

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* DUNNIGAN

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT

No. 91-1300. Argued December 2, 1992—Decided February 23,
1993

At respondent's federal trial for conspiracy to distribute cocaine, the Government's case-in-chief consisted of five witnesses who took part in, or observed, her cocaine trafficking. As the sole witness in her own defense, respondent denied the witnesses' inculpatory statements and claimed she had never possessed or distributed cocaine. In rebuttal, the Government called an additional witness and recalled one of its earlier witnesses, both of whom testified that respondent sold crack cocaine to them. Respondent was convicted and sentenced pursuant to the United States Sentencing Guidelines. Finding that she had committed perjury, the District Court enhanced her sentence, which is required under §3C1.1 of the Guidelines when a "defendant willfully impeded or obstructed, or attempted to impede or obstruct the administration of justice during the investigation or prosecution of the instant offense." In reversing the sentence, the Court of Appeals found that a §3C1.1 enhancement based on a defendant's alleged perjury would be unconstitutional. It also distinguished the precedent of *United States v. Grayson*, 438 U. S. 41—in which this Court upheld a sentence increase stemming from an accused's false testimony at trial—on the grounds that §3C1.1's goal is punishment for obstruction of justice rather than rehabilitation, and that, in contravention of the admonition in *Grayson*, §3C1.1 is applied in a wooden or reflex fashion to enhance the sentences of all defendants whose testimony is deemed false.

Held: Upon a proper determination that the accused has committed perjury at trial, a court may enhance the accused's sentence under §3C1.1. Pp. 5-11.

(a) The parties agree, and the commentary to §3C1.1 is explicit, that the phrase "impede or obstruct the

administration of justice" includes perjury. Perjury is committed when a witness testifying under oath or affirmation gives false testimony concerning a material matter with the willful intent to provide false testimony. Because a defendant can testify at trial and be convicted, yet not have committed perjury—for example, the accused may give inaccurate testimony as a result of confusion, mistake, or faulty memory or give truthful testimony that a jury finds insufficient to excuse criminal liability or prove lack of intent—not every testifying defendant who is convicted qualifies for a §3C1.1 enhancement. If a defendant objects to such an enhancement resulting from her trial testimony, a district court must review the evidence and make independent findings necessary to establish that the defendant committed perjury. While a court should address each element of the alleged perjury in a clear and distinct finding, its enhancement decision is sufficient where, as here, it makes a determination of an obstruction or impediment of justice that encompasses all of the factual predicates for a perjury finding. Pp. 5–8.

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(b) An enhanced sentence for the willful presentation of false testimony does not undermine the right to testify. The concern that a court will enhance a sentence as a matter of course whenever the accused takes the stand and is found guilty is dispelled by the requirement that a district court make findings to support all the elements of a perjury violation in a specific case. Any risk from a district court's incorrect perjury findings is inherent in a system which insists on the value of testimony under oath. A §3C1.1 enhancement is also more than a mere surrogate for a separate and subsequent perjury prosecution. It furthers legitimate sentencing goals relating to the principal crime, including retribution and incapacitation. The enhancement may not serve the additional goal of rehabilitation, which was the justification for enhancement in *Grayson*, but rehabilitation is not the only permissible justification for increasing a sentence based on perjury. Finally, the enhancement under §3C1.1 is far from automatic—when contested, the elements of perjury must be found by the district court with specificity—and the fact that the enhancement stems from a congressional mandate rather than from a court's discretionary judgment cannot be grounds for its invalidation. Pp. 8-11.

944 F. 2d 178, reversed.

KENNEDY, J., delivered the opinion for a unanimous Court.