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

CAPPY, C.J., CASTILLE, SAYLOR, EAKIN, BAER, BALDWIN, FITZGERALD, JJ.

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

OPINION

MR. CHIEF JUSTICE CAPPY[*] **DECIDED: December 28, 2007**

The question presented in this appeal is the proper interpretation of the perjury statute, 18 Pa.C.S. § 4902, in a case involving multiple falsehoods made by the same witness during a single judicial proceeding. The Superior Court concluded that the trial court erred by failing to conduct an individualized analysis of the alleged perjurious statements. Accordingly, the court vacated the judgment of sentence. For the reasons stated herein, we affirm the order of the Superior Court albeit on different grounds.

The facts underlying the instant matter are straightforward. In 1994, Appellee Duane King entered a negotiated plea of guilty to third-degree murder, 18 Pa.C.S. § 2502(c),

[*] This matter was reassigned to this Justice.

robbery, 18 Pa.C.S. § 3701, and conspiracy, 18 Pa.C.S. § 903, in connection with the 1993 murder of Darryl Crawford. As part of the plea agreement, Appellee agreed to testify against his co-defendants, Kyle Dickerson and Shawn Harris. Appellee testified at his co-defendants' joint trial in 1996 and both men were convicted of second-degree murder. During Appellee's plea sentencing, the prosecutor made no recommendation as to the term of his sentence, but noted that Appellee's testimony had resulted in the conviction of his co-defendants. The court sentenced Appellee to five and one-half to thirty years in prison for his role in the murder.

After serving his minimum sentence, Appellee was denied parole. On June 7, 2000, Appellee filed a PCRA petition in which he indicated that his testimony at his co-defendants' trial was false.[1] On March 12, 2001, Appellee signed an affidavit in which he swore that his trial testimony against Dickerson was false. Dickerson, in turn, attached Appellee's affidavit in support of his own PCRA petition, claiming after-discovered evidence, and called Appellee as a witness at his PCRA evidentiary hearing on July 12, 2002. Under oath, Appellee recanted his sworn testimony from the 1996 trial.

In addition to testifying that he had lied at the 1996 trial, Appellee tried to explain his prior testimony by claiming that he had been coerced into lying by the police and the prosecution. To bolster his claim of coercion, Appellee made six specific factual representations, which the Commonwealth later used in charging Appellee with six separate counts of perjury. The six alleged perjurious statements made during Dickerson's PCRA hearing were as follows: 1) Appellee claimed that he was arrested before, not after, providing a statement to the police detectives; 2) Appellee claimed that the detectives told him to falsely accuse Ivan Bingham in Crawford's murder; 3) Appellee claimed that the

[1] In his Brief to this court, Appellee states that his PCRA petition was summarily denied without a hearing.

detectives told him that they would lift an open charge of murder against him in exchange for his false accusation against Ivan Bingham; 4) Appellee claimed that the detectives told him to falsely implicate himself in the Crawford murder (in order to bolster his testimony regarding Bingham); 5) Appellee claimed that the detectives promised him that he would receive no more than five years in prison for the Crawford murder; and 6) Appellee claimed that Assistant District Attorney Fisk told him that she would dispose of his open homicide case and limit his sentence on the Crawford murder to five years in prison. In response, the Commonwealth presented evidence that each of these claims was false, as was Appellee's overall recantation testimony. The Dickerson PCRA court rejected Appellee's recantation testimony and denied Dickerson's request for PCRA relief.

Following Dickerson's PCRA hearing, the police arrested Appellee and charged him with perjury and false swearing, 18 Pa.C.S. § 4903. After a jury trial, Appellee was convicted of one count of false swearing and six counts of perjury -- one count for each of the six falsehoods related previously. The trial court sentenced Appellee to three to six years on each perjury conviction ordered to run consecutively, resulting in an aggregate term of eighteen to thirty-six years in prison.

Appellee filed an appeal and the trial court filed an opinion in support of its sentence. Regarding Appellee's claim that the evidence did not support six separate counts of perjury, the trial court explained that the statements were material to the proceeding in which they were made because they cast doubt on the credibility of the police and the district attorney's office.

The Superior Court vacated the judgment of sentence in a memorandum opinion. Relevant to the instant appeal, the court explained that the Commonwealth was required to show that each of the six statements "that it parsed out of the PCRA transcript, could have, standing alone, affected the outcome of the proceeding." Superior Court slip opinion, 3/8/2005, at 5. The trial court failed to provide such an individualized analysis of the

alleged perjurious statements and the Commonwealth "essentially concede[d] that the six independent statements had only incremental value." Id. at 6. Accordingly, the court concluded that the record only supported a single count of perjury when the six falsehoods were considered in the unified context in which they were given.

Judge Olszewski filed a concurring and dissenting opinion, noting that he would uphold all six of Appellee's perjury convictions. The proper inquiry concerning the materiality of a false statement, according to Judge Olszewski, was whether the statement had the ability to affect the fact finder and the outcome of the proceeding, not whether the statement actually influences the result of the proceeding.

