

IN THE  
SUPREME COURT OF THE UNITED STATES

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

ALBERT WILLIAM ROBERTS III,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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Petition for Writ of *Certiorari* from Appeals Court Eighth Circuit  
17-1366

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**PETITION FOR WRIT OF *CERTIORARI***

Albert Roberts  
Federal I.D. 65631-112  
USP Leavenworth Camp  
P.O. Box 1000  
Leavenworth, Kansas 66048

## QUESTIONS PRESENTED

**Question Number One:** We hold that an acquitted count that incorporates all of the succeeding counts of an indictment retains its acquitted status when subsequently incorporated into succeeding counts and by the English language having been ruled in the first instance, governs therein. **The question presented is what is the meaning and value of an acquittal?**

**Question Number Two:** In *United States v. Watts*, 519 U.S. 148 (1997) (*per curiam*), this Court controversially held that an acquittal was not necessarily a finding of innocence and that acquitted conduct could be considered at a defendant's sentencing. Conversely, *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), this Court signaled that an acquittal was absolutely relevant, so relevant that no penalty could be assessed subsequent to that acquittal, thus creating a tension between the two rulings. We hold that the use of acquitted conduct at sentencing is a Sixth Amendment and Due Process violation of a defendant's rights and not a matter of degrees of guilt or innocence.

**The question presented is can acquitted conduct continue to be used at sentencing?**

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## **OPINIONS BELOW**

The opinion of the United States Court of Appeals Eighth Circuit appears at Appendix A to the petition and is attached

The opinion of the United States district court appears at Appendix C to the petition and is reported at DCD 112 on Pacer.com

## **JURISDICTION**

A timely petition for rehearing was denied by the United States Court of Appeals on April 10, 2018, and a copy of order denying the rehearing appears at Appendix B.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Sixth Amendment of the Constitution and Due Process clause of the Fifth Amendment. Mr. Roberts was acquitted of 18 U.S.C. Sec. 1349. (DCD 82) Mr. Roberts was convicted of four counts of 18 U.S.C. Sec 1343 & 2. U.S.S.G. Sec 2B1.1 was used to sentence Mr. Roberts.



## STATEMENT OF THE CASE

### Question One: What is the meaning and value of an acquittal?

#### A. Standard of Review

The question asked is point specific to Mr. Roberts' Indictment but generic in terms that an Indictment must charge what is intended to be charged, whether structurally sound or based on the assumption of guilt, as was the case in Mr. Roberts' Indictment. Under rule 29, the district court, on the defendant's motion, "must enter a judgment of acquittal on any offense for which the evidence is insufficient to sustain a conviction." Fed. R. Crim. P. 29(a). "A guilty verdict is overturned only if, viewing the evidence most favorably to the prosecution, no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Stacks*, 821 F.3d 1038 (8<sup>th</sup> Cir. 2016)

The English language and the meaning therein of given words governs the meaning of the spoken and written word. A review of Mr. Roberts' Indictment, the chosen words and charges as well as the finding of innocence and guilt are the standard in which the case at hand will be reviewed as well as the application of verdicts in context of what was charged and how the words employed in the Indictment are used to govern those charges.

#### B. Analysis

The district court erred in denying Mr. Roberts' motion for judgment of acquittal on Counts II, III, IV, and V of the Indictment because the government failed to give value to the acquitted of Count One of the Indictment as it was written. Mr. Roberts was acquitted in Count One of not only Conspiracy to Commit Wire Fraud but also acquitted of making "material false and fraudulent representations and omissions of fact", repeated thirteen times (DCD 1 pg. 1-21)(attached); acquitted of developing and implementing a fraudulent scheme; repeated at least four times,

acquitted of Acts in Furtherance of the Conspiracy (DCD 1 pg. 7-21), and acquitted of the substantive Counts Two through Five by Count One's thirteenth paragraph, subsection w3, accusing Mr. Roberts of additional "wire transmissions and transfers of funds as set forth on Counts Two through Five" (DCD 1 pg. 21).

Pursuant to 18 U.S.C. Sec. 1343, [t]o prove wire fraud, the government must prove (1) intent to defraud, (2) participation in a scheme to defraud, and (3) the use of a wire in the furtherance of the fraudulent scheme.

