

# TENTH CIRCUIT ORAL ARGUMENT CALENDAR

Monday, March 18, 2019  
Federal District Court, Salt Lake City, UT  
Courtroom 3.400

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9:00 A.M.

18-1263 CO United States v. Cabral

1. Is the standard condition of release obligating the defendant to notify others that he or she poses a risk, should the probation officer so demand, unconstitutionally vague, and does it improperly delegate judicial authority to the probation office (distinguishing *Hull*)?

for the government: Karl Schock

for the defendant: Veronica Rossman (Denver, CO)

**Tuesday, March 19, 2019**  
**Federal District Court, Salt Lake City, UT**  
**Courtroom 3.400**

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**9:00 A.M.**

**18-6110 WOK United States v. Cade**

1. Whether this defendant's above-guideline felon-in-possession sentence is substantively unreasonable?

for the government: Steven Creager

for the defendant: Jennifer Beck (Colorado FPD)

**18-5041 NOK United States v. Gorrell**

1. Was the affirmative-act jury instruction in this tax-evasion case plainly erroneous because it permitted the jury to convict on an impermissible basis?

for the government: Jeffrey Gallant

for the defendant: Barry Derryberry (Oklahoma FPD)

Tuesday, March 19, 2019  
Federal District Court, Salt Lake City, UT  
Courtroom 7.300

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9:00 A.M.

**18-1062 CO United States v. Duran**

1. Was the evidence sufficient to sustain this defendant's drug convictions under 21 U.S.C. § 841?
2. Did the district court erroneously admit irrelevant, prejudicial hearsay evidence of drug sales that predated this defendant's alleged involvement in the charged drug conspiracy, in violation of FRE 401, 402, 403, 602, and 801?
3. Did the district court abuse its discretion in this drug case by admitting a case agent's subjective belief in the defendant's guilt, and "expert" testimony translating recorded phone calls, in violation of FRE 701 and 702?

for the government: James Murphy

for the defendant: Adam Mueller (Denver, CO)

**18-1125 CO United States v. Gallardo-Medina (submitted on the briefs)**

**18-1126**

1. Did the district court plainly err when it rejected this defendant's *variance* request on grounds that it did not meet *departure* requirements?

for the government: Michael Johnson

for the defendant: Meredith Esser (Colorado FPD)

**18-1129 CO United States v. Yurek (Daryl)**

1. Should the district court have calculated loss in this bankruptcy-fraud case as the amount sought to be discharged, or rather the amount of assets concealed, and did the district court clearly err in determining the amount of loss for purposes of USSG § 2B1.1?

for the government: Pegeen Rhyne

for the defendant: Timothy Kingston (Foley, AL)

**18-1134 CO United States v. Yurek (Wendy)**

1. Should the district court have calculated loss in this bankruptcy-fraud case as the amount sought to be discharged, or rather the amount of assets concealed, and did the district court clearly err in determining the amount of loss for purposes of USSG § 2B1.1?
2. Are this defendant's tax-evasion and bankruptcy-fraud convictions multiplicitous?
3. Was the evidence sufficient to convict this defendant-wife of committing tax evasion and bankruptcy fraud alongside her husband?
4. Should the district court have severed this defendant's tax-evasion and bankruptcy-fraud trial from that of her husband-codefendant?
5. Is USSG § 2B1.1 (the fraud guideline) the right guideline for bankruptcy fraud, or is USSG § 2T1.1 (the tax-crimes guideline) the most analogous guideline?
6. Should the district court have adjusted this defendant's sentence for her mitigating role under USSG § 3B1.2?

for the government: Pegeen Rhyne

for the defendant: Robert Jackson (Oklahoma City, OK)

**18-1220 CO United States v. Blair**

1. Whether this child-pornography defendant's 10-year within-guidelines prison sentence is substantively unreasonable?
2. In this child-pornography case, does a special condition of release prohibiting the defendant from using any computer or device with internet access without his probation officer's permission involve a greater deprivation of liberty than necessary?

for the government: Paul Farley

for the defendant: Jennifer Beck (Colorado FPD)

Wednesday, March 20, 2019  
Brigham Young University – J. Reuben Clark Law School  
Provo, UT

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9:30 A.M.

