

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

WILLIAM KOSTOPOULOS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

**WHETHER A DEFENDANT'S GENERAL DENIAL TO STATE
LAW ENFORCEMENT OFFICERS THAT HE COMMITTED A
MISDEMEANOR OFFENSE IS SUFFICIENT TO MEET THE
FEDERAL NEXUS REQUIREMENT UNDER 18 U.S.C. §
1512(b)(3) AND IS SUFFICIENT TO ESTABLISH THE MENS
REA FOR AN OFFENSE UNDER THIS STATUTE?**

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

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PETITION FOR WRIT OF CERTIORARI

William Kostopoulos respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 17-12145 in that court on March 14, 2019, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on March 14, 2019. This petition is timely filed pursuant to SUP. CT. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

STATUTORY PROVISIONS INVOLVED

Petitioner intends to rely on the following statutory provision:

18 U.S.C. § 1512(b)(3)

Whoever knowingly . . . engages in misleading conduct toward another person, with intent to . . . hinder, delay or prevent the communication to a law enforcement officer . . . of the United States of information relating to the commission or possible commission of a Federal offense [violates 18 U.S.C. § 1512(b)(3)].

STATEMENT OF THE CASE

On June 18, 2015, a federal grand jury in Miami-Dade County in the Southern District of Florida charged William Kostopoulos, with three (3) misdemeanor counts of deprivation of rights under color of law, in violation of 18 U.S.C. § 242 (Counts 1-3); and one count of tampering with a witness, in violation of 18 U.S.C. § 1512(b)(3) (Count 4). Before trial, Mr. Kostopoulos filed a motion to suppress evidence retrieved from a red cellular phone without a warrant; a motion in limine regarding Mr. Kostopoulos's wife's criminal record; three motions to compel evidence -- evidence seized from Gray Taurus, evidence of robberies in Homestead, evidence regarding Santiago Garcia identifying himself as a Mexican national; and a motion to exclude evidence regarding landlord/tenant disputes. The district court conducted a hearing on all of the aforementioned motions on March 31, 2016. After the hearing, the district court denied the motion to suppress; denied as moot the motion to compel evidence of robberies in Homestead; granted the motion in limine regarding Mr. Kostopoulos's wife's criminal record; granted the motion to compel evidence seized from the Gray Taurus; reserved ruling on the motion to exclude landlord/tenant disputes; denied the motion to compel regarding Santiago Garcia; and also denied the defense request to keep out the alleged Rule 404(B) evidence outlined in the government's notice.

Mr. Kostopoulos also filed a motion to suppress identification; a motion to exclude FPL bills and other related evidence; a motion to exclude testimony of Homestead Detective David Mata; a motion for reconsideration of ruling on Rule

404(b) evidence; and an objection to the government's notice of submission regarding evidence of defendant's financial motive. The district court set a hearing for the motion to exclude testimony of Detective Mata; the motion to suppress identification; and the motion to exclude FPL bills and other related evidence; on October 19, 2016. At the beginning of the hearing, defense counsel also identified, the defendant's motion to exclude financial motive based on the government's notice as a motion that needed to be resolved. After conducting a hearing on the motions, the district court denied the motion to suppress; and granted the motion to exclude the testimony of Detective Mata. The district court granted in part and denied in part the motion to exclude financial records. At this time, the government also conceded the defense's motion for reconsideration of the court's ruling on excluding 404(b) evidence, which resolved this motion.

Mr. Kostopoulos filed a motion to exclude evidence regarding the May 27, 2015 debriefing; a motion to exclude course guide; a motion to compel evidence regarding the man Gomez; and a motion in limine to exclude lay opinion testimony. The district court granted the motion to compel. The government filed a motion in limine to exclude evidence of defendant's good character; and a motion in limine to exclude hearsay statements by the defendant. The district court granted the motion to exclude course guide and reserved in part and granted in part the government's motion to exclude evidence of defendant's good character. The district court also reserved ruling on the motion to exclude the May 27, 2015, debriefing as it may become moot.

Prior to trial, the district court dismissed Count 1 of the indictment. A jury trial began on January 23, 2017. At the conclusion of trial, the jury returned verdicts of guilty on all counts. Before sentencing, Mr. Kostopoulos filed objections to the presentence investigation report in which he objected to a two level enhancement for possession of a firearm in connection with the offense charged in Count 2; a two level vulnerable victim enhancement; and objected to the failure to include a guideline calculation for Count 3. Mr. Kostopoulos also filed a motion for downward departure under § 5K2.0 and a motion for downward variance.