In wire fraud cases, circuit courts throughout the nation have reversed the district court's refusal to grant a defendant's motion for judgment of acquittal after a jury trial when the government failed to make the requisite showing of proof as a matter of law. *United States v. Dooley*, 578 F. 3d 582, 588-89 (7<sup>th</sup> Cir. 2009); *United States v. Lake* 472 F. 3d 1247, 1260 (10<sup>th</sup> Cir. 2007); *United States v. Izydore*, 167 F. 3d 213, 220 (5<sup>th</sup> Cir. 1999)

Perhaps more importantly, this Court has reversed mail and wire fraud convictions that would have dramatically expanded the scope and statutes. *Skilling v. United States*, 561 U.S. 358, 413-15 (2010) (affirming the reversal of honest-services wire fraud conviction)

The Eighth Circuit focused their denial of Mr. Roberts' Appeal on the rule, preponderance of the evidence, established in the *United States v. Watts*, 519 U.S. 148 (1997) (*per curiam*) and Mr. Roberts further Petitioned the Eighth Circuit En Banc, denied, to review the preponderance of the evidence in that the evidence not pondered was the Indictment and scope of the acquitted charges therein, not just acquitted of Conspiracy to Commit Wire Fraud.

Many lenders pre-2008 made poor lending decisions, and doing so caused one of the worst financial disasters in American history. It is undisputed here that the lenders, in exercising such poor judgment, committed no crime. The same is true of Mr. Roberts, who was a businessman that

expanded his portfolio of homes at the wrong time and lost everything after thirty years of hard work.

Like the Count One charges of conspiracy, making “material false and fraudulent representations and omissions”, developing and implementing fraudulent schemes, Acts In Furtherance of the Conspiracy, and the substantive inclusion of Counts Two through Five into Count One, Mr. Roberts was acquitted of all of these charges by a jury. No rational trier of fact could have found the essential elements of substantive wire fraud in Counts II, III, IV, and V. Therefore, the district court was required to enter a judgment of acquittals as a matter of law.

**Question Two: Will the Court please clarify the tension created between *United States v. Watts*, 519 U.S. 148 (1997)(*per curiam*) and *Nelson v. Colorado*, 137 S. Ct. 1249 (2017) as it relates to the use of relevant conduct to enhance sentencing of defendants?**

#### **A. Standard of Review**

This Court ruled on both cases cited in the question to the Court. The standard to be established is embodied in the meaning of an acquittal as was asked of the Court in question number one. The Court is asked to review both *Watts* and *Nelson* and clarify the tension that has been created between the two cases. We hold that at this conjecture, the Court should stop and review the *Amicus Curiae* Brief for a clear picture as to what the standard should be.

#### **B. Analysis**

In reviewing components of acquittals it is not uncommon for an acquitted charge to have a financial loss implied or proven by a preponderance of the evidence. Even though, absent *mens re*, criminal intent being a requirement of statute 28 U.S.C. § 1343 for proving Wire Fraud, there remains the civil side of an acquitted charge.

Courts for the past twenty-one years have fashioned a litany of case law around this Court’s interpretation of *Watts* to mean specifically that “relevant conduct” to any underlying acquitted

charge, may be considered for purposes of sentencing if the said relevant conduct was proven by a preponderance of the evidence. In other words, a not guilty verdict is by degrees in that it is not a finding of innocence and there by a court is allowed to re-enter the acquitted verdict and declare by the same evidence the jury used to acquit, that a defendant is guilty enough to use the acquitted conduct to enhance a defendant's sentence.

It is noted in this Court's reasoning in *Nelson* that an acquittal is in fact a restoration to a presumption of innocence, so relevant as to preclude any penalty being assessed subsequent to the acquittal. Additionally, the *Nelson* reasoning was applied in *United States v. Brooks*, 13-3213 (2 Cir. Sept. 20, 2017) in a further clarification in a "multi-count case where the defendant had been both acquitted of some charges but remained guilty of others". (See *Amicus Curiae* Brief) In recent years, the Supreme Court directly held that the Sixth Amendment, together with the Fifth Amendment's Due Process Clause, "requires that each element of a crime" be either admitted by the defendant, or "proved to the jury beyond a reasonable doubt." *Alleyne v. United States*, 133 S. Ct. 2151, 2156 (2013). Thus, as articulated by some federal judges, recent precedent regarding the Sixth Amendment and Due Process Clause of the Fifth Amendment supports the conclusion that a district court violates a defendant's constitutional "rights by making findings of fact that either ignore or countermand those made by the jury and then rel[ying] on these factual findings to enhance the defendant's sentence." *Canania*, 532 F. 3d at 776 (Bright, J., concurring).

