NO. _____

IN THE

Supreme Court Of The United States

LIDDON YOUNG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. When a defendant admits to all the elements of an offense/enhancement, does a prevarication on details not effecting the question of guilt render the prevarications immaterial?

2. Can the Circuit Court find a false statement to be material for the purpose of applying a sentencing enhancement for obstruction of justice even though the defendant stipulated to the enhancement (U.S.S.G. § 2K2.1(b)(5)) the false statement centered around?

3. Can the Circuit Court base its affirmance of an obstruction of justice enhancement upon an entirely different issue than the District Court originally applied it for?

TABLE OF AUTHORITIES

CASES

INTRODUCTION

The issue of whether § 3C1.1 enhancement can apply to a defendant who admitted to all the elements necessary to apply an enhancement under § 2K2.1(b)(5), but was deemed to have prevaricated on exactly when he began such conduct is a novel question that is likely to reoccur throughout the Circuit Courts of the United States, but has never been addressed by this Court. The Petitioner respectfully asks this Court to grant its petition for a writ of certiorari and address this issue and error.

OPINIONS AND ORDERS BELOW

The Circuit Court affirmed the Defendant's sentence and the District Court's application of an obstruction of justice enhancement under § 3C1.1, ruling that the Defendant's statement that was deemed to be false was material to the application to the trafficking enhancement (§ 2K2.1(b)(5)), United States v. Young, ___ 2018 U.S. App. LEXIS 15938 (2d Cir. 2018).

The Circuit Court's judgement denying Petitioner's request for rehearing is unpublished and unreported. United States v. Liddon Young, No. 16-4216 (2nd Cir. ____).

JURISDICTION

The judgement of the Second Circuit entered on June 12, 2018. Petition for rehearing was denied on July 30, 2018. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

No person shall be held to answer for a capital, or otherwise infomous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service

in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const., Amend. V.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to hace the Assistance of Counsel for his defense.

U.S. Const., Amend. VI.

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States. Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

18 U.S.C. § 3231

A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence (1) was imposed in violation of the law; [or] (2) was imposed as a result of an incorrect application of the sentencing guidelines[.]

18 U.S.C. § 3742(a)(1) and (2)

It shall be unlawful for any person except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce;

18 U.S.C. § 922(a)(1)(A).

It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
18 U.S.C. § 922(d)(1).

If two or more person conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.
18 U.S.C. § 371.

If the defendant engaged in the trafficking of firearms, increase by 4 levels. Subsection (b)(5) applies regardless of whether anything of value was exchanged, if the defendant- (i) transported, transferred, or otherwise disposed of two or more firearms to another individual, or received two or more firearms with the intent to transport, transfer, or otherwise dispose of firearms to another individual; and (ii) knew or had reason to believe that such conduct would result in the transport, transfer, or disposal of a firearm to an individual- (I) whose possession or receipt of the firearm would be unlawful; or (II) who intended to use or dispose of the firearm unlawfully.
U.S.S.G. § 2K2.1(b)(5) Application Note 13(A).

If the defendant used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used in connection with another felony offense.
U.S.S.G. § 2K2.1(b)(6)(B).

If (1) the defendant willfully obstructed or impeded, or attempted to

obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by 2 levels.

U.S.S.G. § 3C1.1.

"Material" Evidence Defined. - "Material" evidence, fact, statement, or information, as used in this section, means evidence, fact, statement, or information that, if believed, would tend to influence or affect the issue under determination.

U.S.S.G. § 3C1.1, Application Note 6.

STATEMENT OF THE CASE

I. BACKGROUND FACTS

The Petitioner challenged his sentence a second time, namely that a sentence enhancement for obstruction of justice under U.S.S.G. § 3C1.1 should not apply. On remand the Petitioner argued that the alleged lies used to apply the obstruction enhancement were immaterial because they would not affect the issue being determined by the District Court. The Government argued that the purported lies would affect the application a guidelines provision that the Petitioner never objected to and in fact he stipulated to it. The Petitioner objected to the Government's argument and rebutted it but the District Court ultimately applied the obstruction enhancement. The Petitioner appealed to the Circuit Court. The Circuit Court ruled as follows:

