

CASE NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

QUINTON TROY HALL- PETITIONER
VS.
UNITED STATES OF AMERICA - RESPONDENT(S)

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

PETITION FOR WRIT OF CERTIORARI

S/Steven N. Howe
STEVEN N. HOWE
Attorney for Petitioner
507 North Main Street
Williamstown, KY 41097
(859) 824-0500 telephone
(859) 824-0555 facsimile
stevenhowe@howeattorney.com

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

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THE PETITION FOR CERTIORARI IS REQUESTED AS THE QUESTION PRESENTED IS OF EXCEPTIONAL IMPORTANCE AND OF CONSTITUTIONAL MAGNITUDE

- 1. WAS IT A VIOLATION OF THE UNITED STATES CONSTITUTION, SIXTH AMENDMENT WHEN THE TRIAL COURT SENTENCED THE PETITIONER TO A TERM OF 360 MONTHS. THE JURY FOUND THE PETITIONER GUILTY OF DISTRIBUTING 50-499 GRAMS OF METHAMPHETAMINE. THE TRIAL COURT SENTENCED THE PETITIONER BASED UPON THE WEIGHT OF THE CONTRABAND BEING 11 KILOGRAMS UNDER A PREPONDERANCE OF THE EVIDENCE STANDARD***

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**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

- ☐ reported at _____; or,
- ☐ has been designated for publication but is not yet reported; or,
- ☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

- ☐ reported at _____; or,
- ☐ has been designated for publication but is not yet reported; or,
- ☒ is unpublished.

JURISDICTION

☒ [X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was April 10, 2023

☒ [X] No petition for rehearing was timely filed in my case.

☐ [] A timely petition for rehearing was denied by the United States Court of Appeals on the following date:

☐ [] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____A____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment, United States Constitution

STATEMENT OF THE CASE

Nature of the Case, Course of Proceedings, and Disposition in the Court Below.

On July 1, 2021, a jury verdict was entered finding the Petitioner guilty of conspiracy to distribute 50 -499 grams of methamphetamine and guilty of possession of firearm in furtherance of drug trafficking. (R. 581 Verdict Form, Pg. ID# 2150-2151)

On April 8, 2022, the Court imposed a sentence of 300 months on Count I of the Superseding Indictment and 60 months to run consecutive, 60 months on Count III to run consecutive to Count I and a \$30,000.00 fine. (R. 698 Judgment Upon Verdict, Pg. ID# 3304-3310)

The Petitioner timely filed a Notice of Appeal in the Sixth Circuit Court of Appeals on April 11, 2022 (R. 699 Notice of Appeal). The Sixth Circuit affirmed the District Court Judgment on April 10, 2023. (R. 27 Order)

STATEMENT OF THE FACTS

OFFENSE CONDUCT

The jury found the Petitioner guilty of conspiracy to distribute 50-499 grams of a mixture containing methamphetamine. (R. 713 Trial Transcript Day 4, Pg. ID# 4277) He was also found guilty of possessing a firearm in furtherance of drug offense. (R. 713 Trial Transcript Day 4, Pg. ID# 4277) The Indictment alleged a large conspiracy to distribute methamphetamine in the Eastern District of

Kentucky (R. 1 Indictment, Pg. ID# 1-11) The proof concerning the Petitioner and the historical conspiracy was through cooperating co-defendants. The lab reports introduced into evidence for the entire conspiracy were for approximately 34 grams of a substance containing methamphetamine. (Gov. Exhibit # 4 and Gov. Exhibit # 6)

There was never any contraband found in the Defendant's possession in the Eastern District of Kentucky. There was never a firearm found on the Petitioner's person in the Eastern District of Kentucky. There were no pictures or videos of the Petitioner in the Eastern District of Kentucky. At the time of his arrest in Georgia there were firearms found in the home. (R. 712 Trial Transcript Day 3, Pg. ID# 4017-4020) There were no DNA or fingerprint examinations of these items although there were numerous individuals in the home and one of the firearms was registered to a person found in the home. (R. 712 Trial Transcript Day 3, Pg. ID# 4022) There were telephone calls, Facebook pages, receipts from vendors including hotels that did corroborate that the Petitioner knew some of the co-defendants and had travelled to the Eastern District of Kentucky. There was a witness who testified that she came with the Petitioner to the Eastern District of Kentucky to purchase vehicles and drive them back. (R. 712, Trial Transcript Day 3, Pg. ID# 4123) Therefore, it was only from witnesses that any amount of

contraband could be roughly cobbled together. These witnesses contradicted one another as well as commented on the other's honesty and credibility.

