NO. _____

In The Supreme Court of the United States

FELIX ADRIANO CHUJOY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the evidence was sufficient to convict the Petitioner for witness tampering in violation of 18 U.S.C. § 1512(b)(1) and two interrelated charges where there was no evidence that any attempt to persuade a witness was "corrupt," that is, that he acted dishonestly or to bring about false or misleading testimony.

RELATED CASES

While there are no other parties to these proceedings, there are two related cases.

The Petitioner along with his mother were indicted in the Western District of Virginia on allegations that prior to December 2014 they committed human trafficking and numerous immigration violations in the operation of her Harrisonburg restaurant, Inca's Secrets, along with witness tampering from December 2014 to March 2015. *United States v. Maria Rosalba Alvarado McTague, et al.,* Case No 5:14cr55.

The *McTague* case was the subject of an interlocutory appeal arising out of the prosecutor's handling of the Grand Jury that issued the indictment in the instant case. *United States v. McTague*, 840 F.3d 184 (4th Cir. 2016).

The *McTague* case was resolved in the District Court when the Petitioner pled guilty to two misdemeanors of aiding and abetting his mother's unlawful employment of aliens in her restaurant. Twenty (20) remaining (and more serious) counts against the Petitioner were dismissed on the motion of the United States.

The second related case is the now-concluded case of the Petitioner's co-defendant: *United States v. Edlind*, 887 F.3d 166 (4th Cir. 2018), cert. denied October 1, 2018.

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PETITION FOR A WRIT OF CERTIORARI

Felix A. Chujoy respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals issued April 30, 2019, is unpublished. App. at 1a. The opinion of the District Court is reported at *United States v. Chujoy*, 207 F. Supp. 3d 626 (W.D. Va. 2016). App. at 17a.

JURISDICTION

The judgment of the Court of Appeals was entered on April 30, 2019. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1503. Influencing or injuring officer or juror generally

> (a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b). If the offense under this section occurs in connection with a trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(b) The punishment for an offense under this section is—

(1) in the case of a killing, the punishment provided in sections 1111 and 1112;

(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than 20 years, a fine under this title, or both; and

(3) in any other case, imprisonment for not more than 10 years, a fine under this title, or both.

18 U.S.C. § 1512. Tampering with a witness, victim, or an informant

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(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to—

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal

> offense or a violation of conditions of probation [1] supervised release,,[1] parole, or release pending judicial proceedings;
>
> shall be fined under this title or imprisoned not more than 20 years, or both.
>
> ***
>
> (k) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

STATEMENT OF THE CASE

RELEVANT PROCEDURAL HISTORY

On October 20, 2015, Petitioner Felix Chujoy was charged in three counts of an Indictment in the United States District Court for the Western District of Virginia alleging that he and a co-defendant, Carolyn Edlind, tampered with a witness, Michael Kwiatkowski, in a case which was then pending in the Western District of Virginia and is summarized as "the *McTague* case" under the heading *RELATED CASES*, supra. Particularly, the three interrelated charges here appealed alleged a conspiracy in violation of 18 U.S.C. § 1512(k), witness tampering in violation of 18 U.S.C. § 1512(b)(1), and obstruction of justice in violation of 18 U.S.C. § 1503.[1] This indictment was the basis for federal jurisdiction in the court of first instance pursuant to 18 U.S.C. § 3231.

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[1] The District Court in its decision denying the Motion for Judgment of Acquittal found that the issue of "corrupt persuasion" is dispositive on all three counts, which fact was noted in Petitioner's appeal brief in the Fourth Circuit notwithstanding the Court's incorrect assertion at Footnote 3 that Petitioner "does not appear to challenge the obstruction of justice conviction."

The case was tried to a jury in December of 2015 where the case turned, ultimately, on the issue of "corrupt persuasion." After lengthy deliberation the jury returned guilty verdicts on all three counts. Following the jury's verdict, the trial court denied the Petitioner's Motion for Judgment of Acquittal at *United States v. Chujoy*, 207 F. Supp. 3d 626 (W.D.Va. 2016), which the Fourth Circuit affirmed in an unpublished decision.

STATEMENT OF RELEVANT FACTS

Petitioner Felix Chujoy was called back from weekend duty at the Army Reserves on December 12, 2014, when he was arrested along with his mother in the *McTague* case (summarized under *RELATED CASES*, supra). Following his arrest and release, the Petitioner sought the emotional support of a small circle of friends who were in no way connected with the *McTague* case, including Mr. and Carolyn Edlind, Michael Kwiatkowski, and Christina Kang. Neither Kang nor Kwiatkowski considered themselves to be a "victim" or a "potential witness" in the *McTague* case. The government's evidence established that other, perhaps closer friends of the Petitioner were intentionally not invited into this support circle.

Thereafter on March 12, 2015, the grand jury issued a Superseding Indictment against the Petitioner and others in the *McTague* case. The Petitioner was again arrested and this time was not committed to bond but detained on March 19, 2015, at which point he was held in the Rockingham County Jail until his release again on bond on June 22, 2015.

During this period of incarceration, the Petitioner maintained or attempted contact with numerous friends by writing letters, receiving visitors, and making telephone calls from the jail.

It was not until a May 2015 interview with agents of the government that Michael Kwiatkowski came to understand that he could be a witness in the *McTague* case, and it wasn't until a summary of that interview was read to the Petitioner by counsel on June 2, 2015, that the Petitioner understood that Kwiatkowski could be a witness in the *McTague* case.