It is suggested that the Court, by and through *Roberts*, hold that "relevant conduct", whereby monetary damages were caused and proven by a preponderance of the evidence but otherwise acquitted or not charged, may be attached at sentencing as a civil component, but may not be used to further enhance any defendant's sentence by applying other acquitted criminal components of relevant conduct to the U.S. Sentencing Guidelines.

In *Roberts*, at sentencing, the Honorable Brian C. Wimes, United States District Judge, intimated what is being suggested to this Court when he said, “I would rather stand on relevant conduct. I understand your argument, but I just won’t make a ruling. So with that said, it is the Court’s intend to consider it as relevant conduct, because I think that it is appropriate for the Court to do so with respect to loss and to restitution.” (Sent Trans. 7, Appellee Brf. 26)

Conversely, should this Court not be inclined to hold an acquittal as a “restoration to the presumption of innocence” then the Court should consider that at Roberts’ sentencing, Judge Wimes, on a technical note, acknowledged that the burden of considering “relevant conduct” was a “preponderance of the evidence”. It is suggested that such a statement would be necessary in sentencing to establish that any ruling on relevant conduct was, in fact, made by a preponderance of the evidence, much like reading one’s Miranda Rights, in that the overwhelming (preponderance of the) evidence was considered in the Court’s decision. No wording in Mr. Roberts’ sentencing, by law, stated the “relevant conduct” ruling was by a preponderance of the evidence.

The use of relevant conduct to significantly enhance sentencing for Mr. Roberts was not harmless. Had the district court made its finding of fact consistent with the jury’s verdict and if this Court rules that Mr. Roberts was restored to a presumption of innocence in his Count One acquittal then Mr. Roberts’ Guidelines range would have called for a sentence considerably less than the 48 months’ imprisonment he was ultimately sentenced to by the district court. Assuming arguendo that Mr. Roberts’ Question Number One challenging the district court’s reading and rendering of acquitted Count One’s governing of Counts Two through Five as it was incorporated, is denied, we follow that the district court found the specific loss of the two properties charged in counts Two through Five to be \$78,586.39 (DCD 86, pg. 31; DCD 99 pg. 6). Thus, based on this finding in fact, the district court was authorized, pursuant to USSG Sec 2B1.1(b)(1)(D), only to enhance Mr.

Roberts' base offense level for wire fraud by six levels, for a total of 13, instead of 27 as calculated by the district court.

This sentencing error by the district court was prejudicial because it caused Mr. Roberts' applicable Guidelines range, and leaves the sentence outside the proper Guideline range.

**“When a defendant is sentenced under an incorrect Guidelines range – whether or not the defendant’s ultimate sentence falls within the correct range – the error itself can, and most often will be, sufficient to show a reasonable probability of a different outcome absent the error.” *Nolina-Martinez v. United States*, 136 S. Ct. 1338, 1345, 194L.Ed2d 444 (2016)(reviewing solely for plain error**

Additionally, this court recently ruled in *Rasalas-Mireles v. United States*, 2018BL 214344, U.S. NO. 16-9493, 6/18/18, the 14<sup>th</sup> Amendment provides that states may not “deprive any person of life, liberty, or property, without the process of law.” To use acquitted relevant conduct to enhance Mr. Roberts' sentence eviscerates the process of law when a jury ruled otherwise.

Specifically, the district court concluded range if 70 to 87 months' imprisonment. (Sent. Tr. pg., 39) when one re-calculates Mr. Roberts' Guidelines range based on his proper base offense level of 13, it provides a starkly different sentencing range of 12 to 18 months, as opposed to 70 to 87 months that was incorrectly calculated by the district court. (Sent. Tr. pg., 39). This error was particularly prejudicial to Mr. Roberts because his ultimate sentence of 48 months' imprisonment exceeded the top end of the Guidelines range of 18 months' imprisonment, which made the district court's sentence a significant upward variance.

This is particularly troubling because the district court *downward varied* in sentencing Mr. Roberts, and therefore it highlights that the district court would have likely sentenced Mr. Roberts to less than 12 months imprisonment. Therefore, a new sentencing hearing is required by this prejudicial sentencing error.

