

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ROBERT WADE UMBACH and  
CHRISTOPHER KINES,

Defendants-Appellants

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA

---

UNITED STATES' OPPOSITION TO APPELLANTS' MOTIONS  
FOR BOND PENDING APPEAL

---

VANITA GUPTA  
Principal Deputy Assistant  
Attorney General

THOMAS E. CHANDLER  
CHRISTINE A. MONTA  
Attorneys  
Department of Justice  
Civil Rights Division  
Appellate Section  
Ben Franklin Station  
P.O. Box 14403  
Washington, D.C. 20044-4403  
(202) 353-9035

---

*United States v. Robert Umbach et al.*, Case No. 16-11588-GG

**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Eleventh Circuit Rules 26.1-1, 26.1-2, and 26.1-3, counsel for the United States hereby certifies that appellants' certificate of interested persons attached to their Rule 9 motions dated August 8, 2016 (Kines) and August 17, 2016 (Umbach) are complete.

s/ Christine A. Monta  
CHRISTINE A. MONTA  
Attorney

Date: August 26, 2016

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

No. 16-11588-GG

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ROBERT WADE UMBACH and  
CHRISTOPHER KINES,

Defendants-Appellants

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA

---

UNITED STATES' OPPOSITION TO APPELLANTS' MOTIONS  
FOR BOND PENDING APPEAL

---

Pursuant to Federal Rule of Appellate Procedure 9(b) and Eleventh Circuit Rule 9-1, the United States respectfully submits this opposition to appellants Robert Wade Umbach's and Christopher Kines' motions for bond pending appeal. Umbach and Kines each were convicted of one count to lying to the FBI with the intent to hinder a federal investigation, in violation of 18 U.S.C. 1512(b)(3), and sentenced to 15 months' imprisonment. Doc. 1, 166, 269. The district court permitted both defendants to remain at liberty until directed to surrender. After the district court denied the defendants' motions for bond pending appeal, they filed

the instant motions with this Court. The district court thereafter granted defendants' unopposed requests to stay their voluntary surrender (which had been scheduled for August 30, 2016) pending this Court's ruling on their motions for bond pending appeal. Doc. 334.

The motions for bond pending appeal should be denied. As discussed below, 18 U.S.C. 3143(b)(1) prohibits a convicted defendant's release pending appeal unless, among other determinations, the court finds that the appeal "*raises a substantial question of law or fact likely to result in \* \* \* reversal,*" an order for a new trial, a non-custodial sentence, or a reduced prison sentence below the total of the time already served plus the expected duration of the appeal. 18 U.S.C. 3143(b)(1)(B) (emphasis added). As the district court correctly held, neither Umbach nor Kines can satisfy this statutory requirement.

## **BACKGROUND**

1. This appeal concerns the prosecution of police officers for the assault of a civilian, Aaron Parrish, during an arrest at a motorcycle festival. On June 10, 2015, after a 13-day trial, a federal jury acquitted one officer of using excessive force during the arrest, but found three officers guilty of obstruction-related offenses. Doc. 166. Robert Wade Umbach and Christopher Kines, the appellants here, were convicted of one count each of witness tampering, in violation of 18 U.S.C. 1512(b)(3), for knowingly making false and misleading statements to FBI

agents regarding the assault. Doc. 166, at 2; Doc. 1, at 5-6. The third officer, Elizabeth Croley, was convicted of two counts: depriving Parrish of his rights under color of law, in violation of 18 U.S.C. 242, for intentionally withholding material exculpatory evidence from the state district attorney's office with respect to Parrish's criminal prosecution; and knowingly making a false report regarding the assault, in violation of 18 U.S.C. 1519. Doc. 166, at 1; Doc. 1, at 2-3.

