

OBSTRUCTING JUSTICE BY TESTIFYING AT TRIAL: PERJURY AS THE BASIS FOR A FEDERAL SENTENCING ENHANCEMENT



Notes

¹ *United States v. Dunnigan*, 507 U.S. 87 (1993).

² *Id.* at 91.

³ *U.S. v. Napolitan*, 762 F.3d 297, 312 (3d Cir. 2014).

⁴ *Payne v. Tennessee*, 501 U.S. 808, 820 (1991).

⁵ U.S.S.G. §3C1.1.

⁶ U.S.S.G. § 3C1.1 cmt. n. 4(B).

⁷ *United States v. Zagari*, 111 F.3d 307, 329 (2d Cir.1997).

⁸ *Dunnigan*, 507 U.S. at 96.

⁹ *Dunnigan*, 944 F.2d 178, 185 (4th Cir. 1991), rev'd, 507 U.S. 87, 113 S. Ct. 1111, 122 L. Ed. 2d 445 (1993).

¹⁰ *Dunnigan*, 507 U.S. at 96.

¹¹ *Id.* at 95.

¹² See, e.g., *United States v. Napolitan*, 762 F.3d 297, 313 (3d Cir. 2014); *United States v. McLaughlin*, 126 F.3d 130, 140 (3d Cir.1997); *United States v. Fiorelli*, 133 F.3d 218, 224 (3d Cir.1998).

¹³ *U.S. v. Jones*, 872 F.3d 483 (7th Cir. 2017).

¹⁴ *U.S. v. Lasseque*, 806 F.3d 618 (1st Cir. 2015).

¹⁵ *U.S. v. Young*, 811 F.2d 592 (2d Cir. 2016).

¹⁶ *U.S. v. Carr*, No. 17-1911, 2020 WL 489171 (3d Cir. Jan. 30, 2020).

¹⁷ *Id.*

¹⁸ *Id.* at *3.

¹⁹ *Dunnigan*, 507 U.S. at 95.

²⁰ *Id.*

²¹ In addition to the cases discussed above, recent trial court decisions refusing to apply a sentencing enhancement for perjury include the following cases: *United States v. Heine*, No. 3:15-CR-238-SI, 2018 WL 2986212, at *9 (D. Or. June 14, 2018) (denying request for sentencing enhancement because defendant's sworn deposition testimony indicated a lack of recollection, rather than falsity); *United States v. Brown*, No. 3:16-CR-34-J-32JRK, 2017 WL 5999200, at *7 (M.D. Fla. Dec. 4, 2017) (denying request for sentencing enhancement because defendant's "general denials of criminal conduct" were not proper basis for enhancement and "specific instances where her testimony diverged from that of other witnesses and evidence" were not enough to constitute perjury); *United States v. Espejo*, No. 4:14-CR-00201-KGB, 2017 WL 4873498, at *4 (E.D. Ark. Oct. 27, 2017) (denying request for sentencing enhancement because (a) "imprecision" of defendants answers regarding filing of tax returns did not "rise to the level of willful false testimony, as required for this sentencing enhancement"; and (b) testimony was not material to certain counts and did not affect the jury's determination of guilt.); *United States v. Armstrong*, No. 3:15-CR-91, 2017 WL 52604, at *5 (E.D. Tenn. Jan. 4, 2017) (denying request for sentencing enhancement because defendant's testimony was not willfully false); *United States v. Boone*, 110 F. Supp. 3d 909, 915 (S.D. Iowa 2015) (denying request for sentencing enhancement because former police officer's testimony concerning his use of force was not willfully false, even though it contradicted the testimony of other witnesses, but simply based on his "subjective memory of what occurred that evening"); *United States v. Villalobos*, 32 F. Supp. 3d 803, 806 (S.D. Tex. 2014) (denying request for sentencing enhancement based on defendant's trial testimony because guilty verdict established only that jury did not credit defendant's testimony, not that defendant necessarily offered willfully false testimony).

²² *United States v. Angel-Huerta*, CR 16-0035-1, 2016 WL 6398260 (E.D. Pa. Oct. 28, 2016).

²³ *Id.* at *3.

²⁴ *United States v. Sempf*, No. 2:12CR123, 2015 WL 12911649 (W.D. Pa. Apr. 7, 2015).

²⁵ *Id.* at *3.

²⁶ *Id.*

²⁷ *United States v. Lincecum*, 220 F.3d 77 (2d Cir. 2000).

²⁸ *Id.* at 79.

²⁹ *U.S. v. Agudelo*, 414 F.3d 345 (2d Cir. 2005).

³⁰ *Id.* at 350.

³¹ *Id.*

³² *United States v. Pena*, 751 F.3d 101 (2d Cir. 2014).

³³ *Id.* at 104-105.

³⁴ *Id.* at 106.

³⁵ *United States v. Boggi*, 74 F.3d 470, 479 (3d Cir. 1996).

³⁶ *Id.*