The Commonwealth appealed the Superior Court's order and this court granted allowance of appeal to explore the materiality requirement in the perjury statute.

Preliminary, this matter involves a question of interpretation of the perjury statute. As such it is a question of law. Our scope of review is plenary, and our standard of review is *de novo*. Freundt v. Penn. DOT, 883 A.2d 503, 506 (Pa. 2005).

The Statutory Construction Act guides us in our inquiry and instructs us, in relevant part that, "the object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly, and '[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.'" 1 Pa.C.S. § 1921. A court should resort to other considerations, such as the General Assembly's purpose in enacting a statute, only when the words of a statute are ambiguous. 1 Pa.C.S. § 1921(c).

The Act also provides that "[w]ords and phrases shall be construed according to the rules of grammar and according to their common and approved usage"; and that "technical words and phrases and such others as have acquired a peculiar and appropriate meaning ... shall be construed according to such peculiar and appropriate meaning or definition." 1 Pa.C.S. § 1903(a). Further, if the General Assembly defines words that are used in a

statute, those definitions are binding. Commonwealth v. Kimmel, 565 A.2d 426, 428 (Pa. 1989). Finally, because we are construing a criminal statute, we must keep in mind that penal provisions are to be strictly construed. 1 Pa.C.S. § 1928.

> The crime of perjury is statutorily defined as follows:
> (a) Offense defined.--A person is guilty of perjury, a felony of the third degree, if in any official proceeding he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true.

18 Pa.C.S. § 4902(a). The Legislature has defined "statement" for purposes of perjury as follows:

> As used in this chapter, unless a different meaning plainly is required, "statement" means any representation, but includes a representation of opinion, belief or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

18 Pa.C.S. § 4901. Last, the materiality requirement of the crime is statutorily defined under section 4902 as:

> (b) Materiality.--Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

18 Pa.C.S. § 4902(b).

Taken together, these provisions make clear that in order to constitute the offense of perjury, there must be a false statement, i.e., a representation, which could have affected the course or outcome of the proceeding. In this case, the Commonwealth's theory of the case was that each individual falsehood was a separate statement justifying a separate count of perjury. Thus, the Commonwealth had to prove three items -- the individual falsehood was a statement, that statement *by itself* "could have affected the course or outcome of the proceeding," and that Appellee did not believe the statement to be true. 18

Pa.C.S. § 4902(b). There is no contention regarding Appellee's belief of the falsity of the statements and this court's focus is on the remaining two requirements.

Turning first to the definition of "statement," Section 4901 is clear that while a statement may be comprised of a single fact, it may also be comprised of many facts, which amount to a single representation. In the context of the instant matter, however, we must consider whether multiple, separate falsehoods amount to a single or multiple statements. In Commonwealth v. Davenport, 386 A.2d 543 (Pa. Super. 1978), the Superior Court had occasion to examine a comparable question. In Davenport, the defendant had made similar statements at two different proceedings, and the Commonwealth charged the defendant with two separate counts of perjury. While the situation was not identical to the case at hand, the court's discussion provides some guidance for the instant matter. The court noted, "the use of the phrase 'facts which are the subject of the representation' makes clear that the legislature had in mind that a 'representation' may comprise more than one fact." Id. at 550. The court then pointed out that the essential question was whether the "representations" described one event or were so inter-related as to a single subject matter to constitute a single "statement." In support, the Davenport court quoted a portion of State v. Anderson, 101 P. 385 (Utah 1939), a case that addressed when multiple false facts are so interrelated that they constitute only one count: "[T]he several assignments contained in the information consist of certain alleged successive statements made by defendant while testifying as a witness, and are so related to the one question which was the subject-matter of inquiry … and were so linked and blended together in point of time, as to constitute but one act or transaction, and therefore constitute but one offense." Davenport, 386 A.2d at 550 (quoting Anderson, 101 P. at 387). Similarly, American Jurisprudence informs us "[s]tatements related to different matters may be made the basis of separate counts of perjury, even though they all refer to the same general subject of inquiry and were made at the same hearing." 60A AM. JUR. 2D *Perjury* § 53.

Therefore, we must conclude that the essential inquiry in determining whether each individual falsehood could be considered an individual "statement" must be whether each lie related to "different matters" or a single event or were so interrelated as to a single subject matter that they could not amount to individual statements for purposes of Section 4902.

Such an inquiry, however, is only half the question, as the Commonwealth must also establish that the individual falsehoods were material. As noted previously, the Legislature has defined materiality as a statement that "could have affected the course or outcome of the proceedings." 18 Pa.C.S. § 4902(b). The word "could" is the past tense of "can." "Can" is "used to indicate possibility or probability." AMERICAN HERITAGE DICTIONARY, 2d College ed., 232 (1981). Moreover, the plain language of Section 4902(b) is clear and the statement need not affect the "outcome" of the proceedings, so long as it "could" have affected the "course" of the proceedings.

