



Perjury, Obstruction, and Barry Bonds' Conviction

June 06, 2011

Last month, an article in the *National Law Journal* asked a question that has been on the minds of many: "Did Barry Bonds really obstruct justice?"

In April a jury convicted baseball legend Barry Bonds on one count of obstruction of justice based on the testimony he provided before a federal grand jury investigating the use of illegal steroids in professional sports. The jury, however, could not reach a unanimous verdict on three other counts of perjury alleging that Bonds made false statements when testifying before the grand jury.

The inconsistency of the jury's verdicts is somewhat astounding given that obstruction of justice means providing intentionally evasive, false, or misleading testimony. As the *National Law Journal* reported, it is not unusual for a defendant to be charged with both perjury and obstruction of justice in the same indictment. However, the real question here is: If the jury could not find unanimously that Bonds had made false statements to the grand jury, how did it convict him on an obstruction count that requires it to find, among other things, that Bonds knowingly made false statements?

Bonds' obstruction of justice conviction was predicated on a non-responsive answer that he provided during his grand jury testimony, referred to as "Statement C." Statement C was provided in response to the following question posed by the prosecutor:

Q: Did Greg ever give you anything that required a syringe to inject yourself with?

Bonds answered as follows:

A: I've only had one doctor touch me. And that's my only personal doctor. Greg, like I said, we don't get into each others' personal lives. We're friends, but I don't—we don't sit around and talk baseball, because he knows I don't want—don't come to my house talking baseball. If you want to come to my house and talk about fishing, some other stuff, we'll be good friends, you come around talking about baseball, you go on. I don't talk about his business. You know what I mean?

After all the hype about Bonds lying to the grand jury about his alleged steroid use, his conviction was ultimately based on a statement that had nothing to do with steroid use at all. Simply put, Bonds is now a convicted felon all because he said that he was a celebrity child who did not like to get involved in anyone else's business. How exactly could the above statements be said to have impeded the grand jury investigation?

Five minutes after asking Bonds the above question, the prosecutor had the following exchange with Bonds:

Q: So no one else other than perhaps the team doctor and your personal physician ever injected anything in to you or taken anything out.

A: Well, there's other doctors from surgeries. I can answer that question, if you're getting technical like that. Sure, there are other people that have stuck needles in me and have drawn out -- I've had a bunch of surgeries, yes.



Q: So --

A: So sorry.

Thus, even though Bonds answered “no” to the original question a mere five minutes later, the jury, after being deadlocked on whether Bonds had lied, was convinced he had been evasive in his testimony. Apparently, the jury seemed to forget that the government had to prove that Bonds’ statement was material because it had a natural tendency to influence the decision of the grand jury. Given that Bonds fully answered the prosecutor’s original question, how could the jury find his statement to have hindered the grand jury investigation, especially if the jury could not agree that the very same statement was false?

The verdict in this case is particularly troubling not only because it sets a bad precedent for the grand jury system, but also because it allows prosecutors who may have otherwise followed up with an evasive witness to allow a question to remain unanswered solely to pin the witness with an obstruction of justice charge. Normally, if a witness gives a prosecutor an evasive answer, the prosecutor would get the witness to a point whether he either answers the question or commits perjury. Now after the Bonds conviction, prosecutors have another choice: allow a question to remain unanswered so if the prosecutor cannot get the witness to perjure himself, he at least can stick the witness with an obstruction of justice charge.

For Bonds, the obstruction of justice charge may mean up to 10 years in prison under the federal statute, but Federal Sentencing Guidelines call for 15-21 months. Bonds’ attorneys are seeking to have the jury’s decision thrown out. The post-trial conference was originally scheduled for May 20, 2011, but it has now been delayed until June 17, 2011, giving Bonds’ attorneys more time to refine their arguments.

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