [herein meth] to an undercover DEA agent for \$2,700 cash, signed a cooperation agreement and testified against Andres and Sutton to reduce her sentence (JA101-102).

Moore sold meth to an undercover officer on March 17, 2021 and again on March 23, 2021, which she got from Andres (JA82, JA89-92, JA108-110). Moore saw Andres measure the meth Moore sold; and smoked meth with Andres prior to the sale (JA113-116). Sutton was not involved in the two March sales of meth (JA142). Officers learned they could get meth from Moore and suspected that Andres was her supplier (JA341). Andres was suspected of distribution since 2020 (JA341-342).

On April 21, 2021, Moore sold to Special Agent Jack Faddis, acting undercover (JA82, JA89-92, JA96). Moore pled guilty on July 1, 2021 to distribution of meth and signed a cooperation agreement with the government, in

¹ References to “JA” in this document are to the joint appendix filed in the Court of Appeals. References to “(A)” in this document are to the appendix filed in this petition for writ of certiorari.

order to get her sentence reduced (JA100-102). Moore is a chronic, lifelong drug user, who has used heroin, cocaine, meth, and marijuana (JA103). She has been diagnosed with schizoaffective disorder, PTSD, and borderline personality disorder (JA103). She is prescribed Haldol, Lithium, Clonidine, and Cogentin (JA103). Moore was not taking her mental health medication during this time (JA132). She has suffered seven (7) felony convictions (JA103).

Moore was released from jail in January 2021, and contacted Andres to begin selling meth (JA108, JA141-142). Moore had been in and out of jail and mental health facilities between February 2019 and January 2021 (JA140-141).

Sutton and Andres began a relationship in April 2021 (JA143). Prior to that time, Andres lived with Robin [West], whom he was in a relationship with until the end of March 2021 (JA142-143).

Moore tried to set up the April 21, 2021 buy the day before, but neither Sutton nor Andres responded to her (JA476-477). Moore refers to Sutton as “Maxie,” rather than “aunt” in the text, telling Sutton to wake up, because Moore had people coming [to her] to make a purchase, with no response (JA477). Moore and Faddis agreed to try to make the buy the next day, April 21, 2021 (JA477-478).

Forensic communication records showed that in the early morning of April 21, 2021, a phone call was made from Sutton to Moore for just under four minutes (JA479). Just after 8:00 a.m., Moore and Faddis had a voice call (JA479). Moore then texted Sutton that she needed the meth soon and the money would be there by 10:00 a.m. (JA479). Sutton did not respond, so Moore contacted Faddis and told

him she was waiting for Moore's "aunt" to be available to bring the meth to Moore, so the buy would have to be later on (JA480). Just before 11:00 a.m., Sutton texted Moore to say, "I'm up. He's [Andres] sleeping. But I have that!!! (JA481). After arranging for Faddis to drive Moore to make the purchase, Moore texted Sutton at 11:45 a.m. stating, "I'm on my way to u to pick that up. U there???, with no response from Sutton. (JA482). Moore then sent a Facebook message to Sutton, "I'm omw ["on my way"]. U at the house right?," in which Sutton did not respond (JA482). At 11:55 a.m., the records show a 37 second call from Sutton to Moore (JA482-483). At 12:21, Moore texted Faddis, "Got 2 bagged up so far . . . almost done" (JA483).

The forensic examination did not produce the content of all of the messages, or location data (JA486-489, JA492-493). The first time Sutton's phone number showed up on Moore or Andres' phone was March 26, 2021 (JA491).

Moore stated Sutton asked her to buy a scale on the way to pick up the meth (JA123). Multiple scales were found at the house during the search (JA145).

Moore stated she went to the house, Sutton measured 4 ounces of meth, which Moore sold to the Agent and gave the money to Sutton (JA123-126, JA266-270). Sutton only agreed to help out Moore because Andres was asleep (JA145). Moore identified text and Facebook messages with Sutton to set up the buy (JA126-128). Moore stated she got 4 ounces from Sutton, but gave only 3 ounces to the Agent (JA142).