## REASONS FOR GRANTING THE PETITION

We present before the Court that the meaning of an acquittal should start with how the acquitted count is used in any indictment of charges. The context in which it is used as well as the wording used is critical for interpreting the meaning of any acquitted charge. We hold that the Court's review of this critical matter is needed as it affects tens of thousands of men and women unduly incarcerated to lengthy sentences on the back of their acquitted charges. We present the case of Mr. Roberts as an example of what can happen when the courts give no meaning or clarification to an acquittal.

Mr. Roberts was acquitted, after a jury trial. The charge he was acquitted read; Conspiracy To Commit Wire Fraud. The acquitted charge was Count One, consisting of twenty-one pages that assessed a variety of charges including, thirteen charges of making "material false fraudulent representations and omissions of fact", four charges of making and executing a fraudulent scheme, twelve individual acts to accomplish the objectives of the fraudulent scheme, the use of a wire in the furtherance of the fraudulent scheme as charged in the opening sentence in paragraph thirteen, and finally, "[T]he wire transmissions and transfers of funds set forth in Counts Two through Five" as set forth in subsection w3 of Count One's paragraph thirteen. Mr. Roberts was acquitted of all Count One's charges not just Conspiracy to Commit Wire Fraud, as a matter of record from the Indictment but not recorded on the jury verdict forms.

Mr. Roberts was convicted of the remaining four counts of the indictment, Counts Two through Five pertaining to two homes. The four charges he was convicted of read; Wire Fraud.

Mr. Roberts in fact, was acquitted of Counts Two through Five, with the Counts Two through Five having been incorporated into Count One's acquittal as noted, in the first instance. That acquittal did not appear on the jury verdict forms.

Mr. Roberts' acquitted Count One was incorporated into the text of Counts Two through Five of the indictment in the opening paragraph therein.

Mr. Roberts was acquitted of 18 U.S.C. Sec. Sec. 1349 and 2 as set forth in the indictment at page 21 therein as well as 18 U.S.C. Sec. Sec. 1343 and 2 as set forth by the incorporation of Counts Two through Five into Count One. The acquittal of Mr. Roberts of Counts Two through Five, as set forth and combined with Count One, was an acquittal of all the underlying charges in the first instance and subsequently the incorporation of the acquitted Count One in the opening paragraph of Counts Two through Five was a restating of the acquittal of Counts Two through Five in the second instance.

How could this happen? On Friday, May 13, 2016, the Honorable Brian C. Wimes was called out of Court and an alternate, the Honorable Greg Kays, presided over the receiving of the jury's verdicts. (Tr. Vol. V p. 3-4) Judge Kays did enter an acquittal of Mr. Roberts but did not include complete charges as noted in the first paragraph of this Summary.

The ruling by alternate Judge Kays did hold a polling of the jury in open court on Count Three of the indictment. No inclusion was made by reading or written text on the jury verdict forms of the charge assessed against Mr. Roberts as they were written in the indictment and so noted herein. The guilty verdicts recorded by Judge Kays did not include the governing written text of the acquitted Count One's inclusion in those guilty verdicts of Counts Two through Five.



At trial, Mr. Roberts moved for judgment of acquittal pursuant to Fed. R. Crim. P. 29(a) because a reasonably minded jury could not have concluded that Mr. Roberts was guilty of wire fraud pursuant to 18 U.S.C. Sec.1349 Id. (Tr. Vol. IV, pg. 21; 91).

Mr. Roberts did motion for judgment of acquittal in his appeal and subsequent Petition For Rehearing *En Banc* before the Appeals Court for the Eighth Circuit. The Eighth Circuit erred in failing to read the indictment as it was written as well as failed to note the acquitted Count One, in the jury verdict's context of being a finding of innocence of the entire combined charges of the indictment as a matter of law.

The Eighth Circuit as well as the Circuit Court erred when they failed to adhere to this Court's majority opinion in *Nelson v. Colorado*, 137 S. Ct. 1249 (2107), whereby Mr. Roberts was restored to a presumption of innocence in his Count One acquittal, so much so that no penalty subsequent to that acquittal could be assessed.