Sentencing began on May 3, 2017. After hearing argument, the district court determined that the guideline range overstated the criminal conduct and sentenced Mr. Kostopoulos to 12 months imprisonment on Counts 2 and 3, to be served concurrently, followed by one (1) year of supervised release and 36 months imprisonment on Count 4, to be served concurrently with Counts 2 and 3, followed by two (2) years supervised release. Mr. Kostopoulos was also ordered to pay restitution in the amount of \$330. After sentencing, counsel for Mr. Kostopoulos filed a motion to withdraw and a motion to appoint new counsel for appeal. The motions were granted and the Federal Public Defender was appointed to represent Mr. Kostopoulos. Mr. Kostopoulos timely filed a notice of appeal. The Eleventh Circuit Court of Appeals subsequently affirmed his convictions, finding that the district court did not abuse its discretion in allowing the government to admit four months of Mr. Kostopoulos's bank account records and that the government had met its burden of proving the required federal nexus.

Statement of Facts

Mr. Kostopoulos was a detective with the Miami-Dade Police Department in Miami, Florida, assigned to the auto theft unit. He was on-duty, working the 4:00 p.m. to midnight shift on both September 13, 2013, and October 11, 2013. During that time he drove an unmarked gray Ford Taurus provided by the Miami-Dade Police Department.

I. September 13, 2013

At trial, Hugo Gomez testified that he came to the United States illegally from Guatemala in May of 2005. He said that on the evening of September 13, 2013, around 9 p.m., he went to a store which was located about five minutes from his home after work. He was carrying about \$160 dollars cash at the time and spent approximately ten dollars or less at the store. After his purchase, he put his wallet in his left front pants pocket, left the store and returned to his car. As he drove away, he saw a gray Ford Taurus following him and then saw blue lights activated on the car. He pulled over and a police officer approached him and asked for his license. He told the officer that he didn't have a license and the officer told him to get out of the car. After he got out of the car, the officer patted him down and found his wallet in his front left pocket. Change from the store was in his right pocket and the officer put the money back in his right pocket after he discovered it during the pat down. According to Gomez, the officer then took his wallet and went to his patrol car where he stayed for about ten minutes. The officer then took a bank card out of

Gomez's wallet and asked Gomez if the card was his and Gomez confirmed that it was. After that, the officer told him to get back in his car and he gave him his keys and his wallet. Gomez said he was told to go, otherwise the officer would take him to jail. Gomez went home and told his wife what happened and then noticed that \$130 was missing from his wallet. He called 911 to report the missing money and a police officer from Homestead Police Department came to take his statement.

II. October 11, 2013

Santiago Garcia testified that he came to the United States illegally from Guatemala and lives in Homestead. On October 11, 2013, Garcia, went to the store on the corner of Mowry and 1st Avenue in Homestead and saw a car parked at the bus stop. After leaving the store, he noticed that the car was following him and had turned its lights on. He stopped in front of the Lucky Meat store. The police officer got out and asked for his driver's license. He said he didn't have a driver's license so the police officer asked him if he had a friend with a license who could come pick up the car. He said the police officer spoke to him in Spanish. Garcia took his wallet and some cash out of his pocket and handed it to the officer. Garcia got out of the car to look for car registration in the glove compartment.

At that point, his friend, Luisa, arrived at the scene. After Luisa arrived, the officer left and Garcia found his wallet thrown onto the seat of the car but \$200 was missing from the wallet. The officer did not give him a ticket that night. He then went to Luisa's place so he could call the police. Hugo Gomez was Luisa's boyfriend at the time. When he got to Luisa's house, the police were there and he told them

what happened. The police then took him by the Lucky Meat store so he could show where he was stopped. When they got there he found a piece of paper of his that "thrown off when the police stopped me." At some point that night, the police took him to 2nd Avenue and Mowry to try to identify the officer who stopped him. He saw the car that had stopped him but was unable to identify the officer because he couldn't see him very well. Garcia testified that he was given a permit to stay and work in the United States.