A search warrant was executed at the house on April 21, 2021 (JA304-306). In the master bedroom, there were plastic baggies; a gun box with an unloaded, .45

Hi-Point caliber handgun inside the box; a .9mm Taurus handgun, with a loaded magazine was atop a dresser; two digital scales; crystal meth inside of a blue bag, inside of a Crown Royal bag, inside of another bag, inside of a clothes hamper; and, a second quantity of crystal meth inside of a bag, inside of the same clothes hamper (JA311-313, JA329-330). Agent Richard Stocks, who participated in the search did not remember the type of clothes that were inside of the clothes hamper, or the type of clothes inside of the master bedroom (JA334-336).

The search produced 10 pounds of marijuana, inside of a wooden box that was “tricky” to open, on the bathroom floor, sticking out of the bathroom into the hallway (JA314, JA317-318, JA328). The officers found meth smoking devices inside of the second bedroom (JA317). Agents recovered \$3,500 from Andres’ person; and, \$2,400 was recovered from Sutton’s person (JA298, JA317, JA322).

There was no mail, bills, or other paperwork with Sutton’s name on it at the house (JA336-337).

Robin West was in an eight to ten year relationship with Andres until the end of March 2021 (JA237). She and Andres moved into the house in January 2000 (JA246-247). Andres paid the rent for the house (JA236). She signed an immunity agreement with the Government in exchange for not being prosecuted (JA129, JA254, JA260, JA261). West, too, is a chronic drug user, and has used marijuana, LSD, mescaline, cocaine, crack [cocaine], meth, and prescription drugs such as Xanax and other pain killers (JA232-234). West stated the chronic drug use over the years has hurt her memory (JA253). She smoked meth with her daughter,

Sarah Davis and Davis's boyfriend, Chris Fant, who lived at the house also (JA245). West traveled with Andres to California to pick up meth approximately four times (JA237). West identified a person nicknamed "HVAC," who West described as Andres' partner (JA242-243). She said they worked together and traveled together to California (JA242-243). West also identified Joey Whitlock, Larry Burks, and Gary Gaskins as three people who sold meth for Andres (JA243-244). Andres' niece, "Kat" [Moore] visited the house to sell his [Andres'] drugs (JA238).

There were a variety of people in and out of the house (JA245). She identified a host of people who frequented the house to get meth from Andres (JA239-240). West described Sutton's presence at the house as that of a "customer" (JA256-257). Sutton began a relationship with Andres after West and Andres broke up (JA254). Sutton did not stay overnight at the house while West lived there; and, Sutton did not go with West and Andres to California (JA257).

West used meth with Andres, and neither of them worked during the eight years they were together (JA258). However, West bought an RV motor vehicle with Andres a month before West moved out (JA254). West stated that even though Andres stated he paid \$10,000 for the RV, West gave Andres \$15,000 for it when she moved out (JA259). Davis continued to live at the house after West moved out (JA260). West last used meth three months before the trial (JA262).

West stated they had scales at the house (JA245). She identified a box where Andres stored meth, stating one would have to know how to open it because it was a puzzle (JA245-246).

Sarah Davis, Chris Fant, and Lori Olup signed immunity from prosecution agreements with the Government to obtain reduced sentences and/or avoid prosecution (JA151-154, JA169-170, JA173-176, JA189-191, JA197-199). Davis used heroin, meth, and marijuana while she lived there (JA152, JA155-156). She testified to the drug use and distribution at the house (JA157-163). She recalled seeing Sutton at the house at a time Sutton was incarcerated (JA162, JA 169-170). Davis stated the drugs she uses affects her memory and clarity about things (JA171).

Fant stated Andres paid him for moving a refrigerator with an 8-ball of meth (JA179). Fant saw Andres with 20 pounds of meth at the house and two firearms (JA179-180). Andres made five trips to California to get meth (JA180). He identified co-conspirators of Andres who sold meth with and for Andres, and traveled often with Andres to get meth (JA180-184). West and Andres lived in the master bedroom together (JA193). Fant has two prior felony convictions; and, has used meth, crack, and marijuana (JA176-179). He had charges pending for possession with intent to distribute and malicious wounding and assault upon hospital staff at the time of his immunity agreement and testimony (JA192-193). Fant stated that everything during that time is just a blur to him (JA195).

Olup has two prior felony convictions, and uses meth, cocaine, heroin, and marijuana (JA199). She met Andres in 2017 (JA200). She cleaned Andres' house in exchange for money and meth, which she sold and smoked (JA202, JA209). In April 2021, Andres paid her boyfriend \$2,000 to drive Andres to California (JA202-204).