The district court also erred in the sentencing of Mr. Roberts because the Sixth Amendment and Due process Clause prohibits the consideration of acquitted conduct in sentencing a criminal defendant, and here the district court committed prejudicial error in expressly relying on acquitted conduct in calculating Mr. Roberts' Guidelines range by applying a twenty level total enhancement under U.S.S.G. Sec. 2B1.1(b).

The government altered the indictment's Count I from just being a Conspiracy only, in paragraph thirteen, titled, "Acts in Furtherance of the Conspiracy", when they used the word, furtherance and again in the opening paragraph, to wit, "in furtherance of and to effect the objectives of the conspiracy...." Furtherance is defined, by Webster, as "in addition, to greater extent or degree". Thus, all of paragraph thirteen were charges of the substantive wire fraud charge and the paragraph further embraced the wire fraud in its final statement in subsection w3 whereby

the indictment incorporates (combines) Counts II, III, IV and V into Count I. Acquitted. The wording of paragraph thirteen therein, as outlined above, made all the Counts of the indictment, one and subsequently the jury's acquittal on Count I immediately restored Mr. Roberts to a presumption of innocence, not only of the conspiracy but of the "Acts in Furtherance of the Conspiracy", i.e., the substantive wire fraud charges.

Continuing at paragraph 13 of Count I, subsection w3, the government incorporates "by reference as additional acts the wire transmissions and transfers of funds set forth in Counts Two through Five. The wire transmissions and transfers of funds were interstate commerce, in furtherance of and as a result of the conspiracy and scheme to defraud, described above", acquitted. Incorporates is defined by Webster as, to unite closely or so as to form one body. Synonyms: Embody, Combine, Integrate. By reference of the wording, Count I fully encompassed and included Counts Two through Five. Acquitted. It is also noted that the word furtherance is used again thus further embracing and combining the substantive wire fraud charges into Count One.

In the English language any finding of fact in the first instance governs any succeeding use of the same language. Reading of Counts Two through Five was in the context of the jury's Count One in the first instance with Counts Two through Five was, in fact, an acquittal of the same in the second instance, no wire fraud.

When the jury foreman read the jury verdicts, before Judge Kays, on the indictment's Count One was Not Guilty, everything changed. Judge Kays, not knowing that Count One had multiple charges beyond the jury form's stated, Conspiracy To Commit Wire Fraud, including the incorporation of Counts Two through Five in count One's paragraph thirteen, subsection w3, as well as the incorporation of now acquitted Count One it now became an integral and critical part of Counts Two through Five and we hold the wording therein now governed those counts. None of

this would have made any difference had the jury not acquitted since the finding of guilt would have underscored the government's assumption of guilt and commitment to the same in the written indictment. However, with an acquittal, the government was committed in writing to their assumptions, hence the always present danger if making assumptions in writing as part of an indictment.

Judge Kays subsequently entered rulings in behalf of Judge Wimes Court that turned out to be what might be characterized as a "pig in a poke" decision and ruling advertantly made by fate's sleight of hand. The charges read and recorded were not the charges assessed in the underlying indictment. Because the government chose to combine (incorporate) Counts Two through Five with Count One by and through Count One's thirteenth paragraph, subsection w3, thus combining the entirety of the government's case into one count, the ruling by the jury, Not Guilty on Count One, exonerated Mr. Roberts of all charges instantly and in the first instance. We hold the same exonerated Mr. Roberts again in the second instance when all of the acquitted Count One was subsequently incorporated into the first paragraph of Counts Two through Five, even prior to the foreman's reading of the jury verdicts in Counts Two through Five.

Secondly, the alternate Judge Kays compounded the verdicts further by committing, unknown to him, a prejudicial error denying Mr. Roberts of his Fifth Amendment rights of Due Process when he polled the jury in a session of open court on Count Three without reading the entirety of Count Three which at that point was governed by Count One's acquittal as was Counts Two, Four and Five.

Therefore, the evidence that is missing, the reading and conclusion on the jury forms of the full of the now acquitted Count One, becomes substantial in the Court's ruling. By not reading the acquitted Count One prior to polling the jury in open court of Count Three, as well as not reading

the now acquitted Count One before receiving the verdicts in Count Two, Four and Five, became significant in that the Court as well as defendant Mr. Roberts, minus a full reading and necessary inclusion on the jury forms, was denied the contextual application as to how the various counts were combined using such words as “incorporates” and “furtherance”. The jury now having acquitted Mr. Roberts of Count One, prior to Judge Kays receiving the verdicts on Counts Two through Five, any reading and completion of the relevant jury forms was in the context of Count One’s acquittal that governed accordingly, restoring Mr. Roberts to a presumption of innocence, and needed to read and recorded as such.

