

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals for
2 the Second Circuit, held at the Thurgood Marshall United States
3 Courthouse, 40 Foley Square, in the City of New York, on the
4 24th day of June, two thousand sixteen.
5

6 **PRESENT: DENNIS JACOBS,**
7 **GUIDO CALABRESI,**
8 **REENA RAGGI,**
9 **Circuit Judges.**

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11 - - - - -X
12 **UNITED STATES OF AMERICA,**
13 **Appellee,**

14
15 **-v.-** **15-1842**

16
17 **JIBRILLA MUMUNI,**
18 **Defendant-Appellant.**

19
20 - - - - -X
21
22 **FOR APPELLANT:** MARK S. DeMARCO, Bronx, NY.

23
24 **FOR APPELLEE:** BRENDAN F. QUIGLEY (Rahul Mukhi,
25 Anna M. Skotko, on the brief),
26 Assistant United States Attorney,
27 for Preet Bharara, United States

1 Attorney for the Southern District
2 of New York, New York, NY.
3

4 Appeal from a judgment of the United States District Court
5 for the Southern District of New York (McMahon, J.).
6

7 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND**
8 **DECREED** that the judgment of the district court be **AFFIRMED**.
9

10 Jibrilla Mumuni appeals from the judgment of the United
11 States District Court for the Southern District of New York
12 (McMahon, J.) convicting him of conspiracy to distribute and
13 possess with intent to distribute a kilogram or more of heroin.
14 Mumuni was sentenced principally to 71 months' imprisonment.
15 Mumuni challenges: (i) the jury instructions, (ii) the
16 sufficiency of the evidence supporting his conviction, and
17 (iii) the reasonableness of his sentence. We assume the
18 parties' familiarity with the underlying facts, the procedural
19 history, and the issues presented for review.

20 **1.** A defendant seeking vacatur based on an erroneous jury
21 instruction must demonstrate both error and prejudice. United
22 States v. Quinones, 511 F.3d 289, 313 (2d Cir. 2007). We review
23 de novo challenges to jury instructions and we will reverse
24 "only where the charge, viewed as a whole, either failed to
25 inform the jury adequately of the law or misled the jury about
26 the correct legal rule." Id. at 314 (internal citation and
27 quotation marks omitted).

28 In United States v. Gaines, 457 F.3d 238 (2d Cir. 2006),
29 and United States v. Brutus, 505 F.3d 80 (2d Cir. 2007), we held
30 that a district court cannot instruct a jury that a defendant's
31 interest in the outcome of the case creates a motive to testify
32 falsely. Brutus, 505 F.3d at 87; Gaines, 457 F.3d at 247. We
33 further held that a district court could, however, charge jurors
34 that a testifying criminal defendant does not assume any burden
35 of proof and they should evaluate the testimony of a testifying
36 defendant just as they would any interested witness. Brutus,
37 505 F.3d at 88 n.7; Gaines, 457 F.3d at 249 n.9.

38 Mumuni asserts that the district court erroneously charged
39 the jury to evaluate his testimony like that of any other witness

1 who had an interest in the outcome of the case. The district
2 court's charge closely adhered to the charge we explicitly
3 approved in Gaines and Brutus. It informed the jurors that they
4 should treat Mumuni's testimony just as they would that of any
5 interested witness, and that Mumuni took on no burden of proof
6 by testifying. Critically, the district court did not instruct
7 the jury that Mumuni, as an interested witness, had a motive
8 to testify falsely. Accordingly, the challenged jury
9 instruction was not erroneous.

10 **2.** A defendant challenging the sufficiency of the
11 evidence underlying his conviction at trial "bears a heavy
12 burden" because our standard of review is "exceedingly
13 deferential": we "must view the evidence in the light most
14 favorable to the government, crediting every inference that
15 could have been drawn in the government's favor," and will
16 uphold the judgment if "any rational trier of fact could have
17 found the essential elements of the crime beyond a reasonable
18 doubt." United States v. Coplan, 703 F.3d 46, 62 (2d Cir. 2012)
19 (internal citations and quotation marks omitted).

20 The evidence presented at trial supports Mumuni's
21 conviction of conspiracy to distribute over a kilogram of
22 heroin. An accomplice testified that Mumuni sold him heroin
23 on two occasions, each of which was recorded and photographed
24 by law enforcement agents, and Mumuni had extensive contacts
25 with others involved in the drug trafficking conspiracy. We
26 will not disturb the jury's finding on grounds that the
27 cooperator was not credible, United States v. Glenn, 312 F.3d
28 58, 64 (2d Cir. 2002), or that Mumuni and his co-defendant were
29 acquitted on other counts, United States v. Acosta, 17 F.3d 538,
30 546 (2d Cir. 1994).

31 **3.** We review a sentence for procedural reasonableness
32 under a "deferential abuse-of-discretion standard." Gall v.
33 United States, 552 U.S. 38, 41 (2007). That means a district
34 court's application of the Sentencing Guidelines is reviewed
35 de novo and its factual findings are reviewed for clear error.
36 United States v. Cossey, 632 F.3d 82, 86 (2d Cir. 2011). A
37 sentence is procedurally unreasonable if the district court
38 "fails to calculate (or improperly calculates) the Sentencing
39 Guidelines range, treats the Sentencing Guidelines as

1 mandatory, fails to consider the § 3553(a) factors, selects a
2 sentence based on clearly erroneous facts, or fails adequately
3 to explain the chosen sentence." United States v. Aldeen, 792
4 F.3d 247, 251 (2d Cir. 2015) (quoting United States v. Chu, 714
5 F.3d 742, 746 (2d Cir. 2013)).

6 Mumuni fails to demonstrate any procedural error. In
7 calculating Mumuni's sentencing guidelines, the district court
8 applied a two-point enhancement for obstruction of justice
9 because it determined that Mumuni willfully had perjured
10 himself at trial with respect to a material matter. This
11 finding, which is not clearly erroneous, is a sufficient basis
12 for applying the obstruction of justice enhancement. United
13 States v. Salim, 549 F.3d 67, 73 (2d Cir. 2008).

14 Accordingly, and finding no merit in Mumuni's other
15 arguments, we hereby **AFFIRM** the judgment of the district court.

16 FOR THE COURT:
17 CATHERINE O'HAGAN WOLFE, CLERK