They picked up Sutton in Tennessee (JA204). Andres and Sutton flew to California; and, Olup and her boyfriend drove there, transporting motorcycles (JA203-204). Andres brought a large amount of meth and marijuana to the hotel, which Andres paid for (JA206, JA209). They smoked meth at the hotel and along the drive back to Virginia (JA206-207).

Olup identified co-conspirators she saw at the house, including Moore, Fant, West, Davis, and Larry Burks, whom she described as Andres' right hand man, among others (JA208). Olup has been smoking meth for two years (JA209).

Andres sent and received monetary wire transfers over a three-year period from January 1, 2018 to April 12, 2021, totaling \$55,000 (JA351, JA357-361). In March or April, Sutton wired \$2,200, then \$2,000 a week later for a total of \$4,200 to Andres (JA354).

REASONS FOR GRANTING PETITION

The reasons for granting this petition is to determine whether the Court of Appeals erred in finding that (1) Sutton had constructive possession of the contents inside of a closed container, which Sutton was unable to open; (2) Sutton maintained a drug-involved premises, where her presence at the premises was described as that of a customer; (3) Sutton was a party to a drug traffic conspiracy, based upon a newly established romantic relationship with drug trafficker, Vincente Alejo Andres; (4) Sutton possessed meth with the intent to distribute it, where she participated in a single buyer/seller transaction to accommodate Andres; (5) Sutton was in constructive possession of the weapons found at the premises, without evidence that she exercised dominion or control over the weapons; and, (6) the sentence imposed was substantively reasonable under the facts and circumstances.

I. Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction for Drug Traffic Conspiracy.

Argument

To prove a drug conspiracy, the evidence must prove (1) an agreement between two or more persons to engage in conduct that violates a federal drug law; (2) the defendant's knowledge of the conspiracy; and (3) the defendant's knowing and voluntary participation in the conspiracy. United States v. Green, 599 F.3d 360 (4th Cir. 2010), quoting, United States v. Wilson, 135 F.3d 291, 306 (4th Cir. 1998).

Here, Andres' drug conspiracy began in 2018, and continued up to April 21, 2021. Sutton purchased meth from Andres as did his other customers. Evidence of a simple buyer/seller relationship is insufficient to support a conspiracy conviction.

United States v. Burgos, 94 F.3d 849, 862 (4th Cir. 1996) (*en banc*). There is no evidence of an agreement between Sutton and Andres to distribute drugs at any time. Sutton's knowledge that Andres sold meth does not make her a co-conspirator; and, neither does her having a romantic relationship with Andres beginning late March/early April – mere weeks before her arrest. Moore was a co-conspirator with Andres and others, evident by the sales of meth she made for Andres in March 2021.

On April 21, 2021, Moore was acting in her capacity as co-conspirator with Andres, attempting to sell meth to Faddis. When she was unable to reach him, she contacted Sutton to accommodate Moore in obtaining the meth from Andres, who was asleep. According to Moore, rather than wake Andres, Sutton handed Moore what Moore and Andres had agreed upon. Of course, the only evidence that this occurred inside of the house is Moore's testimony. Moore's chronic, drug induced haze, overlaying significant, untreated mental health issues casts serious doubt upon the veracity of her testimony. By her own admission, she has difficulty with her memory and clarity of events due to her years of chronic drug use of a variety of drugs.

Having been caught red-handed distributing meth three times within a month to undercover agents, Moore had substantial motivation to say anything to avoid, what would have been a lengthy prison sentence, given her seven prior felony convictions. Moore's lack of veracity is also evident by her apparent theft of one of the four ounces of meth she sold to Faddis.

If, in fact, Sutton passed the meth that Andres and Moore had agreed to distribute to accommodate Moore, who was pressing Sutton for it, rather than wake Andres, Sutton's actions are more consistent with an attempt to help out Moore, rather than an intent to distribute meth. Therefore, the evidence fails to prove Sutton's voluntary participation in the conspiracy between Moore, Andres, and others.

The fact that Moore had to bring scales to the house for the transaction, where there were multiple scales at the house, shows Sutton was not measuring and distributing the meth from the house regularly, such that her mere presence there as a houseguest and meth user can be characterized as voluntary participation in the conspiracy.