On this same date, Hugo Gomez said he saw the same car that had stopped him approximately a month earlier. He saw the Ford Taurus parked in front of the same store he had visited in September. He also noticed that it was the same officer who had stopped him before who was in the car so he circled back to the store parking lot. He parked and saw his friend, Romeo, a friend he knew from Guatemala, also parked in the lot. He got into Romeo's car and told Romeo that this was the police officer who stole from him before. He asked Romeo to follow him if he noticed the police officer follow him after he left. He left the parking lot and noticed that the police car was following him with its blue lights on. Gomez continued driving and called 911. The officer did not pull him over but honked and left. Police from Homestead Police Department arrived at his house and Santiago Garcia, a friend of his wife Luisa, also came to the house. He told the police what happened and then left with one of the officers to go to the intersection of 2nd Avenue and Mowry. When they got to the intersection he saw the Ford Taurus stopped on the side of the road and told the police officer that he recognized the car. He also

said that he recognized the man standing next to the Ford Taurus as the man who had previously stopped him. He went home and later to the police station where he gave a statement to Homestead police officers and Miami-Dade police officers. At a later date, law enforcement officers showed him pictures and he identified the man who had stopped him. He said the man who stopped him was wearing glasses. He testified that for his testimony he was given deferred action from deportation, an authorization to work and his status was modified so that he could get a driver's license.

Romeo Aguilar said that he was also from Guatemala and had illegally come into the United States in 2007. He was at the bakery at Mowry and 1st Avenue on the evening of October 11, 2013, when he saw his friend, Hugo Gomez. Gomez pointed out a Ford Taurus and after Gomez left the store he saw the Ford Taurus follow Gomez. Aguilar followed the police officer and saw red and blue lights on the car but the lights were turned off when Hugo got to his house. He called Hugo but he didn't answer so he called Luisa and told her what happened. He then went and picked Luisa up and they went looking for the police officer. While driving they saw the Ford Taurus stopped with its lights on at Mowry and Third Avenue and saw another car near the Ford Taurus. He parked his car and Luisa got out and went running toward the officer. The officer turned off his lights and left. Aguilar then went home and Luisa went home with Santiago Garcia.

Luisa Bravo, who also came to the United States illegally from Guatemala, was living with Hugo Gomez in Homestead in September, 2013. On September 13,

2013, Hugo came home and called 911 after they spoke for about ten minutes. On October 11, 2013, she was doing homework with her child at a friend's house when she got a call from Romeo, a friend of Hugo's. Then Romeo came to pick her up and took her to the Lucky Meat store where she saw a police officer and Santiago Garcia. After she arrived, the officer left quickly and she tried to take a picture of the license plate. She remembered the numbers 117 from the license plate and she and Santiago followed the police officer. They stopped following the police officer when she got close to her house and saw a lot of policemen by her house. She went in and talked to Hugo and told the police about the 117 tag number. At some point that night an officer took her to 2nd Avenue and Mowry. She saw a car there and told the officer that it was the same car she had seen earlier. Later that night she was taken to the Homestead Police Department and was kept there for the night as they questioned her. Bravo was given a permit to stay and work in the United States.

Detective David Mata with the Homestead Police Department said that in September of 2013, he became involved in an investigation of a possible police impersonator. The victim's name was Hugo Gomez and after contacting Gomez by phone Mata believed it was a real police officer involved in the event. He went to the location where the stop allegedly occurred and was unable to locate any videos or witnesses and was unable to locate a gray Ford Taurus with the Homestead Police Department.

He was working on October 11, 2013, when Homestead dispatch advised that a person who was robbed a month before saw the person who robbed him. The

person gave a description of the vehicle with a partial tag and he drove around looking for the vehicle. Then he heard Officer Stephenson advise that she had found a vehicle that fit the description and Mata was directed to go to the victim's residence and meet with him. He went and got the victim and took him to a show-up of the vehicle and the officer. When they got to the location, Mata recognized the police officer as one he knew. As they approached, Hugo Gomez identified Mr. Kostopoulos as the person who robbed him and identified the vehicle as the one used in the robbery. The license plate on the car was 117ICB.

After the show-up he took Gomez back to the residence and then they went to the Homestead Police Department. At some point that night he interviewed Mr. Kostopoulos. Detective Morales was also present at the interview. After the interview, Mr. Kostopoulos was turned over to the Miami-Dade Police Department supervisors and was not arrested that night, but his car was towed and impounded. When the car was searched, no \$100 bills were found in the car.

Detective Fernando Morales was the officer who took Luisa Bravo and Santiago Garcia to the show-up that night. Morales also recognized Kostopoulos as an officer he had known for several years. Morales was present for all of the statements taken that night at the Homestead Police Department. During Kostopoulos's statement Kostopoulos offered to submit to a search but Kostopoulos was not searched. Morales did not write a report but co-authored Mata's report. Morales said that when reports are written sometimes things are left out but they

know they'll have an opportunity later to meet with the State Attorney's office "and go through a full and complete explanation of what occurred."