On March 15, 2016, the district court sentenced both Umbach and Kines to 15 months' imprisonment followed by two years of supervised release. Doc. 267, 269. Umbach and Kines each faced an advisory guidelines range of 21 to 27 months of incarceration, but the district court imposed below-guidelines sentences to align their sentences with that of the more culpable defendant Croley, who had received an 18-month sentence after the district court granted a downward variance from Croley's advisory guidelines range of 33 to 41 months' imprisonment. Doc. 305, at 65-66, 70, 75-77. Based on the seriousness of the offense conduct—namely, obstructing a federal investigation into a possible criminal civil rights violation by a law enforcement officer—the district court rejected defendants' requests for probationary sentences. Doc. 305, at 33-34, 56-58, 63-64.

On April 7, 2016, after the district court entered final judgments of conviction, Umbach and Kines filed notices of appeal. Doc. 278, 280. Under this

Court's briefing schedule, appellants' opening briefs are currently due September 26, 2016, and the government's brief is due October 31, 2016.

2. Following the entry of judgment, Umbach and Kines each filed motions for bond pending appeal in the district court. Doc. 273, 276.

a. Umbach's motion set forth two errors that he asserted raised substantial questions of law or fact likely to result in relief on appeal: (1) the district court's imposition of a two-level sentencing enhancement under U.S.S.G. § 3B1.3 for abuse of a position of trust; and (2) the district court's denial of his Rule 29 motion for judgment of acquittal. Doc. 273, at 4-9. Umbach argued that if the district court were to resentence him based on what he viewed to be the correct sentencing range of 15 to 21 months of imprisonment, he likely would receive a non-custodial sentence or reduced prison sentence. Doc. 273, at 9.

b. Kines' motion also challenged the two-level sentencing enhancement under U.S.S.G. § 3B1.3 for abuse of a position of trust. Doc. 276, at 2; Doc. 277, at 10. Additionally, Kines asserted that the district court (1) should have granted his motions for judgment of acquittal and new trial, and (2) erred in making five evidentiary rulings. Doc. 276, at 2. Kines did not explain how the alleged errors raised a substantial question of law or fact in satisfaction of 18 U.S.C. 3143(b). Rather, he simply asserted that the district court should grant his motion because

this Court could find one or more of his claimed errors convincing and because any erroneous ruling could not be deemed harmless. Doc. 277, at 9.

c. The United States opposed Umbach's and Kines' motions for bond pending appeal. Doc. 285. The government agreed that neither defendant posed a flight risk, presented a danger to public safety, or filed his appeal for the purpose of delay. Doc. 285, at 3-4. The government argued, however, that neither Umbach nor Kines had raised a substantial question of law or fact likely to result in reversal, a new trial, a non-custodial sentence, or a reduced term of imprisonment less than the total of the time already served plus the expected duration of the appeal. Doc. 285, at 4.

As to both defendants' claim regarding the two-level abuse-of-trust enhancement, the government explained that even if the defendants had been sentenced absent that enhancement, the 15-month sentences they received were at the bottom of the corresponding guidelines range for which they advocated, *i.e.*, 15 to 21 months. Doc. 285, at 4. The government further explained that, based on the district court's statements at sentencing, there was no basis to believe that in these circumstances the court would have granted a downward variance from that lower range. Doc. 285, at 4-5. Finally, the government argued that any appeal reasonably could be expected to be resolved within 15 months, and thus that

defendants' appeal, even if successful, was not likely to result in a sentence shorter than the duration of the appeal process. Doc. 285, at 5.

As to Umbach's claim that the district court should have granted his Rule 29 motion for judgment of acquittal, the government argued that, viewed in the light most favorable to the government, the evidence presented was sufficient for a rational jury to find Umbach guilty of 18 U.S.C. 1512(b)(3) beyond a reasonable doubt. Doc. 285, at 6-7. As to the remaining issues Kines raised in his motion for bond pending appeal—namely, the district court's evidentiary rulings and denial of his post-trial motions—the government responded that Kines did not even argue that, let alone explain how, such issues presented substantial questions that would satisfy his burden under Section 3143(b)(1)(B). Doc. 285, at 7-8.

d. The district court afforded both defendants an opportunity to reply to the government's response. Doc. 286. Umbach did so (Doc. 292); Kines did not.

