

United States Attorney  
Northern District of California

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February 5, 2013

Hon. Molly Dwyer  
Clerk, U.S. Court of Appeals for the Ninth Circuit  
P.O. Box 193939  
San Francisco, California 94119-3939

Re: *United States v. Bonds* – C.A. No. 11-10669

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j), the United States notifies the Court of the following additional pertinent and significant authority that supports the government's position that there is sufficient evidence to uphold defendant Bonds's conviction:

*United States v. Wiggan*, 700 F.3d 1204 (9th Cir. 2012), held that the number of calls by Turner to the defendant, the defendant's own calls to her voicemail, and the timing of those calls constituted sufficient evidence to uphold the jury's determination that the defendant knowingly lied when she testified that she did not remember receiving a voicemail message from Turner. In its discussion on materiality, *Wiggan* cited to *United States v. Leon-Reyes*, 177 F.3d 816, 820 (9th Cir. 1999), which explains that materiality may be proven by introduction of a complete transcript of, summary of, and testimony by witnesses to the prior proceeding(s).

*United States v. Manning*, – F.3d –, 2012 WL 5871715 (9th Cir. Nov. 21, 2012) (per curiam), held in the context of the United States Sentencing Guidelines's enhancement for obstruction of justice that the defendant's false story to a pretrial services officer was material even though the defendant later confessed to the truth.

*United States v. Chao Fan Xu*, – F.3d –, 2013 WL 28392 (9th Cir. Jan. 3, 2013) supports the government’s position that the jury instructions given at defendant Bonds’s trial were adequate. It held that the defendants’ proposed instruction was “unnecessary” because “the elements” of the charged conspiracy “adequately covered” the defense claim that their actions were not fraudulent because they were approved by the Chinese government. Hence, there was no instructional error.

Very truly yours,

MELINDA HAAG  
United States Attorney

s/ Merry Jean Chan  
MERRY JEAN CHAN  
Assistant United States Attorney

cc: Dennis Riordan, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Tyle L. Doerr  
TYLE L. DOERR  
Appellate Paralegal Specialist