Larry Hammons summed it best when testifying about his own mother, Angelia Hammons, who was alleged to be the one primarily involved with the Petitioner in bringing contraband to the Eastern District of Kentucky:

A. My mother is a liar and manipulator.

Q. Your mother is a liar and manipulator. Well, that's --

THE COURT: No commentary. Just questions.

MR. NAPOLEON: I apologize, Your Honor.

BY MR. NAPOLEON:

Q. Why do you say your mother's a liar and a manipulator?

A. She has been that way all my life.

Q. So she has lied to you your entire life?

A. Correct.

Q. And you think that she has no qualms about lying to people, correct?

A. Correct.

Q. Even if it's involving kidnapping, correct?

A. Correct.

Q. And even if it's involving drug trafficking?

A. Correct.

(R.664, Excerpt Trial Day 2, Pg. ID # 2865)

Further, excerpts from the trial demonstrate the inconsistent testimony concerning Quinton Hall, the inability to identify Quinton Hall when the investigation began and witnesses were interviewed and how two years later at trial the same witnesses could identify the Petitioner before the jury. No cellular telephone records were introduced that corroborated the cooperating co-defendants testimony.

DUSTIN WALTERS TESTIMONY

Q. Did you ever do a controlled buy with Mr. Quinton Hall?

A. No.

Q. Why not?

A. Never was -- never was approached for that.

Q. You were never approached. So did you give them Quinton Hall's name?

A. Yes.

Q. And you told the government who Quinton Hall was?

A. Yes.

Q. Okay. And they never asked you to do a controlled buy with the person who they perceived to be the source of supply for all of these drugs coming into Laurel County and this part of the Eastern District of Kentucky?

A. They had already made arrests on the case, and there was -- you couldn't get ahold of them.

Q. Okay. So your testimony here today, they had already -- had they already arrested Quinton Hall by the time that you were cooperating with the government?

A. No, it come after.

Q. I'm sorry?

A. It come after.

(R. 663, Excerpt Trial Day 1, Pg. ID # 2667)

Q. Okay. And you could have set up a controlled buy with Mr. Hall because, according to your testimony, you told the government that he was the source of supply, correct?

A. Correct.

Q. And so don't you think that it would be important for the government to know and for you to set up something with Mr. Hall and Ms. Hammons if he is the source of supply of all of these drugs running through the Eastern District of Kentucky?

A. Well, when -- he never dealt with me directly, so he dealt with Angelia. So when Angelia got arrested, within three weeks after I talked to the federal government, my statements, there was no way. I had no way to get ahold of him. Messaged him on -- on Facebook account. Don't answer back. So, I mean...

(R. 663, Excerpt Trial Day 1, Pg. ID # 2670)

Q. Okay. So you set up a fake Facebook account. Why did you do that?

A. Try to get in touch with him to make a buy.

Q. Okay. And did you do that?

A. Never got no answer back.

Q. You never got no answer back as far as the friendship request?

A. Yeah.

Q. Okay. Did you have Mr. Hall's telephone number?

A. I had one of them.

Q. Okay. Did you provide that to law enforcement?

A. I think I told them it was on my phone.

Q. Okay. You told them that you had Quinton Hall's telephone number. Do you know when that was?

A. No.

(R. 663, Excerpt Trial Day 1, Pg. ID # 2671-2672)

GLENNIS NANTZ TESTIMONY

Q. Now, after the search in November, where law enforcement took your firearms and your dope, there was a search of your residence again in December, correct?

A. Yes, ma'am.

Q. And law enforcement found more dope?

A. Yes, ma'am.

Q. Was that the defendant's dope?

A. No, ma'am.

Q. Okay. And where did that dope come from?

A. Louisville.

Q. Did you have multiple sources of supply during this period?

A. Yes, ma'am.

(R. 663, Excerpt Trial Day 1, Pg. ID # 2703)

Q. Okay. And now, you stated before that there was a point in time that someone who you identified as the Petitioner in this case and another individual came to your house, correct?