> " We conclude that the District Court's application of the obstruction of justice enhancement was not procedurally unreasonable. One of Young's statements to the probation officer preparing his presentence report - which Young repeated under oath during an evidentiary hearing before the

District Court - was that he had not trafficked in farearms before he began dealing with a certain Paul Davis. The District Court found that Young's statement was false, see J.A. 443-44, and we conclude that this finding is not clearly erroneous. We also conclude that this statement was material, since it bore directly on one of the issues that the District Court needed to determine: whether the four-level enhancement for having "engaged in the trafficking of firearms" applied to Young, U.S.S.G. § 2K2.1(b)(5). We therefore need not consider whether the statement Young mentions in his brief was material." United States v. Young, 2018 U.S. App. LEXIS 15938 (2nd Cir. 2018).

II. STATEMENT WAS NOT MATERIAL

A material lie is one that "if believed, would tend to influence or affect the issue under determination." U.S.S.G. § 3C1.1 cmt. n.6.

Firstly, this statement is immaterial as to whether or not the trafficking enhancement (U.S.S.G. § 2K2.1(b)(5)) applies because it was not a denial of the fact that the Petitioner trafficked firearms. It was simply an attempt to clarify when he began trafficking. So, whether Petitioner began trafficking before or after he began dealing with Paul Davis is immaterial to the trafficking enhancement's application. It would apply in either instance. § 2K2.1(b)(5) applies if a defendant: (i) transported, transferred, or otherwise disposed of two or more firearms to another individual, or received two or more firearms with the intent to transport, transfer, or otherwise dispose of firearms to another individual; and (ii) knew or had reason to believe that such conduct would result in the transport, transfer, or disposal of a firearm to an individual - (I) whose possession or receipt of the firearm would be unlawful; or (II) who intended to use or dispose of the firearm unlawfully. U.S.S.G. § 2K2.1(b)(5) Application Note 13(A).

Secondly, the statement is immaterial because it had no ability to influence or affect what the District Court needed to determine. The § 2K2.1(b)(5) enhancement was a given since the Petitioner admitted that he sold between 25 and 50 guns to Paul Davis and others (See A-80; PSR1 at 63; A-278; A-284; A-295 - A-296), and he pleaded guilty to the three counts in the indictment, namely count three. Which was "Disposition of Firearms to a convicted felon." Thus, the Petitioner admitted to all the elements of the § 2K2.1(b)(5) as stated in Application Note 13(A). the only contention in this case from the very beginning of plea negotiations and throughout this entire process was the applicability of the 2K2.1(b)(6)(B) enhancement (See A-407). Petitioner never disputed or objected to the application of the § 2K2.1(b)(5) enhancement (see A-71 - A-78; A-82; A-85).

At Petitioner's initial sentencing/evidentiary hearing the District Court made clear what issues it needed to determine. The § 2K2.1(b)(5) enhancement was not one of them, as is clear from the transcripts:

> "THE COURT: The issue then for the hearing is really the four points, which was assessed based upon the determination that this involved a transfer of a firearm with knowledge that it would be used in the commission of another felony offense. Is that correct?
>
> MR. PILATO: That's correct, Judge.
>
> THE COURT: Consequently based upon that, the defendant obviously denied such conduct. He did plead guilty to transfer of a firearm to a felon, but not that it was with major intent or reason to believe that it could be used in the commission of another felony offense. So that would be the subject of the hearing. Then going hand-in-hand with that is the two points for obstruction of justice based upon the fact that if, in fact, the defendant did transfer a firearm with knowledge that it would be used in the commission of another felony offense, but denied it to the Probation Officer, that would be -- could be deemed to be obstruction of justice

based upon the fact that that involved a materially false statement, being material in that it would influence or effect the issue under determination. So we all agree on that as well?

MR. PILATO: Yes, Judge.

MR. MARANGOLA: Yes, Judge."

(A-136 - A-137).

This establishes that the § 2K2.1(b)(5) enhancement was never an issue at the hearing nor at the interview with the probation officer. Also, and maybe more importantly, it establishes that the obstruction enhancement was applied based upon my denial of the § 2K2.1(b)(6)(B) enhancement, not the § 2K2.1(b)(5) enhancement.