Officer Christopher Hodges described the procedure that Miami-Dade officers are expected to follow in conducting traffic stops. Antonio Casteneda, a supervisor with the FBI who supervises the Public Corruption and Civil Rights Squad for Miami-Dade was aware that an investigation was opened in this matter in December 2013.

Pamela Jackson, a sergeant in the internal affairs section of the Professional Compliance Bureau works with Miami-Dade and investigates complaints filed against Miami-Dade police department employees. She was called to the Homestead Police Department on October 11, 2013, and advised that one of their employees had been detained. She testified that there was a decision at some point that Homestead Police Department would take the criminal investigation and Miami-Dade would take care of whatever internal affair investigation was going to proceed. The first time anything was turned over to the FBI was months later.

Jennifer Richardson works for the FBI as a forensic accountant. Richardson reviewed and analyzed the Chase bank account records in the names of Cheryl Kostopoulos and William Kostopoulos for the time frame of July 26, 2013-November 27, 2013. She said that for the records she analyzed there were ten salary deposits during the time frame. Of those ten there were ten times that the balance was negative prior to the payroll deposits. There were nine times that the account incurred insufficient funds fees. During the time frame, \$32,962,78 came

in salary payments, total bank fees was \$879, consisting of insufficient funds fees of \$816, withdrawal fees of \$48 and an extended overdraft fee totaling \$15. On September 11, 2012, a document was executed authorizing overdraft charges on the Kostopoulos account. Chase continued to process transactions and did not cut off the account even if there were insufficient funds in the account. The types of transactions for the account were for "Walgreens, Publix, ATM" etc. There were no transactions for extravagant vacations or fine dining restaurants. It was mainly fast food restaurants, gas stations and grocery stores. The majority of the transactions were conducted by card number 6816 which was the card in the name of Cheryl Kostopoulos. She testified that large sums of cash were also withdrawn during this period of time. She said there were cash withdrawals ranging from small cash ATM withdrawals to \$2500 withdrawn from a teller and she had no idea how the cash was used.

Mr. Kostopoulos presented defense testimony. Gina Orinstein, who works in the dispatch office of the Homestead Police Department as a call taker, testified about the communications event log for September 13, 2013, and the fact that when they get calls they come from other places like the Miami-Dade 911 Center before they are routed to them. Ricardo Rodriguez, a lieutenant with the Miami-Dade Police Department, testified that it happened quite a bit that an officer could not reach dispatch because the air was not available, in October of 2013. He said that recently, Miami-Dade has changed their radios from analog to digital to try to improve the communication. He testified that, "if we took a traffic stop, for

instance, or a subject check, a lot of the times we took it off the air because the frequency was pretty busy.” He knows Mr. Kostopoulos from working together as officers in Cutler Ridge. He testified that Mr. Kostopoulos does not speak Spanish and that he would translate for him.

Giovanni Poveda, is a sergeant with the Miami-Dade Police Department who is currently assigned to the personnel management bureau in charge of background investigations. He has known Mr. Kostopoulos since approximately 2005 or 2006 and has worked with him. Mr. Kostopoulos does not speak Spanish. He assisted Mr. Kostopoulos on a number of occasions with Spanish translation during investigations. At one point, he became Mr. Kostopoulos’s supervisor. Mr. Kostopoulos ended up working at the front desk under his supervision. Part of that responsibility involved taking money from individuals for fingerprints taken for background checks. Poveda never had any issues in terms of the money handling by Mr. Kostopoulos. He conducted an annual evaluation of Mr. Kostopoulos in 2014. In reviewing Mr. Kostopoulos’s file, he recalls that he had “a very clean file full of commendations.” His overall rating of Mr. Kostopoulos was “outstanding,” which is the highest rating and evaluation an employee can receive.

Mr. Kostopoulos testified that he first became a police officer in 1988 and that he eventually came to work for Miami-Dade in 1998 and attained the rank of detective with the Miami-Dade Police Department. He started working in the auto theft unit in January of 2003. His total salary for the year 2013 was \$123,594.66. He earned \$20,163.04 in overtime that year. He received an hourly rate of \$68 for

overtime work at the Port of Miami inspecting vehicles that were being transported. He received \$15,382.49 for off-duty work like working football games or for stores like Walmart as security. The off-duty hourly rate was approximately \$38 per hour.