A. Yeah.

Q. And you told law enforcement, when you cooperated with them, that you had a DVR in your house, correct?

A. Yeah.

Q. And what is a DVR?

A. Where was it at?

Q. No, no. What is it? I just want to make sure that we're talking about the same thing. Digital recording where you had cameras in your house?

A. Yeah. It was one of these little box things that you plug up so you can record everything going on around you.

Q. Right. And you told law enforcement that my client would appear on the DVR, correct?

A. Yeah.

Q. And you gave that DVR to law enforcement, didn't you?

A. No.

Q. Why not?

A. They seized it.

Q. They took it. Well, I guess that's probably a better way to put it. They took the DVR as opposed to you giving it to them, right?

A. Yes.

Q. Okay. And that's in federal custody, correct?

A. I guess.

Q. Okay. And based on your testimony, when the federal government plays that DVR, you're going to see a picture of my client, right?

A. Should.

Q. Because the way that your cameras were positioned, it would capture a photograph or a recording of my client, correct?

A. It records everything coming into my driveway, into my house, into my garage, or behind my house. No blind spots.

Q. Snakes included, right?

A. No blind spots.

Q. No blinds spots. If he went to that house, that DVR is going to record it, ain't it?

A. Yeah.

(R. 663, Excerpt Trial Day 1, Pg. ID # 2706-2707)

Q. And what's in Louisville?

A. My -- more dope.

Q. Your supplier? Another supplier, correct?

A. Multiple.

Q. Multiple suppliers. And you don't only sell methamphetamines; you sell other narcotics, too, don't you?

A. Yeah.

Q. What else do you sell?

A. Oxys, Suboxones. That's about it.

(R. 663, Excerpt Trial Day 1, Pg. ID # 2712)

Q. Okay. Do you recall speaking to the special agents involved in this case?

A. Which one?

Q. Any of them. Do you remember speaking to special agents about this case?

A. Yeah.

Q. Okay. Did they ask you about my client?

A. Yeah, couple of times.

Q. Did they present you with a six-person photographic lineup and ask you to identify my client?

A. Yeah.

Q. And could you do it?

A. Not at the time.

Q. Oh. So now you can do it, but you couldn't identify him at the time, which was approximately January of 2020, which was only a couple of months before, right?

A. Yeah

(R. 663, Excerpt Trial Day 1, Pg. ID # 2718)

ANGELA HAMMONS TESTIMONY

Q. Did you ever know him by the name of "Brother"?

A. No.

Q. Did you ever call him Brother?

A. No.

Q. So if somebody testified in court saying that they heard you call him "Brother," that would be inaccurate.

You never called Mr. Hall "Brother," did you?

A. No.

Q. Who is "Brother?"

A. Tramone Horne.

(R. 664, Excerpt Trial Day 2, Pg. ID # 2786)

BRANDON BLEDSOE TESTIMONY

Q. Sir, do you recognize in the courtroom the individual that you described as "Unc"?

A. That doesn't quite look like him.

Q. Now, you stated that most of the time that you met or you rode with Ms. Hammons and met her supplier, it was a black male who was bald, correct?

A. Yes.

Q. And it wasn't Mr. Hall? I'm sorry. Speak a little louder.

A. No, it wasn't.

Q. How many times did you meet with this black male who was bald that was her supplier?

A. Just two or three times.

Q. Okay. And you referred to him as "Bro Bro"?

A. Yeah, Bro.

Q. Bro. Okay.

And you don't know who he is?

A. No.

Q. In those two times that you met with Ms. Hammons and Bro, Mr. Hall wasn't there?

A. No.

(R. 664, Excerpt Trial Day 2, Pg. ID # 2814)

JOSH GOOD TESTIMONY

Do you know a woman by the name of Angie Hammons?