3. On July 28, 2016, the district court denied Umbach's and Kines' motions for bond pending appeal. Doc. 321. On the sentencing claims, the district court rejected appellants' arguments that they did not hold a position of trust or violate that trust. Doc. 321, at 3-4. The court also found that applying the abuse-of-trust enhancement under U.S.S.G. § 3B1.3 did not constitute double-counting because the charged offense did not implicitly include an abuse of trust. Doc. 321, at 4-5.



As to Umbach's Rule 29 claim, the district court again concluded, as it had in an earlier post-trial order, that the government had presented "enough direct and circumstantial evidence for a rational jury to find Mr. Umbach guilty" of violating 18 U.S.C. 1512(b)(3). Doc. 321, at 5; see also Doc. 253 (district court's denial of Umbach's Rule 29 motion). Accordingly, the district court found that "no significant issue of law or fact remains meriting an appeal bond." Doc. 321, at 5.

Finally, as to Kines's "several conclusory assertions" of other "substantial issues of law or fact"—namely, the court's denial of his motion for judgment of acquittal and allegedly erroneous evidentiary rulings—the district court found that Kines had not "articulate[d] a basis for how any of the Court's previous determinations create a substantial issue of law or fact" or "explain[ed] how the Court's decision could be decided in another way." Doc. 321, at 5-6. Thus, the court held, Kines had not provided "any truly substantial question of law or fact meriting" bond pending appeal. Doc. 321, at 6.

4. Following the district court's denial of their motions, Umbach and Kines both filed motions seeking bond pending appeal in this Court pursuant to Federal Rule of Appellate Procedure 9(b). Kines filed his motion (Kines Rule 9 Mot.) and accompanying "brief" (Kines Rule 9 Mem.) on August 8, 2016. He set forth the same list of claimed errors as below: (a) the district court should have granted his motion for judgment of acquittal; (b) the court erred in reaching five of its

evidentiary rulings; and (c) the court incorrectly imposed a two-level abuse-of-trust enhancement. Kines Rule 9 Mot. 5-6; Kines Rule 9 Mem. 5-25. Umbach filed his motion on August 17, 2016 (Umbach Rule 9 Mot.). He likewise asserted the same two errors that he presented to the district court: (a) the district court's imposition of the two-level abuse-of trust enhancement; and (b) the court's denial of his motion for judgment of acquittal. Umbach Rule 9 Mot. 9-18.

### **DISCUSSION**

The Bail Reform Act of 1984, 18 U.S.C. 3141 *et seq.*, creates a presumption that a convicted defendant sentenced to a term of imprisonment “shall \* \* \* be detained” while an appeal is pending. 18 U.S.C. 3143(b)(1). It allows for the release of a defendant pending appeal only if the defendant shows, among other things, that (1) he does not pose a flight risk or a danger to public safety, (2) the appeal is not for the purpose of delay, and (3) the appeal “raises a substantial question of law or fact” likely to result in reversal, a new trial, a non-custodial sentence, or a reduced prison sentence less than the total of the time already served plus the expected duration of the appeal process. 18 U.S.C. 3143(b)(1)(B).

The United States conceded below that neither Umbach nor Kines poses a flight risk or a danger to public safety and that they have not filed their appeals for the purpose of delay. Doc. 285, at 3. Thus, the only question for this Court is whether their appeals raise a “substantial question of law or fact” likely to result in

material relief such as reversal, a new trial, a non-custodial sentence, or a reduced prison term. 18 U.S.C. 3143(b)(1)(B). The court below correctly concluded that neither defendant had made such a showing. This Court should reach the same conclusion and deny Umbach's and Kines' motions for bond pending appeal.