It was one day later, on June 3, 2015, that the Petitioner relayed to Carolyn Edlind that he had seen a report of Michael Kwiatkowski's recent statement to law enforcement: "I'm pretty shocked by what it says, so I'm hoping that it is either a big misunderstanding or that the feds are twisting it around. The interview says that according to Mike, my mom was very intimidating, that I can't be trusted, and that I'm always lying and making up stories. It goes on into more specific stories and examples that made me laugh." The letter continues, "Please make sure to meet with both of them so that Mike understands that much of the information he gave out is <u>incorrect</u> and could lead into me getting into a <u>huge</u> problem. Be nice to him about it, as I wouldn't want to offend him or have him take things personal. I understand that my jokes are sometimes stupid and between that and him not being able to tell when I was joking or not, his comments/interview are ludicrous. I hope you get to meet with them ASAP, as clarifying all this is pretty crucial." And, finally, a postscript: "He should probably also clarify that we didn't really start hanging out,

until half way through 2014, as that would probably explain why we were always on two different pages and why he didn't really know much about me, or why he couldn't tell when I was joking." This letter is reprinted in its entirety at App. 76a.

Upon receipt of this letter, Carolyn Edlind and her husband did meet with Mike Kwiatkowski several weeks later at a restaurant on June 16, 2015. Unbeknownst to Edlind, Kwiatkowski was wearing a wire, and the entire transcript of that recording was introduced at trial. During that conversation (in which the Petitioner was not involved as he was still incarcerated), Mr. and Mrs. Edlind sought to convince Kwiatkowski that the Petitioner often said things in jest and that the Petitioner served informally as an unpaid manager at his mother's restaurant, both of which were in fact true statements. The Edlinds also told Michael Kwiatkowski multiple times to "tell the truth" and that he should answer questions truthfully even if he thought the answers might be "bad for Felix." Mr. Edlind said, "That's [the lawyers'] job [to "fix" answers that hurt Felix]. Not your job, her job, my job."

The government also introduced evidence that the Petitioner made several phone calls to a friend named Smith in which the Petitioner wanted Smith to talk to Kwiatkowski after Smith received an explanatory letter from the Petitioner. Smith testified that he never received such a letter and that he did not attempt to contact Kwiatkowski. No evidence was presented regarding the contents of (or even the existence of) that letter, and any speculation regarding the content of the letter is mere speculation.

REASONS FOR GRANTING THE PETITION

Recognizing that persuading a person to withhold testimony or to amend a previous statement is not inherently malign, the Court in *Arthur Anderson v. United States*, 544 U.S. 696, 125 S. Ct. 2129, 161 L. Ed. 2d 1008 (2005), held that persuasion is "corrupt" if the defendant acted knowingly and dishonestly, with specific intent to subvert or undermine the due administration of justice. The words *corrupt* and *corruptly* "are normally associated with wrongful, immoral, depraved, or evil." *Id*. at 705. "Only persons conscious of wrongdoing can be said to knowingly corruptly persuade." *Id*. at 706.

"A defendant's directive to a witness to lie to investigator or at trial always suffices." *Edlind*, supra, at 174, citing *United States v Bedoy*, 827 F.3d 495, 510 (5th Cir. 2016) (sufficient evidence when defendant suggested that witness misrepresent their relationship), and *United States v. Burns*, 298 F.3d 523, 540 (6th Cir. 2002) (sufficient evidence when defendant told witness to lie to grand jury about defendant's drug dealing). It follows, then, that attempts to correct incomplete or inaccurate statements by a potential witness in an effort to help him testify truthfully cannot be culpable conduct.

Acknowledging that that the government is required to prove that a defendant's action was done "voluntarily and intentionally to bring about false or misleading testimony . . . with the hope or expectation of some benefit to the defendant," the Fourth Circuit then can cite no "false or misleading testimony" which the Petitioner (or his co-defendant Edlind) attempted to obtain. Indeed, the Fourth

Circuit cites as "consciousness of wrongdoing" only a no-longer-effective bond condition prohibiting contact with witnesses and the Petitioner's telephone calls placed from the jail to another individual (Smith, not Kwiatkowski) using another inmate's PIN – neither of which establishes an intention to bring about "false or misleading testimony." See App. at 7a-10a.

The District Court also could point to no false or misleading statements made by the Petitioner. Indeed, the District Court even acknowledged that "there is some question about the precise facts Edlind and Chujoy wanted Kwiatkowski to deny," supra, at 207 F.Supp.3d at 646, finding for the government only by focusing not on statements made but on evasive behavior and longstanding suspicions by Edlind of government eavesdropping as evidence of "consciousness of wrongdoing" without reference to particular false or misleading facts in evidence.

Other than the June 3 letter from the Petitioner to Carolyn Edlind, all the evidence of statements made by defendants in the case are statements made by Carolyn Edlind and her husband without the knowledge or direction of the Petitioner. During the relevant period, from June 2 through June 16, 2015, the Petitioner was incarcerated, and it is uncontroverted that he had no contact with Michael Kwiatkowski during that time. It is from the face of the June 3 letter, App. at 76a, that any attempt to obtain false or misleading testimony – or any evidence of witness tampering – by the Petitioner, Felix Chujoy, must be drawn; and there are none.

CONCLUSION

Wherefore, for the reasons stated, the Petitioner respectfully requests that the Court grant his Petition for Certiorari and reverse his convictions.

Respectfully submitted,

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