The Government's evidence of conspiracy to distribute drugs against Sutton is predicated upon the testimony of chronic drug addicts, motivated by self-gain – primarily related to avoiding prosecution or reducing a sentence for their involvement in various drug activity, including distribution and/or conspiracy to distribute drugs with Andres. Because of their chronic drug usage over time, the witnesses describe this time period as a blur, and admit that their memory of events is adversely affected by drug usage. Moreover, West, who was with Andres for a lengthy period of time and witnessed the traffic in and out of the house, described Sutton's activity at the house as that of a customer, rather than a distributor and co-conspirator.

II. Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction or Maintaining a Drug-Involved Premises.

Argument

The offense of maintaining a drug-involved premises under 21 U.S.C. § 856 requires proof that the defendant (1) knowingly (2) opened, leased, rented, used, or maintained any place (3) for the purpose of manufacturing, distributing, or using any controlled substance. United States v. Santiago, 96 F.4th 834 (5th Cir. 2024). See also United States v. Russell, 595 F.3d 633, 642 (6th Cir.), cert. denied, ___ S. Ct. ___, (2010); United States v. Verners, 53 F.3d 291, 295 (10th Cir. 1995); United States v. Onick, 889 F.2d 1425, 1431 (5th Cir. 1989).

Here, Andres rented the house where the contraband was found and lived there, distributing drugs for more than a year. As such, the statutory language "open, lease, or rent" applied to Andres based upon the evidence that the premises was Andres' residence. In addition, Andres clearly maintained the premises by paying whatever utility bills or costs that permitted him to live there. The evidence showed that Andres "used" the premises for the purpose of drug distribution, based upon the overwhelming evidence of his guilt.

By contrast, there is no evidence that Sutton's name was on the lease, that she paid rent or utilities, or that she did anything to maintain the premises. There is no evidence that Sutton lived at the premises or stayed there overnight during the three-week period between when West moved out and when the arrests were made. There is no evidence that Sutton's clothes were found at the premises or that

mail associated with Sutton was found there. Sutton's nexus to the house was that of a houseguest, who was there to spend time with her boyfriend, Andres.

However, the Court of Appeals affirmed Sutton's conviction based upon the word "use" in the statute. That finding is erroneous as no evidence showed that Sutton made use of the premises for the purpose of distributing drugs.

In the opinion, the Court of Appeals looks to various ways to append a meaning to the word "use" other than its ordinary, plain meaning to affirm the conviction. (A8-16). Ordinarily, to "use" means to "take, hold, or deploy (something) as a means of accomplishing a purpose or achieving a result." Oxford Languages Dictionaries, Oxford University Press (2025). Based upon the plain meaning of the word "use," there is no evidence that Sutton used the premises for the purpose of distributing drugs. Sutton was merely present at the premises, and just before her arrest, she accommodated Moore, who wanted to obtain the drugs from Andres, who was asleep. The fact that Sutton asked Moore to purchase a scale in route to the premises to have the drugs weighed, when there were two sets of scales already at the premises, shows a lack of knowledge and intent to use or maintain the premises for drug related purposes. Sutton was at the premises to spend time with Andres, her new romantic partner.

As the Court stated in Santiago, "Using a hotel room for the night as a storefront for illegal drugs is precisely the type of 'use' Congress included in [the statutory] language that would not already be covered by 'open,' 'lease,' 'rent,' or 'maintain.'" Santiago, 96 F.4th at 847.

To the extent that this opinion places more or less weight to the verbs used in the statute, or characterizes them as “active” and/or “passive” verbs, it serves to rewrite the statute to assign specific meanings to the words, which the Court, by its own admission, acknowledged that Congress chose not to do. The Court of Appeals’ analysis serves only to muddy the waters in directing the trial courts in applying a plain meaning to the words in the statute. Moreover, this opinion is in direct conflict with the opinion in Santiago, where the 5th Circuit interpreted the word “use,” giving it the ordinary meaning. More importantly, the Fifth Circuit opinion makes it clear the when Congress added the word “use,” it’s purpose was to cover any other way a property could be used for drug activity that wasn’t already covered by the other verbs in the language of the statute.

Here, Sutton’s presence at the premises was not for the purpose of using it as a drug-related property. Rather, it was to spend time with her boyfriend, Andres. The Court of Appeals’ finding to the contrary is plainly wrong. Therefore, the evidence is insufficient to support the conviction.

III. Whether the evidence is sufficient as a matter of law to sustain Sutton’s conviction for Possession with Intent to Distribute Meth.

