

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

United States v. Ronald Burns

United States v. Ronald Burns, 898 F.2d 819 (1st Cir. 1990) · No. No. 88-1699 · Decided March 20, 1990

SUMMARY

The First Circuit reversed a drug conspiracy conviction, holding that the district court abused its discretion by denying a continuance sought to obtain a severed co-defendant's exculpatory testimony. The court applied the four-factor test from *\*United States v. Drougas\** (bona fide need, substance of testimony, exculpatory nature, and likelihood of testimony) and found that the defendant met his burden, while the district court's countervailing concerns about judicial economy and speedy trial did not outweigh the deprivation of the defendant's only witness. Key topics: severance for co-defendant testimony, abuse of discretion in denying continuance, and balancing defendant's right to present exculpatory evidence against judicial economy.

CASE DETAILS

|                       |                                                                                    |
|-----------------------|------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the First Circuit                               |
| WRITING FOR THE COURT | Bailey Aldrich; Breyer; Aldrich; Selya                                             |
| JURISDICTION          | Federal                                                                            |
| DECIDED               | March 20, 1990                                                                     |
| DOCKET                | No. 88-1699                                                                        |
| DISPOSITION           | reversed_and_remanded                                                              |
| PROCEDURAL POSTURE    | Appeal from a jury verdict and judgment in a criminal case after a separate trial. |
| STANDARD OF REVIEW    | Abuse of discretion                                                                |
| PRECEDENTIAL VALUE    | Published                                                                          |
| PARTIES               | Ronald Burns v. United States of America                                           |

TOPICS

- criminal procedure
- appellate procedure

PRACTICE AREAS

- Criminal Law
- Criminal Procedure

## QUESTIONS PRESENTED

1. Whether the district court abused its discretion in denying Burns's motion for continuance to secure the testimony of co-defendant Jay Hart after granting severance for that purpose.

## HOLDINGS

1. The district court abused its discretion in denying the continuance where the defendant had shown a bona fide need for the testimony, the substance and exculpatory nature of the testimony, and that the co-defendant would testify if severed, and the court failed to properly weigh the four factors from *United States v. Drougas*.

## KEY QUOTATIONS

*“In order to be entitled to a severance on the basis of a codefendant's testimony the movant must demonstrate: (1) a bona fide need for the testimony; (2) the substance of the testimony; (3) its exculpatory nature and effect; and (4) that the codefendant will in fact testify if the cases are severed. Given such a showing, the court should (1) examine the significance of the testimony in relation to the defendant's theory of defense; (2) consider whether the testimony would be subject to substantial, damaging impeachment; (3) assess the counter arguments of judicial economy; and (4) give weight to the timeliness of the motion.” (at 820)*

*“It would seem difficult to think of anything more fundamental.” (at 821)*

## FACTUAL BACKGROUND

Ronald Burns was a sometime assistant and handyman to Jay Hart, the ringleader in drug offenses. The principal evidence against Burns came from Susan Pierce, a government witness, who claimed Burns assisted in 'reconstructing' cocaine. Burns sought severance to obtain Jay Hart's exculpatory testimony that Burns was not involved. The court granted severance, but later Jay Hart was committed for a competency evaluation, making him unavailable. Burns moved for a continuance, which the district court denied.

## PROCEDURAL HISTORY

Burns was indicted with others for drug offenses. He moved for severance to obtain co-defendant Jay Hart's exculpatory testimony. The court granted severance, but later when Hart was unavailable for trial due to a competency evaluation, Burns moved for a continuance. The district court denied the continuance, and Burns was tried separately and convicted. He appeals.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

a new trial ordered

## CASES CITED

- United States v. Gay, 567 F.2d 916 (9th Cir. 1978)
- United States v. Drougas, 748 F.2d 8 (1st Cir. 1984)
- United States v. DiBernardo, 880 F.2d 1216 (11th Cir. 1989)

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