On October 10, 2013, he worked his regular shift from 4 p.m. to midnight and then he went home and changed into his uniform and went to work off-duty at Walmart where he arrived at 1:03 a.m. He worked there until 8:53 a.m. and then went home to sleep because he had to work later that afternoon. After his normal shift concluded on October 11, 2013, he intended to go home and sleep because he was scheduled to be at the Port of Miami for overtime work at 8 the next morning. He testified that he does not speak Spanish and that other officers would have to translate for him over the years.

On September 13, 2013, he issued a citation to Willie Charles Williams for a child restraint violation at 10:20 p.m. The traffic stop ended at 10:31 p.m. and then he overheard a call of a suspicious vehicle in the area so he advised the dispatcher he would assist with it and take the call. He drove through the area and didn't see anything that matched the description. He cleared the call at 10:47. He does not recall being in Homestead during that September 13, 2013, shift.

On October 11, 2013, he went to work at 4 and began by doing paperwork at the station. He patrolled the Homestead junkyards and surveilled the west end of Mowry which was a problem area. He saw a Honda that night traveling recklessly in the neighborhood as he was going westbound towards the junkyards on Mowry.

He attempted to make a turn to get behind the vehicle but before he could make the turn another vehicle pulled into the street in front of him. He tried to follow the Honda but the other car was in between so he activated his lights to go around the vehicle in between. After passing the vehicle, which was a small SUV, a stop sign came up quickly and then he lost sight of the Honda. He eventually ended up back at Mowry and resumed surveillance.

That evening he made a traffic stop on an Isuzu SUV because the thought there was a possibility of an impaired driver. He wasn't able to call the stop in because the radios were so busy that night. As he approached the driver he did not smell any alcohol or notice any other indications of impairment. He asked him for his license and he shook his head and said, "No." He asked if he had been drinking and he responded, "No." The driver indicated that he didn't speak English and Mr. Kostopoulos didn't speak Spanish so he spoke to him in English along with the words "licencia" and "cerveza," which Mr. Kostopoulos knew to mean license and some kind of alcohol. He asked him for identification in English and the driver pulled a Guatemalan ID out of his wallet and presented it to him. The name on the ID was Santiago Garcia. He pulled out two other types of ID, one of which appeared to be a store bought card with his name and date of birth. He asked Garcia if he could check the wallet for any other type of ID and Garcia said he could look. He glanced to see if there was anything else and didn't see anything. He never saw any money in his wallet and never took any money from his wallet. He also did not take any money from Garcia's person. He gave the wallet back to Garcia and Garcia put the

wallet back down on his seat. Mr. Kostopoulos asked for registration and Garcia pointed to the glove compartment. He accompanied Garcia to the passenger side of the vehicle and held his flashlight so that Garcia could see what he was going through. Garcia found the registration and after examining it, Mr. Kostopoulos saw that the vehicle came back to Garcia. He checked and compared the public VIN number for the vehicle with the registration and checked the federal safety standards sticker. Everything appeared to be valid so he told Garcia to park his car and not drive and then Mr. Kostopoulos left. He never saw or heard anyone else during this stop. He was eventually questioned by Homestead detectives around 4:30 in the morning and told them about the Garcia stop.

There came a point when he entered into a financial agreement with Chase Bank that provided for overdraft protection and he took advantage of that protection.

REASON FOR GRANTING THE WRIT

A DEFENDANT'S GENERAL DENIAL TO STATE LAW ENFORCEMENT OFFICERS THAT HE COMMITTED A MISDEMEANOR OFFENSE IS INSUFFICIENT TO MEET THE FEDERAL NEXUS REQUIREMENT UNDER 18 U.S.C. § 1512(b)(3) AND IS INSUFFICIENT TO ESTABLISH THE MENS REA FOR AN OFFENSE UNDER THIS STATUTE.

Title 18 U.S.C. § 1512(b) sets forth different types of obstruction of justice crimes. Pursuant to 18 U.S.C. § 1512(b)(3): "Whoever knowingly . . . engages in misleading conduct toward another person, with intent to . . . hinder, delay or prevent the communication to a law enforcement officer . . . of the United States of information relating to the commission or possible commission of a Federal offense [violates 18 U.S.C. § 1512(b)(3)]." In order to sustain a conviction for a violation of 18 U.S.C. § 1512(b)(3), the government must prove that: (1) the defendant knowingly and willfully engaged in misleading conduct toward another person; (2) the defendant intended to hinder, delay, or prevent the communication of information to a federal official; and (3) the information related to the commission or possible commission of a federal crime. *United States v. Ronda*, 455 F.3d 1273, 1284 (11th Cir. 2006).