Argument

The evidence fails to prove that Sutton was in knowing possession of the meth found at the house. Knowing possession may be proven by actual or constructive knowledge. Constructive possession exists when the defendant exercises, or has the power to exercise, dominion or control over the item, and has knowledge of the item’s presence. United States v. Laughman, 618 F.2d 1067, 1077

(4th Cir.), cert. denied, 447 U.S. 925 (1980); United States v. Robinson, 60 F.3d 826 (4th Cir. 1995); United States v. Bell, 954 F.2d 232, 235 (4th Cir. 1992).

Here, the evidence fails to prove Sutton's knowledge of the presence of the substance. One container of meth was found inside of a blue bag, inside of a Crown Royal bag, inside of another bag, inside of a clothes hamper. A second quantity of meth was inside of a bag, inside of the same clothes hamper. There is no evidence Sutton knew the meth was where it was found. The meth was inside of multiple closed containers; and, therefore, not in plain view. None of the clothes in the hamper where the meth was found was linked to Sutton such that it can be said that Sutton saw the bags; and, even if there were such evidence, it would not show that she knew what was inside of the bags.

Moreover, even if knowledge could be established, which it cannot, the evidence failed to show that Sutton had the authority to exercise dominion or control over the meth. Clearly, the meth belonged to Andres, who traveled out of state regularly to obtain the meth with a value of \$400,000. It is not likely that Sutton, who had no property rights to or at the house, or to any of the items inside of the house, would have the authority to exercise dominion or control over Andres' \$400,000 meth stash.

IV. Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction for Possession with Intent to Distribute Marijuana.

Argument

The evidence fails to prove that Sutton was in knowing possession of the marijuana found inside of the wooden box. Knowing possession may be proven by

actual or constructive knowledge. Constructive possession exists when the defendant exercises, or has the power to exercise, dominion or control over the item, and has knowledge of the item's presence. United States v. Laughman, 618 F.2d 1067, 1077 (4th Cir.), cert. denied, 447 U.S. 925 (1980); United States v. Robinson, 60 F.3d 826 (4th Cir. 1995); United States v. Bell, 954 F.2d 232, 235 (4th Cir. 1992).

Ten pounds of marijuana were found inside of a wooden box that was "tricky" to open, on the bathroom floor, sticking out of the bathroom into the hallway. As such, the marijuana was not in plain view. No evidence proved that Sutton was aware of what was inside of the box. The box was "tricky" to open and no evidence was produced to show that Sutton knew how to open the box, or had ever done so.

The Court of Appeals found that such evidence was not necessary to prove Sutton exercised dominion and control over the marijuana found inside of the box, without pointing to any evidence of how she otherwise knew marijuana was inside of the box. (A7). Contrary to the Court's finding, evidence that Sutton knew how to open the box or had at any time opened the box is essential to establishing constructive possession. The only way to know what was inside of the box was to have looked inside of it. In order to look inside of the box, Sutton would have had to know how to open it. Therefore, the fact that she did not know how to open the box or had ever done so, without other substantial evidence to establish her knowledge, is merely lack of substantial evidence of guilt, and amounts to no evidence at all. Essentially, the Court found that the lack of evidence of her knowledge is somehow evidence of her knowledge.

The Court of Appeals found that merely because Andres knew how to open the box, didn't mean that he was the only one who knew how to open the box, and that many people could have known the code to opening the box. While this finding is speculative, it simply does not prove that Sutton herself, knew how to open the box or had ever done so. The Court stated that her proximity to the box's contents and proximity to the box for a long time supported a finding of constructive possession. There is no evidence at all that Sutton had proximity to the box's contents. She was in a vehicle driving across country, in which the box was somewhere in the vehicle. The evidence showed that Sutton was a meth user, not a marijuana user, and that she smoked meth, not marijuana as Andres drove across country from California. The meth was not inside of the wooden box. It was in a plastic bag. Therefore, Sutton was in proximity to the box then, and at the time of the arrest in which the box was inside of the premises. Proximity to the locked box is not synonymous to proximity to the marijuana found inside of the box, without proof that Sutton accessed the contents of the box in order to establish her knowledge of its contents or dominion or control over it.