To further slam the point home, the District Court made clear what the issues were and upon what basis it applied the obstruction enhancement at Petitioner's resentencing hearing:

"THE COURT:...The Court previously sentenced the defendant to a term of imprisonment of 180 months, three years of supervised release, and a fine of $1,500. The defendant argues in this case that everyone agrees the base offense level is level 22. that there is a six level increase for the defendant possessing between 25 and 99 firearms. The defendant agrees there's a four level increase as well for the defendant engaging in the trafficking of firearms. The dispute was the application of in addition to that, a four level application pursuant to 2K2.1(b)(6)(B), and the Court agrees that that application should not apply in this case based upon the ruling from the Second Circuit.

(A-447).

III. JURISDICTION IN THE COURT OF FIRST INSTANCE

The Federal District Court of the Western District of New York had juris-

diction pursuant to 18 U.S.C. § 3231.

REASONS FOR GRANTING THE PETITION

The Court should grant certiorari to address the scope of materiality as it relates to obstruction of justice to right the ruling of the lower court which was clearly erroneous because the Petitioner's statement was clearly not a denial of an element that was crucial to § 2K2.1(b)(5)'s application, and to bring uniformity to this issue between the circuits. This issue is of national importance especially now that obstruction of justice is the exact charge being hurled around daily in the media in reference to the President of the United States, the Mueller probe, and Senate Judiciary hearings. The ruling of the Second Circuit is in conflict with the rulings of the Third, Seventh, Eighth, and Eleventh Circuits.

The ruling of the Second Circuit is novel and has set a dangerous precedent. this ruling is in direct contradiction to application note 6 of § 3C1.1 and is a departure from the accepted and usual norm regarding materiality.

The issue of materiality is recurrent. It comes up in many other instances of § 3C1.1 enhancements, perjury cases, false statement cases, § 2C1.1 and obstruction of justice cases just to mention a few.

The Court should grant the Petition to resolve the issue and correct the error.

I. COURTS ARE DIVIDED AS TO WHETHER DENYING AN ACT THAT IS NOT AN ELEMENT OF THE CRIME CAN BE DEEMED A MATERIAL DENIAL.

Othercircuits have ruled in total contradiction to the Second Circuit's ruling in this case.

A. Rulings of the Seventh Circuit

"Based on the conflict between Cannon's trial testimony and Weaver's

grand jury testimony, Judge Williams added 2 points to Weaver's offense level for obstructing justice." See U.S.S.G. § 3C1.1. The judge analyzed the issue under United States v. Dunnigan, 507 U.S. 87, 122 L. Ed. 2d 445, 113 S. Ct. 1111 (1993), which lays out the test for the application of the obstruction of justice enhancement: the sentencing court must find that the defendant gave "false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory." Id. at 94 (emphasis added). We have stated that a matter is material if it is "crucial to the question of... guilt...." United States v. Mustread, 42 F.3d 1097, 1106 (7th Cir. 1994); see U.S.S.G. § 3C1.1, comment (n.5). Judge Williams reasoned that Weaver's statement was material because it could have led the jury to believe that he would not sell the marijuana in order to recover his money. The testimony, thus, was crucial to the question of Weaver's guilt on the charge of conspiracy to distribute marijuana.

Weaver argues that he had already admitted his guilt to the grand jury regarding his agreement to accept the marijuana and, therefore, the question of whether he returned the marijuana or kept it is irrelevant to the charge of conspiracy. Weaver points out that the prosecution made exactly this argument at closing. Weaver analogizes his case to United States v. Parker, 25 F.3d 442, 448-49 (7th Cir. 1994), in which this court ruled that a defendant's false statement that he stole $200 from a bank (the actual amount equaled $1,252) did not merit an obstruction of justice enhancement because the statement was irrelevant to his guilt and the amount was not an element of the crime.

Weaver's arguments have merit. The government charged him with conspiracy to distribute, not with the substantive offense of distribution. He admitted his agreement to accept marijuana instead of cash and, thus, he admitted his intent to sell marijuana in order to make up for the money Duncan owed him. In other words, Weaver admitted to the elements of the offense. To put a finer

point on it, even if Weaver had never received the marijuana, a jury still could have found him guilty of conspiracy to distribute.