A "substantial question," this Court has explained, is one that "is either novel," "has not been decided by controlling precedent," or "is fairly doubtful." *United States v. Giancola*, 754 F.2d 898, 900 (11th Cir. 1985) (quoting *United States v. Miller*, 753 F.2d 19, 23 (3d Cir. 1985)). This Court has stated that "an issue may be without controlling precedent largely because that issue is so patently without merit that it has not been found necessary for it to have been resolved." *Id.* at 901. "Similarly, there might be no precedent in this circuit, but there may also be no real reason to believe that this circuit would depart from unanimous resolution of the issue by other circuits." *Ibid.* Although "there are no blanket categories for what questions do or do not constitute 'substantial' ones," thus requiring case-by-case determinations, a "substantial question" is a "close" one or "one that very well could be decided the other way." *Ibid.*

This Court further stated in *Giancola* that Section 3143(b)'s "likely to result in reversal" language "must be read as going to the significance of the substantial issue to the ultimate disposition of the appeal." 754 F.2d at 900 (quoting *Miller*, 753 F.2d at 23). In other words, a court may find that reversal of the conviction or

a new trial is “‘likely’ only if it concludes that the question is so integral to the merits of the conviction on which defendant is to be imprisoned that a contrary appellate holding is likely to require [such relief.]” *Ibid.* (quoting *Miller*, 753 F.2d at 23). Holding otherwise would undermine Congress’s intent in enacting the Bail Reform Act to “reverse the presumption in favor of bail that existed under the prior statute” so that “the conviction is presumed correct and the burden is on the convicted defendant to overcome that presumption.” *Id.* at 900-901.

Here, the district court presided over appellants’ 13-day trial and, as noted above, denied both appellants’ motions for judgment of acquittal, twice overruled their objections to a two-level sentencing enhancement for abuse of a position of trust (first at sentencing and then in denying their bond motions), and rejected Kines’ five claimed evidentiary errors. As the court most familiar with the case, “the district court is in an excellent position to determine in the first instance whether the defendant raises a substantial question on appeal.” *United States v. Pollard*, 778 F.2d 1177, 1182 (6th Cir. 1985). While this Court may decide anew whether an appellant has satisfied Section 3143(b), appellants’ laundry list of errors fails to raise a “substantial question” that warrants bond pending appeal.

A. *Abuse-Of-Trust Sentencing Enhancement*

Both Umbach and Kines argue that the district court erred in imposing a two-level sentencing enhancement under U.S.S.G. § 3B1.3 for abuse of a position

of trust, and that such error raises a “substantial question of law or fact” that, if decided in appellants’ favor, would likely result in a reduced prison term or a sentence that does not include imprisonment. 18 U.S.C. 3143(b)(1)(B); see Umbach Rule 9 Mot. 9-16, 18; Kines Rule 9 Mem. 23-24. The district court, in denying their motions for bond pending appeal, specifically addressed and rejected this argument. Doc. 321, at 2-5. This Court should as well.

Contrary to Umbach’s suggestion (Umbach Rule 9 Mot. 9, 16), the government did not expressly concede below that Umbach and Kines did not abuse a position of trust within the meaning of U.S.S.G. § 3B1.3. Rather, as the government explained in its response to their motions for bond pending appeal (Doc. 285, at 4 n.1), the government argued that the district court should not apply the abuse-of-trust enhancement under U.S.S.G. § 3B1.3 because, under the government’s preferred guidelines calculation, abuse of trust would already be encompassed in the six-level enhancement under U.S.S.G. § 2H1.1(b)(1) for acting under color of law, and thus the application of both enhancements would constitute double counting. See also Doc. 218, at 4 n.4 (government’s objection to draft PSR) (stating that the government objects to the application of § 3B1.3 “*to the extent that the base offense level [is] calculated as outlined in these objections,*” *i.e.*, with a § 2H1.1 enhancement) (emphasis added)). The district court, however, rejected the government’s calculation method and thus did not apply U.S.S.G.