It is clear that she did not own the box, rather Andres owned the box. In United States v. Blue, 957 F.2d 106 (4th Cir. 1992), the Court stated, "It is well established that mere presence as a passenger in a car from which the police recover weapons does not establish possession. The mere proximity of a weapon to a passenger in a car goes only to its accessibility, not to the dominion or control which must be proved to establish possession," quoting, United States v. Soto, 779 F.2d

558, 560 (9th Cir. 1986). The Court found that Blue seated as a passenger in a car did not transform him into the possessor of a firearm found underneath the seat where he was seated, despite evidence that he lowered his shoulder at some point. Id. Similarly, here, Sutton's proximity to the wooden box where marijuana was found does not establish her possession of the contents of the container.

There is no evidence that Sutton had knowledge of the marijuana inside of the closed container because there is no evidence she ever opened or accessed it to show Sutton had knowledge of the contents of the closed container. Sutton's mere presence in the car or at Andres' premises where the wooden box was seen and found goes only to her accessibility to the box, not to her dominion or control over the box, or her knowledge of its contents. This is especially true where no evidence shows she ever touched or handled the box. As such, the evidence is insufficient to support the conviction.

The contrary finding by the Court is erroneous. Therefore, the evidence is insufficient to prove knowing possession of marijuana. Moreover, it is contrary to the well-established law of constructive possession of contraband in this circuit, the other federal circuits, and the Supreme Court of the United States.

V. Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction for Possession of a Firearm in Furtherance of a Drug Traffic Crime.

Argument

Here, the government was required to prove Sutton possessed the firearms and that the possession of the firearms furthered, advanced, or helped forward a drug trafficking crime. Whether the firearms served such a purpose is ultimately a

factual question. United States v. Lomax, 293 F.3d 701, 705 (4th Cir. 2002). Factors to consider include, “the type of drug activity that is being conducted, accessibility of the firearm, the type of weapon, whether the weapon is stolen, the status of the possession (legitimate or illegal), whether the gun is loaded, proximity to drugs or drug profits, and the time and circumstances under which the gun is found.” Id. United States v. Perry, 560 F.3d 246 (4th Cir. 2009).

Here, the evidence fails to show that Sutton exercised dominion or control over the weapons or any items at the house, as argued throughout this petition. Moreover, the evidence fails to show that the weapons, if Sutton possessed them, which she did not, were possessed in furtherance of a drug trafficking crime. The meth was found inside of multiple bags, concealed inside of a clothes hamper. Two handguns were found inside of the room, in which one was inside of a box, not loaded, and the other was atop a dresser. The distance from the weapons to the hamper is unknown. The marijuana was not found in the room with the weapons. The most dangerous weapon – the AR 15 – was in the living room, separated from the meth or marijuana. Moreover, it was not loaded.

Again, this evidence is mere presence where the weapons were found, which is insufficient to show constructive possession of them. The weapons did not belong to Sutton. The drugs found did not belong to Sutton. Therefore, Sutton had no basis to possess firearms to further Andres’ drug trafficking. As such, the evidence is insufficient to support the conviction.

VI. Whether the evidence is sufficient as a matter of law to sustain Sutton's conviction for Convicted Felon in Possession of a firearm.

Argument

It shall be unlawful for a person previously convicted of a felony to possess a firearm. Rehaif v. United States, ___ U.S. __, 139 S. Ct. 2191 (2019). To sustain a conviction, the Government must show that the defendant knew he possessed a firearm and he knew he had the relevant status [convicted felon] when he possessed it. Id.

Here, the evidence failed to prove that Sutton exercised dominion or control over the weapons for the reasons previously stated. Sutton had no property rights in the house or any of its contents. The firearms belonged to Andres. There is no evidence that Sutton had any connection to the weapons other than knowledge of the presence of the weapons in plain view.

No evidence was presented that Sutton touched the weapons or accessed them in any way for any purpose. Therefore, the evidence is insufficient to support the conviction.

VII. Whether the sentence imposed is longer than necessary to achieve the goals of sentencing, in violation of Sutton's right to due process.

Argument

In United States v. Booker, 543 U.S. 220 (2005), the Court held that the federal Sentencing Guidelines were advisory and required district courts to engage in a multi-step process in arriving at a sentence. In Gall v. United States, 552 U.S. 38 (2007), the Court held that the district court must first correctly determine the proper guidelines range, upon making appropriate findings of fact. United States v.