We think Weaver's situation is close to that of the defendant in Parker. It does not matter whether Weaver's trunk contained 100 pounds, or 40 pounds, or no marijuana. It does not matter whether Weaver drove off with it and gave it away, or whether he drove off without it. By agreeing to accept the marijuana in lieu of cash, he admitted his involvement in the conspiracy to distribute marijuana. The only difference between this case and Parker is that Parker committted a substantive offense while Weaver committed an inchoate offense. Because both defendants admitted to all the elements, their prevarications on the details cannot be considered crucial to the question of guilt. Thus, the application of the obstruction of justice enhancement to Weaver constituted clear error." United States v. Senn, 129 F.3d 886 (7th Cir. 1997).

B. Ruling of Other Circuits

The Third Circuit: "Regardless of what Belletiere told the probation officer concerning his personal drug use, the probation officer was free to routinely test Belletiere for drugs. He did so and performed two random tests on Belletiere, one of which was positive. When Belleteire failed the test, the government revoked his bail as punishment, a punishment justified by Belletiere's separate illegal conduct. See Thomas-Hamilton, 907 F.2d at 286. Belletiere's false statement to the probation officer was not relevant to the Presentencing Investiagation of the conviction offenses, and it was error for the court to adjust his sentence upward under section 3C1.1 either on this basis or because he quit-claimed his interest in his home to his wife." United States v. Belletiere, 971 F.2d 961, 968 (3rd Cir. 1992).

The Sixth Circuit: Jones was indicted for and found guilty of corruptly accepting bribes "intending to be influenced [by]" and "In return for providing benefits to Guess, Robertson, and students of the Winchester Driving School." Thus, the jury clearly found that a quid pro quo arrangement existed. Although Jones asserts that she was paid "for actions taken already," as Jennings and Griffen make clear, her intent to be influenced- regardless of the timing of the payments- made the payments bribes. Accordingly, the district court properly interpreted and applied §2C1.1. United States v. Jones, 260 Fed. Appx. 873, 877(6th Cir. 2008). In the present case, Jones testified at the sentencing hearing regarding his claim of selective prosecution. Jones testified that the officers' t-shirts contained a racial slur that was written on the t-shirts with majic marker. However, the t-shicts did not contain a racial slur when viewed by the district court. Even if we accept the district couct's finding that Jones committed perjury, we do not believe that the perjured testimony regarding Jones's selective prosecution claim was relevant to Jone's sentencing. The court had already ruled on Jone's claim of selective prosecution which was not at issue at the time of sentencing. Based on the record, it appears the district court was simply giving Jones the opportunity to speak fully and freely before his sentencing; there were no pending arguments regarding selective prosecution that could have influenced Jone's sentence. Because Jone's testimony was not material to his sentencing, we find that the district court erred in enhancing Jone's sentence for obstruction of justice. United States v. Jones, 159 F .3d 969, 981(6th Cir. 1998).

The Eighth Circuit: United States v.Packer, 871 F.3d 590, 607(8th Cir. 2017)(holding that retaliation against witness after the conclusion of trial w-ould not impede the process of [the defendant's] case in any way, the enhance-ment pursuant to §3C1.1 cannot be applied.).

The Eleventh Circuit: United States v. Miranda, 666 F.3d 1280, 1284(5th & 11th Cir. 2012)(holding defendant was guilty of possessing fireams in

furtherance of a drug trafficking crimewhen he traded drugs for guns, regardless of the timing of the delivery of the firearms.).

CONCLUSION

Petitioner submits that statements that are deemed to be false but do not amount to a denial of any of the elements of the charged offense/enhancement should not be deemed material; when a defendant admits to the conduct covered by a particular enhancement the timing of "when" he began engaging in such conduct is immaterialto the application of the enhancement; an obstruction of justice enhancement should not be applied based upon a false statement about an issue that was not under determination by the court; nor should a circuit court affirm an obstruction of justice enhancement based upon a different issue than the district court originally applied the enhancement.

For the reasons stated above, the Petitioner requests for a Writ of Certiorari to be granted.

Respectfully Submitted,

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