A. I do.

Q. And how do you know her?

A. I've known her through some associates for a while, and we just got into a lot of trouble together.

Q. Okay. In the summer and fall of 2019, what kind of trouble did you get into together?

A. She introduced me to some guys from out of state. Tramone Horne is the main guy that I remember dealing with. And we used to go and buy large quantities of meth from them.
(R. 664 Excerpt Trial Day 2, Pg. ID 2829)

Q. Okay. And ten times you met him by yourself, right?

A. Yes.

Q. And you said that the person that you met with was Tramone Horne?

A. Correct.

Q. And Tramone Horne took your identification?

A. Correct.

Q. And the police asked you about the other individual that was with Mr. Horne, correct?

A. Yes.

Q. And you couldn't identify him, could you?

A. No. That's the one Brother, too. That's the only way I could identify him.

Q. Okay. So as you sit here today, the person that was with Tramone Horne, you cannot identify who that was?

A. No.

(R. 664, Excerpt Trial Day 2, Pg. ID # ID 2839)

LARRY HAMMONS TESTIMONY

Q. And at some point in time, isn't it true that you told the police officers initially that you didn't even know who --

I'm sorry. I was about to mess up -- that you didn't even know who Krysten Powell was, correct?

A. Correct.

Q. So you lied to the police officers, and you told them that you didn't even know who the one that you claim you were forced to sell drugs with, you told them you didn't know her?

A. Correct.

Q. And you were lying at that particular point in time?

A. Correct. I was scared.

Q. And you want the jury to believe that now?

A. Correct.

Q. Okay. When you walked in here today, you said that you identified my client as Quinton Hall, correct?

A. Correct.

Q. Isn't it true that when you talked to the police back in January of 2020, you told them that you could not identify Quinton Hall out of a photo lineup?

A. I said it was 50-50.

Q. You said it was 50-50?

A. Yes.

(R. 664, Excerpt Trial Day 2, Pg. ID # 2852)

KRYSTEN POWELL TESTIMONY

Q. So when you went to Georgia, who did you meet up with?

A. Tramone.

Q. And was Tramone the one with the gold teeth or without?

A. No, without.

(R. 664, Excerpt Trial Day 2, Pg. ID # 2880)

Q. Now, you are talking about an incident that happened on Thanksgiving Day where you said that you drove to Atlanta?

A. No. It was Calhoun, Georgia.

Q. Calhoun, Georgia?

A. Yes, sir.

Q. And you said that you met with Tramone Horne and Quinton Hall?

A. I didn't see Quinton.

Q. So you met with Tramone?

A. Yes.

Q. Okay. And Tramone was the main person that you were communicating with, correct?

A. Yes.

Q. In fact, back when the ATF agents in this particular case showed you a photograph of a lineup, you picked Tramone Horne as the person who sold narcotics to you, correct?

A. Yes, sir.

Q. And they showed you a six-person lineup of Quinton Hall, correct?

A. Yes.

Q. And you did not pick Quinton Hall out of the lineup, did you?

A. No.

(R. 664, Excerpt Trial Day 2, Pg. ID # 2888)

Q. And when you were selling drugs and you were high on meth, you couldn't identify my client, Quinton Hall, to the police as the person who provided you with narcotics, correct?

A. Correct.

Q. But you did identify Tramone Horne, correct?

A. Yes.

(R. 664, Excerpt Trial Day 2, Pg. ID # 2894-2895)

How did you communicate with Tramone Horne?

A. Just text most of the time. Every now and then, I would talk on the phone, but most of the time, it was through text.

Q. Okay. And in those text messages, it was the normal way to communicate with Mr. Horne, correct?

A. Yeah.

Q. And you signed a consent for the government to take and search your phone, correct?

A. Yes.

Q. And even if you delete text messages on your phone, you can still recover those text messages if you search the phone, correct?

A. Yes, sir.

Q. And you don't have any text messages with Mr. Hall talking about methamphetamines now, do you?

A. No.

(R. 664, Excerpt Trial Day 2, Pg. ID # 2896)

Q. Would you describe Angelia as a con artist?

A. Yes, sir.

Q. A liar?

A. Yes, sir.

Q. Willing to do anything to get out of jail?

A. Yes, sir.

(R. 664, Excerpt Trial Day 2, Pg. ID # 2899)

OFFICER TAYLOR TESTIMONY

Q. And Larry identified Bro, or Brother, as the person who's bringing drugs from Atlanta to Kentucky, correct?

A. Correct.

Q. And when you got there on the morning or night of December 13, 2019, who was there as Bro? Who did you find there?

A. Eventually -- it was early morning, around 6:00 a.m., the black SUV -- it was Tramone Horne that arrived.

Q. Tramone Horne was the person who brought the drugs from Georgia to Kentucky, correct?

A. Well, we found no drugs on him that morning.

Q. I'm sorry. Let me be more specific.

Tramone Horne was the person who came from Georgia to Kentucky, correct?

