

U.S. judge orders new trial based on prosecutorial misconduct

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Saying a federal prosecutor here engaged in misconduct by asking jurors to rely on false testimony by a government witness, a judge has ordered a new trial for four defendants on some counts in a drug conspiracy case.

U.S. District Court Judge Joan Humphrey Lefkow issued her ruling in the case Wednesday. The defendants are Rondell Freeman, Brian Wilbourn, Daniel Hill and Adam Sanders.

A jury convicted the four men of conspiring to distribute more than 50 grams of cocaine and other drug-related charges in late March following a five-week trial. The charges stemmed from drug dealing at the Cabrini-Green public housing complex on Chicago's North Side.

Lefkow ordered a new trial on the conspiracy count for the four defendants and on some other counts. The judge, however, declined to dismiss numerous others counts and the four defendants face sentencing on those convictions.

"I think it's a refreshing opinion," Leonard C. Goodman, a Chicago lawyer representing Wilbourn, said Friday. "It shows that there's some justice for these young men."

Randall Arthur Samborn, a spokesman for the U.S. attorney's office in Chicago, said Friday that officials are continuing to review their options, including seeking reconsideration of Lefkow's decision and filing an appeal with the 7th U.S. Circuit Court of Appeal.

A key cooperating government witness at the trial was Senecca Williams. Williams had previously agreed to plead guilty to the conspiracy charge under a written plea agreement.

Williams and the other defendants were facing sentences of 20 years to life in prison, according to Goodman. Under Williams' plea deal, he would face a five-year prison sentence.

Williams testified that he saw Wilbourn packaging narcotics and discussing drug

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business with Freeman at Freeman's North Side apartment during late 2002 and early 2003.

Prosecutors later acknowledged that Wilbourn was in state custody from April 2002 until September 2005 on a drug-related conviction.

When Wilbourn's lawyer confronted Williams with the fact that Wilbourn was in jail when Williams testified he was involved in the conspiracy, a prosecutor objected and said, "That's not true," in the presence of the jury, Lefkow wrote. The judge did not identify that prosecutor.

Goodman filed a post-trial motions to dismiss charges tainted by trial perjury, based on Senecca Williams' false testimony, and for a new trial.

"It's very difficult to prove lies," Goodman said. "This is just a rare case where we were able to show that it was a physical impossibility as to what the witness was saying."

Lefkow honed in on Assistant U.S. Attorney Rachel M. Cannon.

Cannon asked jurors to rely on Williams' false testimony about

Wilbourn's activities at Freeman's apartment, which Wilbourn never set foot in.

Canon asserted during rebuttal that the government's witnesses "did the best they could with dates, but they knew where they were and what had happened," Lefkow wrote quoting from the trial transcript.

But Lefkow noted that defense lawyers had no chance to respond to Cannon's rebuttal.

"The court ... therefore finds that Cannon's statements during the government's rebuttal argument, during which she attempted not only to use but to bolster Williams' false testimony, constituted prosecutorial misconduct," Lefkow wrote in the 27-page opinion. *U.S. v. Rondell Freeman, et al.*, No. 07 CR 843.

Herbert L. Goldberg of Highland Park represents Freeman. Chicago lawyer Michael J. Falconer represents Daniel Hill, while Linda Amdur, a Chicago attorney, represents Sanders.

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