Before the jury foreman read the verdicts on Counts Two through Five, the first paragraph therein already had a finding of Not Guilty by the incorporation of the acquitted thirteen paragraphs on Count One, Count One’s entirety. A literal reading of the jury’s finding of guilt in Counts Two through Five might have read, “Mr. Roberts is Guilty of Being Not Guilty” or more accurately, “Mr. Roberts is Not Guilty of Being Guilty”. Of course, there was no such recognition by and through alternate Judge Kays, presiding, that all the counts were combined as one, as they were worded, by and through the English language and the meaning of the words therein.

The evidence demonstrates unstated, that the government assumed at every step Mr. Roberts was guilty of all charges in each and every count and they wrote the indictment accordingly with that assumption. When the indictment’s twenty-one pages of assumed accusations leveled against Mr. Roberts in Count One were acquitted in the first instance and immediately again in the second instance, prior to a jury’s rendering Counts Two through Five verdicts, the government was locked into their assumed guilt theory predicated on the soundness or lack therein as recorded in writing and incorporated in the subsequent Counts Two through Five in its opening paragraph. The result is self-evident as the government’s assumed guilt was rendered false. Again, such is the danger of

making assumptions and committing the same in writing, one predicated on the other and vice versa.

The assumptions in Count One and the combining of the acquitted Count One to Counts Two through Five renders the underlying criminality of Counts Two through Five as moot, by and through the English language. That leaves only the civil component that Mr. Roberts was guilty of causing three faxes and one email to be sent from Missouri to Kansas.

The district court erred in denying Mr. Roberts' motion for judgment of acquittal on Counts Two through Five, because had the court noted all of the charges in the acquitted Count One and incorporated the same into the sentencing forms they would have been remiss to not note that Mr. Roberts was acquitted of the substantive Counts Two through Five in the first instance by the wording of Count One wherein the Counts Two through Five were incorporated (combined) in writing by fact of Count One' thirteenth paragraph, subsection w3. The *mens re* of Counts Two through Five was eviscerated by that incorporation of the acquitted Count One into Counts Two through Five largely based on the government's false assumption that Mr. Roberts was guilty as charged, so much so, that they doubled down with the language incorporated in the indictment. The incorporation of the assumed guilt, as it was written, must be held firm when the matter is acquitted by a jury. That is the danger of making assumptions and committing to the same in writing.

As a matter of law by definition of 18 U.S.C Sec. 1343, there was no intent to defraud, there was no participation in a fraudulent scheme, and no wire was sent in furtherance of a fraudulent scheme, rendering the charge of violating the same as moot. The missing charges of Count One on the jury verdict forms was prejudicial and violates the conscious and due process of the law so much so that any rendering of law could not be properly assessed without knowing and advising the Court the extent and gravity of the complete charge as well as the context of the resulting acquittal

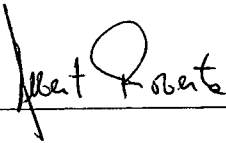
and inclusion of the acquitted Count One in the subsequent Counts Two through Five jury forms as it was governed by Count One's incorporation into Counts Two through Five.

The district court also erred in sentencing Mr. Roberts because the Sixth Amendment and Due Process Clause prohibits the consideration of acquitted conduct in sentencing a criminal defendant, and here the district court committed prejudicial error in expressly relying on acquitted conduct in calculating Mr. Roberts' Guidelines range by applying a twenty level total enhancement under U.S.S.G. Sec. 2B1.1(b). Additionally, the Eighth Circuit erred in denying Mr. Roberts' Petition for Rehearing *En Banc* when they were advised of this Court's ruling and reasoning in *Nelson* in that an acquittal is a restoration to a presumption of innocence, so relevant that no penalty can be assessed subsequent to the acquittal. Each ruling was prejudicial in that degrees of guilt were assessed with Mr. Roberts being sentenced as if an acquittal had no meaning.

## CONCLUSION

The petition for a writ of *certiorari* should be granted

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Albert Roberts", is written over a horizontal line.

Albert William Roberts III

July 6, 2018