**17-6184 WOK Smith v. Carpenter (Death Penalty)**

1. Is this Oklahoma capital defendant entitled to 28 U.S.C. § 2254 relief on grounds of intellectual disability, ineffective assistance of counsel, and instructional error?

for the government: Jennifer Dickson

for the defendant: Emma Rolls (Oklahoma FPD)

**18-5052 NOK United States v. Murphy**

1. Was the district court's reliance on hearsay to revoke this defendant's supervised release reversible error?

for the government: Richard Cella

for the defendant: Robert Ridenour (Oklahoma FPD)

**18-5085 NOK United States v. Arterbury**

1. The district court originally granted this defendant's motion to suppress, and the government appealed. But the government then voluntarily dismissed its appeal, after which the district court granted the government leave to dismiss the case without prejudice. Nine-plus months later, the government recharged the defendant and argued that *Workman* overruled the legal basis for the district court's original suppression order. Did the district court err in declining to find that the government was collaterally estopped from relitigating the suppression motion?

for the government: Jeffrey Gallant

for the defendant: Jimmy Hopkins (Tahlequah, OK)

**Wednesday, March 20, 2019**  
**Federal District Court, Salt Lake City, UT**  
**Courtroom 3.100**

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**9:00 A.M.**

**18-3052 KS United States v. Cortes-Gomez**

1. Did the district court err in imposing a criminal-livelihood enhancement under USSG § 2D1.1?
2. Did the district court err when it imposed an organizer/leader sentencing enhancement under USSG § 3B1.1(a)?
3. Did the district court err in denying this defendant's motion to dismiss on Sixth Amendment and statutory speedy-trial grounds?
4. Did the district court err in refusing to give a cautionary instruction regarding accomplice testimony?

for the government: James Brown

for the defendant: Ryan Ray (Tulsa, OK)

**17-8096 WY United States v. Chavez**

1. Did the district court violate the best-evidence rule (FRE 1002) by admitting (partial) transcripts of Spanish language audiotapes without admitting the tapes themselves; and did the district court plainly err when it instructed the jury that the translations (which attributed certain statements to the defendant) were accurate and not to be rejected?

for the government: Timothy Forwood

for the defendant: Neil Van Dalsem (Oklahoma FPD)

**18-8023 WY United States v. Rosales-Trujillo**

**18-8032**

1. Is this defendant's revocation sentence substantively unreasonable?

for the government: Timothy Forwood

for the defendant: Howard Pincus (Colorado FPD)

**18-1259 CO United States v. Mendez**

1. Is this defendant's revocation sentence substantively unreasonable?

for the government: Paul Farley

for the defendant: Howard Pincus (Colorado FPD)

**2:00 P.M.**

**17-6109 WOK Harris v. Carpenter (Death Penalty)**

1. Should the district court have granted federal habeas relief (or at least an evidentiary hearing) on this state capital defendant's claims of ineffective assistance of counsel, unconstitutional jury instructions, unconstitutional victim-impact testimony, and cumulative error?

for the government: Jennifer Crabb

for the defendant: Jack Fisher (Edmond, OK)

**Wednesday, March 20, 2019**  
**Federal District Court, Salt Lake City, UT**  
**Courtroom 7.300**

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**9:00 A.M.**

**18-2008 NM United States v. Montijo-Dominguez (submitted on the briefs)**

1. Was the evidence sufficient to prove interdependence or a common purpose in this drug-conspiracy case?
2. Is this defendant entitled to safety-valve relief, and did the district court err in concluding otherwise?

for the government: Paul Mysliwicz

for the defendant: Wendy Palen (Glendo, WY)

**18-2036 NM United States v. Mendoza-Alarcon (submitted on the briefs)**

1. Was the evidence sufficient to prove a shared distribution objective in this drug-conspiracy case?
2. Did the district court plainly err in this drug-conspiracy case when it failed to instruct the jury, in response to a jury question, that an agreement with an undercover government agent is insufficient to support a conspiracy conviction?

for the government: Paul Mysliwicz

for the defendant: Irma Rivas (New Mexico FPD)

**18-2063 NM United States v. Dominguez-Perez**

1. Was there a sufficient nexus between the firearms and drugs in this case to support a gun enhancement under USSG § 2D1.1(b)(1)?
2. Was there sufficient evidence to support an enhancement for maintaining a drug premises under USSG § 2D1.1(b)(12)?
3. Did the district court erroneously add obstruction points for perjury under USSG § 3C1.1?
4. Did the district court erroneously deny acceptance of responsibility under USSG § 3E1.1?
5. Is this first-time offender's 180-month sentence on drug and gun convictions substantively unreasonable?

for the government: Paul Schied

for the defendant: Marshall Ray (Albuquerque, NM)

**18-2091 NM United States v. Ravenell**

1. Did the district court err in finding this defendant's confession voluntary?

for the government: Allison Jaros

for the defendant: W. Keith Goody (Battle Ground, WA)

