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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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FOWLER *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 10–5443. Argued March 29, 2011—Decided May 26, 2011

While preparing to rob a bank, petitioner Fowler and others were discovered by a local police officer, whom Fowler killed. Fowler was convicted of violating the federal witness tampering statute, which makes it a crime "to kill another person, with intent to . . . prevent the communication by any person to a [Federal] law enforcement officer" of "information relating to the . . . possible commission of a Federal offense," 18 U. S. C. §1512(a)(1)(C). Rejecting Fowler's argument that the evidence was insufficient to show that he had killed the officer intending to prevent him from communicating with a *federal* officer, the Eleventh Circuit held that a showing of a possible or potential communication to federal authorities was sufficient.

Held: In such circumstances, the Government must establish a §1512(a)(1)(C) violation by showing there was a reasonable likelihood that a relevant communication would have been made to a federal officer. Pp. 3–10.

(a) In a §1512(a)(1)(C) prosecution, "no state of mind need be proved with respect to the circumstance . . . that the law enforcement officer is an . . . employee of the Federal Government," §1512(g)(2). Thus, the Government must prove (1) a killing, (2) committed with a particular intent, namely, an intent (a) to "prevent" a "communication" (b) about "the commission or possible commission of a Federal offense" (c) to a federal "law enforcement officer." P. 3.

(b) Nothing in §1512(a)(1)(C)'s language limits it to instances in which the defendant has some identifiable law enforcement officers particularly in mind. Any such limitation would conflict with the statute's basic purpose. Witness tampering may prove more serious (and more effective) when the crime takes place before the victim has engaged in any communication at all with officers—at a time when

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the precise communication and nature of the officer who may receive it are not yet known. Hence, the statute covers a defendant, like petitioner, who kills with intent to prevent communication with any and all officers. The Court must consequently decide what, if anything, the Government must show about the likelihood of a hypothetical communication with a federal officer where the defendant did not think specifically about any particular communication or its recipient. Pp. 4–7.

(c) To determine what the Government must prove in such instances, the Court looks to the dictionary definition of the statutory word "prevent," which means rendering an "intended," "possible," or "likely" event impractical or impossible by anticipatory action. No one suggests that the word "intended" sets forth the appropriate standard here. The Government and the Eleventh Circuit would rest their standard on the word "possible." But that standard would eliminate the independent force of the statutory "federal officer" requirement, and would extend the statute beyond its intended, basically federal, scope. Fashioning a standard based on the word "likely" is consistent with the statute's language and objectives. Thus, 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* officers only if there is a reasonable likelihood 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. The Government need not show that such a communication, had it occurred, would have been federal beyond a reasonable doubt, nor even that it is more likely than not. But it must show that the likelihood of communication to a federal officer was more than remote, outlandish, or hypothetical. Pp. 7–10.

(d) Because Fowler's argument that the evidence is insufficient to satisfy a "reasonable likelihood" standard was not raised at trial, the lower courts must determine whether, and how, the standard applies in this case. P. 10.

603 F. 3d 883, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment. ALITO, J., filed a dissenting opinion, in which GINSBURG, J., joined.