§ 2H1.1(b)(1)'s six-level enhancement for acting under color of law. See Doc. 305, at 27-29. Thus, as the court recognized when it denied Umbach's bond motion, the government's "contention that the abuse of trust enhancement did not apply was a position predicated on a theory that was not accepted." Doc. 321, at 3.

In any event, even if this Court were to find that imposing the abuse-of-trust enhancement was erroneous and remand the case for resentencing, neither Umbach nor Kines would be likely to receive a non-custodial sentence or reduced term of imprisonment. Appellants concede that their total offense level without the abuse-of-trust enhancement would have been 14, yielding a corresponding advisory guidelines range of 15 to 21 months' imprisonment. Kines Rule 9 Mem. 23-24; Umbach Rule 9 Mot. 18. Appellants assert, however, that because the district court granted a two-level downward variance from his advisory guidelines range of 21 to 27 months in imposing a prison term of 15 months, it similarly could be expected to impose a downward variance from the lower guidelines. Kines Rule 9 Mem. 23-24; Umbach Rule 9 Mot. 18.

This argument, however, ignores the district court's *reasons* for granting the downward variance to 15 months. The district court granted a downward variance to 15 months' imprisonment on the basis of the sentencing factors set forth under 18 U.S.C. 3553(a), its individualized assessment of relevant facts, and the need to avoid imposing sentences on Umbach and Kines that were longer than the 18-

month sentence it had imposed on Croley, whose conduct was more serious than Kines' and Umbach's. Doc. 305, at 65-66, 70-71, 75-77. Thus, the record does not support appellants' claims that they would be likely to receive a prison sentence of less than 15 months absent the two-level enhancement imposed under U.S.S.G. § 3B1.3.

The record also belies appellants' claim that the district court on resentencing would likely impose a sentence of probation absent the two-level abuse-of-trust enhancement. Kines Rule 9 Mem. 24; Umbach Rule 9 Mot. 18. In fact, both the statements the district court made at sentencing and the sentences it ultimately imposed make clear that the seriousness of appellants' offense conduct—namely, obstructing a federal investigation into a possible criminal civil rights violation by a law enforcement officer—warranted a prison sentence. Doc. 305, at 56-64. Thus, under these circumstances, there is no basis to conclude that appellants would likely receive a non-custodial sentence or a reduced prison sentence below the total of the time already served plus the expected duration of the appeal. This is especially so where this Court has already issued a briefing schedule on appeal that orders the completion of merits briefing by mid-November, and appellants have not yet served any of their sentence.

*B. Denial Of Appellants' Motions For Judgment Of Acquittal*

Appellants also argue that this Court should grant their motions for bond pending appeal because the district court should have overturned the jury's verdict. Umbach Rule 9 Mot. 17; Kines Rule 9 Mem. 5-8. But as the district court correctly noted, a court reviewing a Rule 29 motion for judgment of acquittal must review the evidence in the light most favorable to the prosecution, *United States v. Hernandez*, 743 F.3d 812, 814 (11th Cir. 2014), and must uphold the verdict so long as “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt,” *United States v. Hunt*, 526 F.3d 739, 745 (11th Cir. 2008) (citation omitted). Thus, sufficiency review under Rule 29 “requires only that a guilty verdict be reasonable, not inevitable, based on the evidence presented at trial.”<sup>1</sup> *United States v. Browne*, 505 F.3d 1229, 1253 (11th Cir. 2007) (citation omitted), cert. denied, 554 U.S. 918 (2008).

Here, reviewing the evidence in the light most favorable to the government, there was more than sufficient evidence for a rational jury to find beyond a reasonable doubt that Kines and Umbach lied to FBI agents with the intent to hinder their investigation into an alleged civil rights violation. See 18 U.S.C.