Further illustration of materiality, for purposes of applying the concept, can be found in Kungys v. United States, 485 U.S. 759, 769 (1988). In Kungys, the Court explained that the term "material" in the context of perjury was not a "hapax legomenon," but had a long history of use. "Blackstone used the same term, writing that in order to constitute 'the crime of willful and corrupt *perjury'* the false statement 'must be in some point material to the question in dispute; for if it only be in some trifling collateral circumstance, to which no regard is paid,' it is not punishable." Id. at 769 (emphasis in the original). After reviewing the historical concept of materiality and relevant case law, the Court concluded that the central object of the "materiality" inquiry was "whether the misrepresentation or concealment was predictably capable of affecting, i.e., had a natural tendency to affect, the official decision." Id. at 771. Stated differently, the "test is not whether the false statement *actually influenced* the relevant decision-making body, or whether the outcome of the proceedings in which the statement was uttered would have been different … but whether

the false testimony *was capable of* influencing or misleading the tribunal on the issue before it." 60 AM. JUR. 2D *Perjury* § 28 (emphasis added). Moreover, the false statement need not be material to the main issue, so long as it "has a legitimate tendency to prove or disprove some fact that is material, irrespective of the main fact at issue. Thus, a statement will generally support a charge of perjury if it is material to any proper matter of inquiry and it is calculated and intended to bolster the testimony of a witness on some material point or attack the credibility of the witness." 60 AM. JUR. 2D *Perjury* § 28.

With these concepts in mind, we turn to an examination of the six falsehoods presented in this case. As stated previously, under the Commonwealth's theory of the case, each individual falsehood had to be a "statement" which "could have" altered the course or outcome of the Dickerson PCRA court proceedings in order for the Commonwealth to proceed on six separate counts of perjury.

There can be no question that the six separate falsehoods related to the same general subject matter, i.e., that Appellee's testimony before the trial court in his co-defendant's case was false and a result of a scheme set-up by the police and the District Attorney's office. Nevertheless, as explained previously, this fact does not prevent the separate lies from being treated as distinct statements. Rather, in determining whether they comprised six separate statements, the question is whether the individual statements related to "different matters" or a single event or were so interrelated as to a single subject matter that they could not amount to individual statements for purposes of Section 4902.

Applying this concept, we acknowledge that the six separate lies arguably related to three "different matters" as one of them concerned the timing of Appellee's arrest, four of them related to Appellee's interaction with the police, and the sixth statement related to Appellee's dealings with the District Attorney. Therefore, there would be support for treating the falsehoods as three separate "statements."

Under the perjury statute, however, each "statement" must also have had the possibility or probability of altering the course or outcome of the PCRA court's proceedings. This does not mean that the statement must have actually changed the course or outcome of the proceedings. Rather, it is sufficient if the statement had a natural tendency to affect the course or outcome of the proceedings. Kungys supra. And, in this case, it is this requirement that we hold the Commonwealth did not establish.

The individual falsehoods were so interrelated that it could not be demonstrated that each one individually had any effect on the course of outcome of the PCRA court's proceedings, much less a possible or probable effect. For example, Appellee's testimony that he was arrested before, and not after, he gave the statement to the police was not possible or probable of influencing the course or outcome of the proceedings. Rather, it was only when considered together with the lies that followed that the import of the statement was clear. Similarly, Appellee's claim that the detectives told him to implicate himself falsely in the Crawford murder was only material within the framework of the two previous lies regarding the fact that the detectives wanted Appellee to implicate Ivan Bingham in the Crawford murder -- the false implication was meant to bolster Appellee's credibility in implicating Bingham, but the lie had no possibility or probability of influencing the decision-maker on its own. Finally, Appellee's claim regarding the promises made by Assistant District Attorney Fisk were only material when considered in context of the remaining lies -- why would ADA Fisk promise Appellee anything if she received nothing in return? The obvious answer is that she was promised Appellee's testimony against Ivan Bingham, an answer that can be made only when looking at the previous four lies. In short, each individual falsehood, considered alone, was merely a "trifling collateral circumstance" that could not have affected the course or outcome of the proceedings when considered alone. Rather, the statements had such probable or possible effect only when considered

together. For this reason, we affirm the order of the Superior Court vacating the trial court's sentence.[2]

Mr. Justice Baer, Madame Justice Baldwin and Mr. Justice Fitzgerald join the opinion.

Mr. Justice Castille files a dissenting opinion in which Mr. Justice Saylor joins.

Mr. Justice Eakin files a dissenting opinion.

---

[2] Appellee raises the question of whether the Superior Court granted the proper remedy, since it affirmed the conviction of count one, but reversed the remaining counts. Appellee points out that none of the counts met the materiality requirement, and therefore, Appellee could not have been convicted of perjury at all. We disagree with Appellee, since we find that the statements considered together clearly established a single count of perjury. Accordingly, we affirm the Order of the Superior Court remanding the matter for imposition of a sentence based upon a single count of perjury.