A. Correct.

Q. Was Mr. Hall with him?

A. No, sir.

Q. He wasn't in the car? Nowhere to be found?

A. No, sir.

(R. 665, Excerpt Trial Day 3, Pg. ID # 2957-2958)

Q. Okay. And did you see Quinton Hall on the DVR like Glennis Nantz said he would be on there?

A. No, sir.

Q. Did you see any evidence of a person in a car with gold teeth on that camera?

A. No, sir.

(R. 665, Excerpt Trial Day 3, Pg. ID# 2960)

The Petitioner was arrested by the Henry County Sheriff's Office in McDonough, Georgia, on an outstanding probation warrant on January 24, 2020 approximately 30 days after the conspiracy was alleged to have ended in the

Indictment. (R. 712 Trial Transcript Day 3, Pg. ID# 4001) At the time law enforcement entered the residence the officer testified that the Petitioner went into the attic of the home where he was subsequently arrested. (R. 712 Trial Transcript Day 3, Page ID# 3999) There were multiple firearms found in the home at the time of the arrest. (R. 712 Trial Transcript Day 3, Pg. ID# 4018-4020) These firearms were never subject to DNA or fingerprint testing. (R. 712 Trial Transcript Day 3, Pg. ID# 4025-4031) There were several individuals in the home at the time of the arrest. (R. 712 Trial Transcript Day 3, Pg. ID# 4021)

SUMMARY OF THE ARGUMENT

1. The Trial Court committed reversible error by violating the 6th Amendment rights of the Petitioner by failing to follow the jury verdict that the Petitioner was involved in more than 50 but less than 500 grams of a substance containing methamphetamine.

REASONS FOR GRANTING THE PETITION

Trial Court Committed a due process violation by not sentencing the Petitioner based upon the amount of contraband found by the jury and/or committed an error in the application of the Guidelines by using an incorrect amount of contraband

Argument

The jury was given an Instruction that required a finding as to the amount of the contraband that was attributable to the Petitioner, as the result of his own

conduct and the reasonably foreseeable conduct of co-conspirators. (R. 507 Jury Instruction #13, Pg. ID # 2110) The Trial Court during the Instruction conference indicated that the jury had been presented facts of varying amounts of contraband. (R. 712 Trial Transcript Day 3, Pg. ID # 4142-4143) The lab reports introduced into evidence confirmed approximately 34 grams of a mixture containing methamphetamine. (Gov. Exhibit # 4 and Gov. Exhibit # 6) The jury found Mr. Hall guilty of distributing 50-499 grams of a mixture containing methamphetamine. (R. 581, Verdict Form, Pg. ID # 2150) In doing so it rejected the 500 or more grams verdict and rejected the less than 50 grams verdict. (R. 581, Verdict Form, Pg. ID # 2150) The Trial Court at sentencing by a preponderance of the evidence standard concluded that Mr. Hall's base offense level was for 5-15 kilograms of a mixture containing methamphetamine resulting in at least a tenfold increase over the jury verdict. (R. 716, Sentencing Transcript, Pg. ID # 4431) The base offense level for the jury verdict returned of 50-499 grams of a substance containing methamphetamine was between a base offense level 24 through level 28. *USSG 2D1.1(c)(6)(7) and (8)* As determined by the Court by a preponderance of the evidence standard the increase of weight to 5-15 kilograms resulted in a base offense level 34. *USSG 2D1.1(c)(5)* (R. 716 Sentencing Transcript, Pg. ID# 4428-4431) The Petitioner was not given a three point reduction for acceptance of responsibility because he chose to go to trial although he was successful in arguing

that he should not be convicted of conspiracy to distribute 500 grams or more of a substance containing methamphetamine. The dramatic difference in the Guidelines for a six point increase in the base offense level from 28 to 34 with an added three point leadership role was to increase the guideline range at a Criminal History V from 168-210 months to 324-405 months. Consequently, a judicial determination by a preponderance of the evidence that was contrary to the jury verdict increased the sentence on the low end by 156 months (13 years) and on the high end 195 months (16 years 3 months).