Diosdado-Star, 630 F.3d 359 (4th Cir. 2011), quoting United States v. Moreland, 437 F.3d 424 (4th Cir. 2006). Where facts are in dispute, the court is required to hold an evidentiary hearing to determine the facts. United States v. Lavell Dean, 414 F.3d 725 (7th Cir. 2005).

After determining whether a sentence is procedurally reasonable, the district court must determine whether the sentence is substantively reasonable. Gall, 128 S.Ct. at 597, *supra* (see also United States v. Stevens, 549 F.3d 459, 465 (6th Cir. 2008)). Substantive reasonableness requires the district court to determine whether the sentence imposed is reasonable based upon the facts and circumstances, pursuant to the sentencing factors of 18 U.S.C. §3553(a).

Sutton maintains that the guidelines range was not properly calculated because she was not given a two-point reduction for acceptance of responsibility; and, a two to four point reduction for minor or minimal role in the offense. In addition, Sutton maintains that the sentence imposed in this case is substantively unreasonable based upon the facts and circumstances, upon consideration of the sentencing factors of 18 U.S.C. §3553(a).

A. Procedural Reasonableness

1. Pursuant to §3E1.1 of the sentencing guidelines, Sutton should have received a two-point reduction for acceptance of responsibility in the offense. She proceeded to trial, based upon perceived pressures to do so. In addition, Sutton did not deny any relevant conduct, placing an undue burden upon the government. Therefore, the reduction should have been granted.

2. Pursuant to §3B1.2 of the sentencing guidelines, Sutton is entitled to an adjustment for her minor/mitigating role in the conspiracy. The conspiracy with Andres existed for many years, in which Sutton was not a party. Sutton was described as a customer, rather than a distributor. Merely, because she accommodated Moore on one occasion rather than wake up Andres to complete his transaction with Moore, does not give her a major role in the conspiracy. In fact, the opposite is true. Sutton played a minor role in the conspiracy, and should have received a two or four point reduction, therefore.

B. Substantive Reasonableness

The enumerated factors of 18 U.S.C. § 3553(a) that a trial court must consider when imposing a sentence are:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant; (2) The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed educational and vocational training, medical care, or other correctional treatment in the most effective manner; (3) The kinds of sentences available; (4) The kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines; (5) Any pertinent policy statement; (6) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) The need to provide restitution to any victims of the offense.

Upon consideration of all of these factors, a trial court must impose a sentence that is sufficient, but not greater than necessary to accomplish the goals of

sentencing. Gall, supra. The specific sentence must be tailored to fit the characteristics of the individual, convicted defendant and the specific case. Id.

Here, the sentence imposed was more than necessary to achieve the sentencing goals. Sutton has a history of meth abuse and mental illness. Presumably, the drug use is to self-medicate, rather than comply with treatment. She started using drugs at an early age, and became addicted to meth. There is no evidence of her participation in the March 2021 drug buys, and it appears her involvement in April was to facilitate the purchase between Andres and Moore, who maintained a buyer/seller relationship for a substantial period of time.

A sentence of 15 years, rather than 29 years, adequately reflects the seriousness of the offense, promotes respect for the law, provides just punishment for the offense, affords adequate deterrence to criminal conduct, and protects the public from further crimes by Sutton. The sentence imposed, under the facts and circumstances of this case, which amounts to one act of distribution at the most, is grossly disproportionate to the conduct.

The sentence imposed does not promote respect for the law. This is especially true, where the witnesses in this case, who would say anything to avoid prosecution or punishment, committed egregious acts of distribution and suffered little or no consequence as a result. Moore, who has seven felony convictions, and distributed three times within a month will serve a seven-year sentence. West, Andres' co-conspirator for years, will not be prosecuted or serve any incarceration time. Meanwhile Sutton, who committed one act of distribution by accommodation, at

best, with far fewer felony convictions will serve 29 years. There is something seriously wrong with this outcome. This outcome undermines the goal of avoiding unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. And, it favors substantial drug traffickers, by not prosecuting them, over a one-time accommodator. The trial court abused its discretion in sentencing Sutton.

CONCLUSION

For these reasons and the reasons stated previously on appeal, Petitioner, Margaret Ann Sutton, submits that this petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Patricia A. René

Patricia A. René, Esq.
Counsel of Record
Virginia Bar No. 38300
THE RENÉ LAW FIRM
P. O. Box 6367
Williamsburg, VA 23188
(757) 345-1391

Counsel for Petitioner
Margaret Ann Sutton