UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 24-1287

UNITED STATES OF AMERICA

v.

THOMAS WATERS,
Appellant

On Appeal from the U.S. District Court, M.D. Pa.
Judge Malachy E. Mannion, No. 3:23-cr-00079-001

Before: RESTREPO, MCKEE, and AMBRO, *Circuit Judges*
Argued: Sept. 23, 2026; Filed: Nov. 19, 2026

NONPRECEDENTIAL OPINION*

AMBRO, *Circuit Judge*

Thomas Waters appeals his conviction and sentence on three counts of assaulting federal corrections officers during an altercation at the prison where he was housed. For the reasons that follow, we affirm.

I. BACKGROUND

In January 2023, Waters, a federal inmate, became involved in an altercation with three corrections officers. Officer James Grizzanti noticed Waters wearing conflicting religious items as he passed through a metal detector. An inmate at the prison may possess only religious items associated with the religious preference he has declared with the Chaplain's Office. An inmate may not register under more than one religion at a time.

*This is not an opinion of the full Court and, under 3d Cir. IOP 5.7, is not binding precedent.

Contrary to policy, Waters was wearing a string of beads associated with the Santeria religion and a multicolored bandana associated with a Native American religion.

Officer Grizzanti asked Waters to step out of line to determine which, if any, items he had permission to wear. When he grew increasingly argumentative in response, Grizzanti attempted to deescalate the situation by placing Waters in a bathroom holding cell and called the prison's Supervisory Chaplain, who confirmed Waters had received approval to purchase Santeria beads.

Officer Grizzanti returned to the bathroom holding cell to explain to Waters why he could not wear the bandana. He grew agitated and belligerent. A physical altercation followed. Several other corrections officers, including Lieutenant William Rosler and Lieutenant Russell Keen, attempted to subdue and restrain Waters. He and the three named officers all sustained physical injuries. Three counts of assaulting federal corrections officers and inflicting bodily injury followed for violations of 18 U.S.C. § 111(a)(1) and (b).

The case proceeded to trial, where Officer Grizzanti testified that Waters instigated the fight. After Grizzanti attempted to confiscate Waters's bandana, Waters allegedly advanced on him and struck his head repeatedly with a closed fist, causing Grizzanti to fall to the ground and momentarily lose consciousness.

Several other officers testified that they responded to Officer Grizzanti's calls for help. Lieutenant Rosler testified to assisting staff in placing Waters on the floor to restrain him. As Lieutenant Rosler was attempting to gain control of Waters's upper

body, Waters bit him in the arm. When Lieutenant Keen stepped in to assist, Waters allegedly bit him on the finger. At some point, Grizzanti lost his radio, handcuffs, and baton. (He testified to having no recollection of how those items became separated from his belt. He discovered they were missing only when he arrived at the prison infirmary.)

The officers gave conflicting accounts on whether Waters used the baton to strike Officer Grizzanti. Lieutenant Young observed Waters striking Grizzanti in the head with the baton but testified he managed to grab it from Waters after the first strike. Grizzanti himself recalled only being struck four times in the head by Waters's fists. Warden Eric Rokosky never saw Waters using a baton but recalled seeing one under his stomach as officers were trying to restrain him on the ground.

Waters also testified at trial and claimed he acted in self-defense. He accused Grizzanti as the instigator by disparaging Waters's ethnic background and religious beliefs before trying to confiscate his bandana. When Grizzanti struck Waters in the ribs with his baton, Waters feared for his safety and attempted to remove the baton from Grizzanti. Waters denied hitting Grizzanti with the baton, and he claimed that he removed it from the Officer's hand only to prevent being hit. Waters admitted to biting Lieutenant Rosler but denied biting Lieutenant Keen. The jury found Waters guilty on all three counts.

At sentencing, the Government asked the District Court to apply a sentencing enhancement under U.S.S.G. § 2A2.2(b)(2)(B) for using a dangerous weapon, based on Waters's use of the baton on Officer Grizzanti, and an enhancement under U.S.S.G.

§ 3C1.1 for obstruction of justice, based on Waters's perjurious statements at trial—namely, denying he bit Officer Keen and claiming he hit Officer Grizzanti in self-defense. The Court applied both enhancements but varied downward because the Guidelines range of 210 to 262 months "was outside the bounds of a just sentence in light of the circumstances even though they're serious." App. 481.

Waters appeals, arguing the District Court violated his Sixth Amendment rights by failing to conduct a *Faretta* inquiry in response to his two requests to proceed *pro se*. He also contends it erred by applying the enhancements for using a dangerous weapon and for obstruction of justice.