It is acknowledged that the law in the Sixth Circuit as it currently exist uses a preponderance of evidence standard for the Court. *United States vs. Walton*, 908 F.2d 1289 (6th Cir. 1990) The Trial Court referenced this standard at sentencing. (R. 716 Sentencing Transcript, Pg. ID# 4423) *Apprendi vs. New Jersey* 530 U.S. 466 (2000) adopted a “bright-line rule” in response to “the need to give intelligible content to the right of jury trial.” *Blakely v. Washington*, 542 U.S. 296, 305, 308 (2004). Giving “intelligible content” to the jury trial right meant in that setting: “Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Id.* at 301 (quoting *Apprendi*, 530 U.S. at 490).

Justice Scalia, joined by Justices Thomas and Ginsburg highlighted the need “to put an end to the unbroken string of cases disregarding the 6th Amendment by

enhancing sentences based on acquitted conduct, by stating “This has gone on long enough.” *Jones vs United States*, 135 S. Ct. 8, 9 (2014). States are recognizing a meaningful jury trial for acquitted conduct. *People v. Beck*, 939 N.W.2d 213, 225-26 (Mich. 2019) (adopting the “minority position” shared by the Supreme Courts of New Hampshire and North Carolina that reliance upon acquitted conduct at sentencing violates federal due process) (citing *State v. Marley*, 364 S.E.2d 133 (N.C. 1988), and *State v. Cote*, 530 A.2d 775 (N.H. 1987)).

Then Circuit Court Judge now Supreme Court Justice Kavanaugh discussed this issue in dissents and concurrences. *United States v. Bell*, 808 F.3d 926, 928 (D.C. Cir. 2015) (Kavanaugh, J., concurring in denial of rehearing *en banc*) (explaining that reliance upon acquitted conduct “seems a dubious infringement of the rights to due process and to a jury trial”); *United States v. Settles*, 530 F.3d 920, 923 (D.C. Cir. 2008) (Kavanaugh, J.) (“we understand why defendants find it unfair for district courts to rely on acquitted conduct when imposing a sentence”); *United States v. Henry*, 472 F.3d 910, 920 (D.C. Cir. 2007) (Kavanaugh, J., concurring) (explaining that it is an “oddity,” given the *Apprendi* rule, that “courts are still using *acquitted* conduct to increase sentences beyond what the defendant otherwise could have received”). Similarly, then-Judge now Justice Gorsuch noted the *Jones* dissent, explaining, “[i]t is far from certain whether the Constitution

allows” using acquitted conduct at sentencing. *United States v. Sabillon-Umana*, 772 F.3d 1328, 1331 (10th Cir. 2014).

A penalty for any crime should not be enhanced based on alleged conduct that was *rejected* by the jury through an acquittal. Courts cannot respect a jury’s verdict by ignoring it. This Court should now make explicit what should be implicit in the *Apprendi* rule: No alleged conduct upon which a jury has acquitted a Petitioner can be used to enhance the defendant’s penalty for any crime. Just as people attach significance to the fact of a jury’s conviction, they expect a jury’s acquittal to be a significant event as well. It has to be recognized that a guilty verdict and an acquittal verdict should be with equal deference.

The Sixth Amendment ensures that “*the truth of every accusation*” must be unanimously confirmed under the watchful eye of the public before a criminal defendant can be convicted and punished. 530 U.S. at 477 (emphasis in *Apprendi*) (quoting 4 William Blackstone, Commentaries on the Laws of England 343 (1769)).

The Supreme Court explained that a “bright-line rule” is necessary “to give intelligible content to the right of jury trial.” *Blakely*, 542 U.S. at 305, 308. As Justice Scalia explained, the Sixth Amendment jury trial guarantee “has no intelligible content unless it means that all the facts which must exist in order to subject the defendant to a legally prescribed punishment *must* be found by the

jury.” *Apprendi*, 530 U.S. at 499 (concurring) (emphasis in original). And the Supreme Court itself has confirmed: “The jury could not function as circuit breaker in the State’s machinery of justice if it were relegated to making a determination that the defendant at some point did something wrong, a mere preliminary to a judicial inquisition into the facts of the crime the State *actually* seeks to punish.” *Blakely*, 542 U.S. at 306-07 (emphasis in original).