Questions have arisen as to the appropriate government burdens under this statute. In evaluating the government burden under § 1512(a)(1)(c), another provision of this statute, this Court addressed the issue of "what, if anything, the

Government must show about the likelihood of a hypothetical communication with a federal law enforcement officer in circumstances where the defendant did not think specifically about any particular communication or its recipient.” *United States v. Fowler*, 563 U.S. 668, 673, 131 S.Ct. 2045, 2050 (2011). The Court concluded that, “where the defendant kills a person with an intent to prevent communication with law enforcement officers generally, that intent includes an intent to prevent communications with *federal* law enforcement officers only if it is reasonably likely under the circumstances that (in the absence of the killing) at least one of the relevant communications would have been made to a federal officer.” *Id.* at 677-78. In addition, this Court concluded that the government must show “that the likelihood of communication to a federal officer was more than remote, outlandish, or simply hypothetical.” *Id.* at 678. The Supreme Court’s reasonable likelihood standard overruled the Eleventh Circuit’s previous standard of possible or potential likelihood. *See United States v. Veal*, 153 F.3d 1233 (11th Cir. 1998); *United States v. Chafin*, 808 F.3d 1263 (11th Cir. 2015) (overruling recognized by).

In this case, the government argued that Mr. Kostopoulos made two statements to state law enforcement officers that qualified him for a conviction under § 1512(b)(c). The first statement is Mr. Kostopoulos’s statement that he did not take any money belonging to Santiago Garcia. The second statement is that he did not see anyone running towards him screaming while conducting a traffic stop of Santiago Garcia. At trial, the government proved that a decision was made by the Homestead Police Department and the Miami-Dade Police Department that the

Homestead Police Department would handle the criminal investigation and the Miami-Dade Police Department would handle the Internal Affairs investigation. When Mr. Kostopoulos was interviewed, every indication was that this was a state investigation. He was advised that Homestead Police Department was investigating the allegations, his car was towed for the purpose of getting a search warrant which was obtained from a Miami-Dade judge, and there was no discussion or hint of a federal offense.

Further, Detective Morales testified that he left information out of reports and the search warrant because he believed he would have the opportunity to sit with a State Attorney at a pre-file conference to discuss the case. (DE 228:155-56). Morales clearly did not have any expectation of federal involvement which undermines the argument that there was a reasonable likelihood that either of Mr. Kostopoulos's statements would be made to a federal official when it did not appear to have crossed the investigating officer's mind. Officer Hodges testified about the current training of police recruits but gave no testimony about Mr. Kostopoulos's own training or how recruits are trained to be knowledgeable regarding civil rights.

Agent Casteneda testified about the existence of a task force and the good relationship the FBI had with local authorities who would reach out to the task force on occasion. But, he provided no testimony or evidence that there was a routine procedure, or mechanism in place for the reporting of thefts of money in traffic stops to federal officials. *Cf. Aguero v. United States*, 580 F. App'x 748, 753 (11th Cir. 2014) (finding evidence of a "working relationship between the MPD and the federal

government, that a massive investigation results each time a police-related shooting occurs, and that standard practice existed of forwarding information from questionable shootings to the FBI" sufficient to meet the reasonable likelihood standard). Casteneda's testimony did not demonstrate a reasonable likelihood that any information would be transferred to federal officials under these circumstances.

No evidence was presented to indicate that Mr. Kostopoulos intended to hinder, delay, or prevent the communication of information to a federal official. More importantly, the government did not meet its burden of proving that there was a reasonable likelihood that the defendant's statements *would* be communicated to federal authorities and that those two statements made by Mr. Kostopoulos reasonably related to a potential federal offense. Because Mr. Kostopoulos's general denial to state officers that he didn't take any money from Garcia and that he didn't see anyone run up to him on the evening he stopped Garcia is insufficient to meet the federal nexus requirement under 18 U.S.C. § 1512(b)(3) and is insufficient to establish the appropriate mens rea under this statute, his conviction on this count must be vacated.

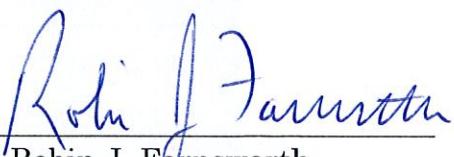
CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER

By: _____



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