II. JURISDICTION AND STANDARD OF REVIEW

The District Court had subject matter jurisdiction under 18 U.S.C. § 3231. We have appellate jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

We conduct *de novo* review of legal questions relating to the right to proceed *pro se*. *See United States v. Peppers*, 302 F.3d 120, 127 (3d Cir. 2002). We review sentencing-related factual findings for clear error but exercise independent review over a district court's interpretation of the Sentencing Guidelines. *See United States v. Wise*, 515 F.3d 207, 217 (3d Cir. 2008); *United States v. Johnson*, 302 F.3d 139, 154 (3d Cir. 2002); *United States v. Bell*, 947 F.3d 49, 54 (3d Cir. 2020).

III. DISCUSSION

A. The District Court did not violate Waters's right to proceed *pro se.*

"The right to counsel embodied within the Sixth Amendment carries as its corollary the right to proceed *pro se*." *United States v. Peppers*, 302 F.3d 120, 129 (3d

Cir. 2002). But there is "no right to hybrid representation," that is, partial self-representation and partial representation by counsel. *United States v. Turner*, 677 F.3d 570, 578 (3d Cir. 2012) (internal quotation marks omitted). "[S]ince a person cannot secure the right to proceed *pro se* without sacrificing the right to counsel," we have "required [a] defendant[] to assert the right to proceed *pro se* affirmatively and unequivocally." *Peppers*, 302 F.3d at 129. If he asserts "his desire to proceed *pro se* clearly and unequivocally," the court must "inquire thoroughly" to ensure he understands the risks of self-representation and "is competent to stand trial." *Id.* at 132 (cleaned up). This is known as "a *Faretta* inquiry" from *Faretta v. California*, 422 U.S. 806 (1975). *Id.*

Though represented by counsel throughout his entire case, Waters asked the Court to allow him to proceed *pro se* in August 2023 and in January 2024. He claims the Court violated his Sixth Amendment rights by failing to conduct a *Faretta* inquiry in response to these requests. We disagree.

First, Waters framed his August 2023 request as a "motion for new counsel" based on his disagreements with his lawyer's legal strategy. App. 29. Only in the last sentence of the motion did he alternatively ask to proceed *pro se*. When a "defendant seeks new counsel, or, in the alternative, opts to represent himself," a district court conducts two inquiries. *United States v. Welty*, 674 F.2d 185, 187 (3d Cir. 1982). Do "the reasons for the defendant's request for substitute counsel constitute good cause"? *Id.* If the court declines to substitute counsel, forcing the defendant either to proceed with his current

counsel or move forward *pro se*, it must then conduct a *Faretta* inquiry. *Id.* The District Court held a hearing and granted Waters's request for substitute counsel. During the hearing, Waters never expressed a desire to represent himself and even agreed with the Court's statement that proceeding *pro se* would be a "major mistake." App. 48. The District Court therefore had no duty to conduct a *Faretta* inquiry.

Second, Waters's January 2024 request to proceed *pro se* was limited. In that motion, titled "motion to proceed pro se at 4th amendment hearing," he asked to represent himself at a "requested 4th amendment hearing under Franks 438 U.S. 154 doc #'s 18 and 36 as well as a hearing on motion to suppress doc #21." App. 51–52. But he never asked to represent himself fully. *See* App. 52 (explaining that he "[did] not wish to waive [his] rights to be heard on these issues" but failing to request *pro se* representation for the entirety of the trial). This was, at most, a request for a hybrid-representation arrangement, which the District Court had no obligation to consider. *See Turner*, 677 F.3d at 578.

Waters reiterated his desire to proceed with counsel at a pretrial conference the following week. His lawyer there explained that he and Waters had discussed Waters's denied *pro se* motions and the issue of representation. Counsel stated, "I believe [Waters] wants me to proceed as his trial counsel," and Waters responded, "Yes, trial counsel[.]" App. 60. When the Court sought to confirm Waters was "satisfied to have [counsel] continue to represent you at trial," he responded, "Yes, sir. Yes, sir." App. 60–

61. Because Waters never requested to proceed *pro se* "affirmatively and unequivocally," it did not err. *See Peppers*, 302 F.3d at 129.

B. The District Court did not clearly err by enhancing Waters's sentence under U.S.S.G. § 2A2.2(b)(2)(B) for using a dangerous weapon.

The Sentencing Guidelines provide for a four-level enhancement of a defendant's sentence if he used "a dangerous weapon" during an aggravated assault. U.S.S.G. § 2A2.2(b)(2)(B). The Government has the burden of proving the enhancement applies by a preponderance of the evidence. *United States v. Quiver*, 805 F.3d 1269, 1272 (10th Cir. 2015). Here, the District Court applied the enhancement by finding Waters had used the baton, a dangerous weapon, to strike Officer Grizzanti. *See United States v. Dixon*, 982 F.2d 116, 123–24 (3d Cir. 1992) (broadly defining "dangerous weapon" for enhancement purposes, emphasizing "fear and the threat of violence" as key). Waters contends that this finding was clearly erroneous.