“When a jury acquit[s] a Defendant based on that standard, one would have expected no additional criminal punishment would follow.” *United States v. Pimental*, 367 F. Supp. 2d 143, 150 (D. Mass.2005) (Gertner, J.) (quoting Judge Nancy Gertner, *Circumventing Juries, Undermining Justice: Lessons from Criminal Trials and Sentencing*, 32 Suffolk U.L.Rev.419, 433 (1999)). A jury verdict should be given the same weight whether that verdict is guilty or an acquittal. “It makes absolutely no sense to conclude that the Sixth Amendment is violated whenever facts essential to sentencing have been determined by a judge rather than a jury, and *also* conclude that the fruits of the jury’s efforts can be ignored with impunity by the judge in sentencing.” *Pimental*, 367 F. Supp. 2d at 150 (citation omitted).

Increasing a defendant’s sentence based on acquitted conduct is not only something that the jury’s verdict “failed to authorize,” it relies upon “facts of which the jury expressly disapproved.” *Id.* at 152. Considering “acquitted conduct

trivializes ‘legal guilt’ or ‘legal innocence,’” *id.*, resulting in the “judicial nullification of juries,” Eang Ngov, *Judicial Nullification of Juries: Use of Acquitted Conduct at Sentencing*, 76 Tenn. L. Rev. 235, 273 (2009).

Justice Scalia has stated that the Supreme Court’s jurisprudence leaves the door “open for a Petitioner to demonstrate that his sentence, whether inside or outside the advisory Guidelines range, would not have been upheld but for the existence of a fact found by the sentencing judge and not by the jury.” *Gall v. United States*, 552 U.S. 38 (2007) at 60 (concurring); see *Rita v. United States*, 551 U.S. 338, 375 (2007) (Scalia, J., concurring). As Justice, then Judge Kavanaugh explained: “Allowing judges to rely on acquitted or uncharged conduct to impose higher sentences than they otherwise would impose seems a dubious infringement of the rights to due process and to a jury trial.” *Bell*, 808 F.3d at 928 (concurring in denial of rehearing *en banc*). Justice Kavanaugh certainly raised the question that is presented to the Court here: If you have a right to have a jury find beyond a reasonable doubt the facts that make you guilty, and if you otherwise would receive, for example, a five-year sentence, why don’t you have a right to have a jury find beyond a reasonable doubt the facts that increase that five-year sentence to, say, a 20-year sentence? *Id.* “Allowing a judge to dramatically increase a defendant’s sentence based on jury-acquitted conduct is at war with the fundamental purpose of the Sixth Amendment’s jury-trial guarantee.” *Bell*, 808

F.3d at 929 (concurring in denial of rehearing *en banc*). The reason is simple: “before depriving a defendant of liberty, the government must obtain permission from the defendant’s fellow citizens, who must be persuaded themselves that the defendant committed each element of the charged crime beyond a reasonable doubt.” *Id.* at 930. Thus, allowing judges to materially increase the length of imprisonment based on facts that were *submitted directly to and rejected by* the jury in the same criminal case is too deep of an incursion into the jury’s constitutional role. “[W]hen a court considers acquitted conduct it is expressly considering facts that the jury verdict not only failed to authorize; it considers facts of which the jury expressly disapproved.” *Id.* (emphasis in original) (quoting *Pimental*, 367 F. Supp. 2d at 152). The judge is “directly second-guessing the jury,” and that is “demeaning of[] the jury’s verdict.” Gertner, 32 Suffolk U. L. Rev. at 422. The jury verdict disapproved of the Petitioner being involved in a conspiracy to distribute more than 500 grams. The jury specifically found the amount distributed and/or what was reasonably foreseeable for the Petitioner was 50-499 grams. As such the Guidelines should have been calculated with a base offense level of 28 at the most. To do otherwise violated the Petitioner’s 6th Amendment rights.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

S/Steven N. Howe
Steven N. Howe
Attorney for Petitioner
507 North Main Street
Williamstown, KY 41097
(859) 824-0500 Telephone
(859) 824-0555 Facsimile
stevenhowe@howeattorney.com

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