---

<sup>1</sup> This Court reviews *de novo* a district court's denial of a motion for judgment of acquittal on sufficiency of evidence grounds. See *United States v. Taohim*, 817 F.3d 1215, 1220 (11th Cir. 2013) (stating appellate and substantive standards governing Rule 29 motions).



1512(b)(2). Several witnesses testified that, as Kines and Umbach were in the process of arresting Aaron Parrish, Deputy Wiley Griffin IV walked up behind Parrish, grabbed his hair, pulled his head back, and beat him multiple times in the face with a metal flashlight. Doc. 315, at 68-69; Doc. 316, at 71, 87-88; Doc. 317, at 141-146; see also Doc. 311, at 34-47.<sup>2</sup> Two witnesses also testified that Griffin admitted to them that he had beaten an arrestee with a flashlight (Doc. 315, at 113-118, 120; Doc. 318, at 133-134), and Parrish sustained injuries consistent with such a beating (Doc. 199, at 35-36; Doc. 308, at 11-12, 25; Doc. 317, at 173-177; Doc. 319, at 158-164).

Yet, both Kines and Umbach told FBI Special Agent Steve McDermond that Griffin did not hit Parrish, that Kines was the only officer who used force (having punched Parrish once in the temple), and that, given their positioning, they would

---

<sup>2</sup> Although Kines urges that this Court cannot consider any rebuttal evidence in the sufficiency analysis because the court reserved its Rule 29 ruling at the close of the government's case-in-chief (Kines Rule 9 Mot. 8 (citing Rule 29)), Kines renewed his motion for judgment of acquittal at the close of all the evidence, and again after the jury's verdict (see Doc. 176, at 1; Doc. 251, at 1, 3-4). Thus, this Court's sufficiency analysis may consider all the evidence presented at trial. See Fed. R. Crim. P. 29(b)-(c). In any event, as the district court expressly recognized (Doc. 251, at 4), the evidence presented in the government's case-in-chief alone was sufficient for a rational jury to find Kines guilty. See also Doc. 187, at 3-6 (government's response to Kines' Rule 29 motion setting forth sufficient evidence to support the jury's verdict).

have seen if Griffin had beaten Parrish with a flashlight.<sup>3</sup> McDermond testified about his interviews with Kines and Umbach, and the government introduced through McDermond audio excerpts of Kines' and Umbach's FBI interviews, which it played for the jury at trial. Doc. 319, at 10, 16-17; Doc. 196, at 49. A rational jury could infer that Kines and Umbach made these false statements knowingly and with the intent to hinder the FBI's investigation into whether Griffin had violated Parrish's civil rights. That is particularly so given that both Kines and Umbach had omitted Griffin's use of force from their written witness statements (see Doc. 319, at 6, 16, 21), and thus had reason to conceal Griffin's involvement from the FBI to avoid prosecution for those false reports.<sup>4</sup>

In short, appellants fail to show that their sufficiency claims are likely to prevail, much less that those claims raise a "substantial question of law or fact" warranting an appeal bond under Section 3143(b)(1)(B).

---

<sup>3</sup> Kines told Special Agent McDermond expressly that, if Griffin had hit Parrish in the face with a flashlight, Kines "would have seen that." Doc. 196, at 49; Gov't Exh. 18a, 18c. Thus, contrary to Kines' assertion, his own statements provide sufficient evidence for the jury to infer that he "had knowledge that Mr. Griffin actually struck Mr. Parrish." Kines Rule 9 Mem. 7-8.

<sup>4</sup> Contrary to Umbach's suggestion (Umbach Rule 9 Mot. 17), an inference that Umbach intended to impede a federal investigation when he lied to Special Agent McDermond did not depend on any inferences about the intent underlying his earlier written statement, nor does the jury's acquittal on the Section 1519 count affect the sufficiency of the evidence on the Section 1512(b) count.