In applying the enhancement, the Court credited the trial testimony of Lieutenant Young, the sole officer who witnessed Waters striking Grizzanti with the baton. Waters attempts to poke holes in this testimony. He points out Young's contemporaneous incident report stated only that Waters attempted to strike staff. Only when Young discussed his testimony with Government prosecutors a few days before trial did he explain there had been a first, successful strike before he stepped in to stop the second. According to Waters, Young's testimony also contradicts that of Warden Rokosky, who never witnessed Waters grabbing or using Grizzanti's baton.

The District Court did not err in concluding Waters used the baton to strike Officer Grizzanti. A factual finding by a district court is "clearly erroneous" only if our Court, after reviewing the entire body of evidence, is left with a "definite and firm conviction that a mistake has been committed." *United States v. Grier*, 475 F.3d 556, 570 (3d Cir. 2007) (en banc) (quoting *Concrete Pipe & Prods. of Cal., Inc. v. Contr. Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 622 (1993)). "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *United States v. Waterman*, 755 F.3d 171, 174 (3d Cir. 2014) (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985)). This Court has also remarked that it affords "special deference to credibility findings, based on the lower court's superior position to evaluate a witness." *United States v. Terry*, 572 F.3d 430, 434 (3d Cir. 2009) (internal quotation marks omitted).

Having presided over the entire trial, the District Court was well positioned to assess witness credibility and other related factual findings in support of the enhancement. Indeed, the purported contradictions are explained by a deeper review of the record. Lieutenant Young may have overlooked the successful first strike in his report because he drafted it only twenty minutes after the incident occurred. Warden Rokosky may not have witnessed the first strike because he arrived while the officers were already trying to restrain Waters. In any event, the District Court did not err by finding by a preponderance of the record evidence that Waters used the baton.

C. The District Court did not clearly err by enhancing Waters's sentence under U.S.S.G. § 3C1.1 for obstruction of justice.

The Sentencing Guidelines allow for a two-level enhancement for willfully obstructing justice. U.S.S.G. § 3C1.1. For the enhancement to apply to perjury, "a defendant must give 'false testimony concerning a material matter with the willful intent to provide false testimony.'" *United States v. Miller*, 527 F.3d 54, 75 (3d Cir. 2008) (quoting *United States v. Dunnigan,* 507 U.S. 87, 94 (1993)). "[N]ot every accused who testifies at trial and is convicted" commits perjury because "an accused may give inaccurate testimony due to confusion, mistake, or faulty memory." *Dunnigan*, 507 U.S. at 95. The defendant's "testimony may be truthful, but the jury may nonetheless find the testimony insufficient to excuse criminal liability or prove lack of intent." *Id.*

The District Court based its application of the enhancement on Waters's testimony denying he bit Officer Keen and claiming he hit Officer Grizzanti in self-defense. At oral argument, the parties agreed it had addressed both the truthfulness and materiality elements. The disputed question is whether it found willfulness. Nowhere in the sentencing colloquy did it address that element explicitly. Yet this omission does not end the inquiry. While "it is preferable for a district court to address each element of the alleged perjury in a separate and clear finding," express findings are not required. *Id.* at 95 (explaining a district's court's application of the enhancement is sufficient if it "encompasses all of the factual predicates for a finding of perjury"). What the Court did here suffices.

On Waters's denial of the bite, the District Court explained there was "corroborat[ion]" by an incident in 2022 when Waters bit a prison staff member. App. 468. His history of a similar attack makes it more likely that he bit Officer Keen and less likely that he sincerely believed he did not do it. The unequivocal nature of Waters's testimony—which the District Court characterized as "completely adverse" to Officer Keen's, App. 467—further suggests Waters gave the testimony with willful intent "rather than as a result of confusion, mistake or faulty memory." *United States v. Boggi*, 74 F.3d 470, 479 (3d Cir. 1996) (explaining the district court's characterization of the defendant's testimony as "flat denials" constituted a finding of willfulness) (quoting *Dunnigan*, 507 U.S. at 95). The Court thus did not clearly err by applying the enhancement based on the bite testimony.

Although that testimony alone justifies application of the enhancement, the Court likewise found Waters willfully lied by testifying he hit Officer Grizzanti in self-defense. As with the bite, the self-defense testimony directly contradicted Grizzanti's testimony that he never removed the baton from his belt, which the Court credited over Waters's claim that Grizzanti beat him over the head with the baton. It also found Waters's injuries "completely inconsistent" with a baton beating. App. 469. Were he so beaten, physical evidence would have supported such a finding. There is none, thus flatly contradicting Waters's account. The District Court did not err on this point.

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We thus affirm Waters's conviction and sentence.

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