

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 01-3117**

**September Term, 2002**

Filed On: March 10, 2003 [736908]

United States of America,  
Appellee

v.

Ethelbert Dawson, Jr.,  
Appellant

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Appeal from the United States District Court  
for the District of Columbia  
(No. 00cr00402-01)

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Before: HENDERSON and TATEL, *Circuit Judges*, and WILLIAMS, *Senior Circuit Judge*.

## **J U D G M E N T**

This appeal was considered on the record from the United States District Court for the District of Columbia and the briefs and oral argument of the parties. The court has determined that the issues presented occasion no need for a published opinion. *See* D.C. CIR. RULE 36(b). It is

**ORDERED AND ADJUDGED** that the district court's decision rejecting Dawson's Jencks Act claim be affirmed.

Defendant has failed to demonstrate that the district court's balancing of the *Bryant* factors, which required it to "weigh the degree of negligence or bad faith involved, the importance of the evidence lost, and the evidence of guilt adduced at trial in order to come to a determination that will serve the ends of justice," represented an abuse of discretion. *See United States v. Bryant*, 439 F.2d 642, 653 (D.C. Cir. 1971); *see also United States v. Perry*, 471 F.2d 1057 (D.C. Cir. 1972). Even assuming the district court's use of the bad faith standard represented a misunderstanding of one element of the *Bryant* and *Perry* tests for determining whether to sanction the government by excluding Officer Parsons' testimony, in view of the fact that (a) *Bryant* and *Perry* are balancing tests and neither

case requires sanctions for violation of the Jencks Act, 18 U.S.C. § 3500, and (b) the district court emphasized the existence of Officer Parsons' notes, the essay's brevity, and the likely absence of additional information in the essay, we believe the result would have been the same.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. RULE 41.

*Per Curiam*

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY:  
Michael C. McGrail  
Deputy Clerk