

[J-115-2007]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 44 EAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered on March 8, 2005 at No.
v.	:	525 EDA 2004 (reargument denied May
	:	11, 2005) vacating the Judgment of
	:	Sentence in the Court of Common Pleas
	:	of Philadelphia County, Criminal Division,
DUANE KING,	:	entered January 28, 2004 at No. 0303-
	:	1004.
Appellee	:	
	:	
	:	
	:	ARGUED: April 3, 2006
	:	RESUBMITTED: September 25, 2007

DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: December 28, 2007

I find the majority's consolidation of King's six perjurious statements into a single offense is ill conceived. King lied under oath at least six times — each lie supported the other, each a distinct brick in the wall of deception that he erected. Each was material to the ultimate purpose of providing exculpatory testimony. I find no reason to combine separate lies based on commonality of subject matter of the individual false statement.

The flaw in the majority's logic, in my view, is its interposition of the phrase "by itself" into the definition of materiality. See Majority Slip Op., at 5. While it is true each falsehood must be shown to be material, the analysis cannot be made as if the other five lies did not exist. That is, one must evaluate each lie in context, the entirety of all the testimony including the other lies. The question is, could each lie have affected the

course of the proceeding? The question is not whether each lie did affect the outcome. We must ask, “Could, not did, each lie here have affected the course, not the outcome, of the proceeding?”

Was the course of the proceeding affected by each lie? If King had told the truth instead of the last lie, he would undo the previous five lies. They would have been exposed, his purpose of false exculpation thwarted. Thus, the final lie was necessary if the course of the proceeding was to continue as his purpose required. The same is true for each of his lies, for had any lie been replaced with the truth, the course of the PCRA proceeding would have been much different. Any trial attorney recognizes that materially false testimony necessarily changes the case; it changes strategy, one’s course of action, the witnesses to be called and their examination, one’s argument to court and jury. It may or may not affect the outcome, but it inevitably alters the proceeding, and that determines the issue before us today.

Putting a common label of subject matter on some of the statements does not negate the fact that each false statement was material, and creates a proper basis for separate counts of perjury. The same lie told on two occasions is still two lies, not one, and each creates the chance to alter the proceeding. Having lied once, one should not be free to repeat the lie ad nauseum with impunity. King made six distinct significant material perjurious statements, and each could have affected the proceeding’s course, much less its outcome. Therefore, I respectfully dissent.