*C. Kines' Claimed Evidentiary Errors*

Finally, Kines argues that the district court made five erroneous evidentiary rulings: (1) denying defendants' motions for the identities of two confidential informants in a separate federal investigation who had reported alleged instances of misconduct by a government witness in this case; (2) prohibiting defense counsel from cross-examining Parrish regarding specific details set forth in the unverified complaint filed in his civil action regarding the assault; (3) excluding three excerpts from Kines' sworn testimony at the state trial against Parrish; (4) allowing Robbie Lynn Webb to testify as a rebuttal witness; and (5) wrongfully admitting certain language in one of the court's jury instructions. Kines Rule 9 Mem. 8-23.

Kines raised these arguments in support of his Rule 33 motion for a new trial in the "interest of justice." Doc. 176, at 2. In denying Kines' Rule 33 motion, the district court separately addressed and rejected each of the five claimed errors. Doc. 251, at 5-15. Kines now asserts that (1) his district court appeal bond motion incorporated the arguments from his Rule 33 motion, and (2) the district court disregarded the arguments without a discussion of the merits. Kines Rule 9 Mem. 5. But Kines' motion did not incorporate his Rule 33 arguments. See Doc. 277. Moreover, the district court properly found that merely including the evidentiary rulings in a list of claimed errors (see Doc. 276, at 2) did not satisfy Kines' burden to show a "substantial question" under Section 3143(b)(1)(B). Doc. 321, at 5-6.

On appeal, Kines fails to identify how any of the allegedly erroneous evidentiary rulings, which this Court generally would review only for an abuse of discretion, see *General Electric Co. v. Joiner*, 522 U.S. 136, 141 (1997), presents a “substantial question” under Section 3143(b). Indeed, Kines does not even acknowledge that the district court rejected each of his claims let alone explain how the court erred in doing so. See Doc. 251, at 5-15 (order denying Rule 33 motion); see also Doc. 187, at 23-39 (government’s opposition to Kines’ Rule 33 motion explaining why each of his claimed evidentiary errors was meritless). Critically, even if this Court were to find that any of the rulings raised a “substantial question,” it would further have to find that the ruling was “so integral to the merits of the conviction \* \* \* that a contrary appellate holding is likely to require reversal of the conviction or a new trial” before granting bond pending appeal. *Giancola*, 754 F.2d at 900 (quoting *Miller*, 753 F.2d at 23). Kines’ motion does not address the second of these requirements—that is, that any of the alleged errors is likely to result in reversal or a new trial—other than to assert in a conclusory manner that Section 3143(b)(1)(B) has been satisfied. Compare Kines Rule 9 Mem. 8-23 (discussing alleged errors) with Kines Rule 9 Mem. 24-25 (stating it is likely Kines’ conviction will be reversed and his sentence vacated). Nor could Kines make such a showing on the basis of the entire trial record.

Because Kines has failed to make the requisite showing under Section 3143(b)(1)(B), no valid basis exists for granting his motion.

**CONCLUSION**

For the foregoing reasons, this Court should deny Kines' and Umbach's motions for bond pending appeal.

Respectfully submitted,

VANITA GUPTA  
Principal Deputy Assistant  
Attorney General

s/ Christine A. Monta  
THOMAS E. CHANDLER  
CHRISTINE A. MONTA  
Attorneys  
Department of Justice  
Civil Rights Division  
Appellate Section  
Ben Franklin Station  
P.O. Box 14403  
Washington, DC 20044-4403  
(202) 514-2195

## **CERTIFICATE OF SERVICE**

I hereby certify that on August 26, 2016, I electronically filed the foregoing UNITED STATES' OPPOSITION TO APPELLANTS' MOTIONS FOR BOND PENDING APPEAL with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit using the Appellate CM/ECF system.

I further certify that all parties are CM/ECF registered, and will be served using the Appellant CM/ECF system.

s/ Christine A. Monta \_\_\_\_\_  
CHRISTINE A. MONTA  
Attorney