**18-2095 NM United States v. Nash (gov't appeal)**

1. Did this defendant's flight between any Fourth Amendment violation and his arrest and subsequent searches attenuate that violation?
2. Should the district court have found that an officer lawfully frisking this defendant had probable cause to seize a baggy in his pocket under the plain-feel doctrine?

for the government: John Balla

for the defendant: Dean Sanderford (Colorado FPD)

**18-4011 UT United States v. Chavarin**

1. Did the district court err when it enhanced this defendant's sentence for obstruction of justice under USSC § 3C1.1 without making findings about what part of his trial testimony was willfully, materially false?

for the government: Ryan Tenney

for the defendant: Meredith Esser (Colorado FPD)

**Wednesday, March 20, 2019**  
**Federal District Court, Salt Lake City, UT**  
**Courtroom 7.400**

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**9:00 A.M.**

**18-2060 NM United States v. Garcia**

1. Does a magistrate judge have jurisdiction (or authority) to accept a guilty plea, or only recommend that the district court do so?

for the government: Finnuala Tessier

for the defendant: Deborah Roden (Cheyenne, WY)

**18-3070 KS United States v. Cookson (cross-appeal)**

**18-3071**

1. Did the district court err when it refused, on good-faith grounds, to suppress the fruit of an unconstitutional search?
2. Is this child-pornography defendant's five-year probationary sentence substantively unreasonable?

for the government: Jason Hart

for the defendant: Dan Hansmeier (Kansas FPD)

**Thursday, March 21, 2019**  
**Federal District Court, Salt Lake City, UT**  
**Courtroom 3.100**

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**8:30 A.M.**

**18-4083 UT United States v. Holloway**

1. Is this petitioner entitled to 28 U.S.C. § 2255 relief (or at least an evidentiary hearing) on his claims of ineffective assistance of counsel and *Brady* violations?

for the government: Ryan Tenney

for the defendant: Gregory Stevens (Salt Lake City, UT)

**18-6119 WOK United States v. Miles**

1. Whether negation of the materiality element of 18 U.S.C. § 1001(a)(3) represents actual innocence warranting coram nobis relief, and whether procedural default bars this defendant from relief?

for the government: Steven Creager

for the defendant: Don Chairez (Las Vegas, NV)

**18-6130 WOK United States v. Arias-Quijada (submitted on the briefs)**

1. Did the district court err in denying this unlawful-reentry defendant his request to assert a duress defense at trial?

for the government: William Farrior, Jr.

for the defendant: William Earley (Oklahoma FPD)

**18-1114 CO United States v. Paup (submitted on the briefs)**

1. Did the magistrate err in this federal misdemeanor shoplifting case by precluding the defendant from presenting a mental-health expert at trial as a discovery-violation sanction?
2. Did the district court erroneously add obstruction points for perjury under USSG § 3C1.1 absent evidence of perjury, and without making the required perjury findings?

for the government: Michael Johnson

for the defendant: Veronica Rossman (Colorado FPD)

**Thursday, March 21, 2019**  
**Federal District Court, Salt Lake City, UT**  
**Courtroom 7.300**

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**8:30 A.M.**

**18-1080 CO United States v. Williams**

1. Was the evidence sufficient in this 18 U.S.C. § 1001 false-statements case?
2. Did the district court deprive this false-statements defendant of his constitutional right to present a defense by excluding two defense expert witnesses?
3. Did the district court err in admitting FRE 404(b) evidence as *res gestae*?

for the government: Bishop Grewell

for the defendant: Megan Hayes (Laramie, WY)

**18-1100 CO United States v. Loya-Ramirez**

1. Did the prosecutor in this case commit reversible misconduct during rebuttal closing argument?

for the government: Bishop Grewell

for the defendant: Mark Scabavea (Lakewood, CO)

**16-6318 WOK Bush v. Carpenter (Death Penalty)**

1. After the judge in this Oklahoma capital case—who was also serving as sentencer—excluded a jail snitch’s testimony as inadmissible, did he violate the defendant’s Eighth Amendment and Due Process rights by deliberately exposing himself to the details of the testimony (*asking the state, after excluding the evidence, to make an offer of proof*)?
2. Did the judge in this Oklahoma capital case commit constitutional error by admitting victim-impact evidence in violation of Supreme Court precedent?
3. Did cumulative error violate this Oklahoma capital defendant’s Eighth Amendment and due-process rights?
4. Was trial counsel in this Oklahoma capital case ineffective in failing to object to unconstitutional victim-impact evidence?
5. Was appellate counsel in this Oklahoma capital case ineffective in failing to challenge the constitutionality of Oklahoma law barring capital defendants who plead guilty from receiving a jury sentencing hearing?

for the government: Caroline Hunt

for the defendant: Mark Henricksen (Oklahoma City, OK)