

**TENTH CIRCUIT ORAL ARGUMENT CALENDAR**  
**Byron White Courthouse, Denver, Colorado**

**Tuesday, November 13, 2018**  
**Courtroom I**

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**9:00 A.M.**

**17-3075    KS    United States v. Smith**

1. Is this defendant entitled to a certificate of appealability and 28 U.S.C. § 2255 relief on grounds that his trial counsel failed to object to the district court's attribution of drug quantity to him for sentencing purposes, and failed to consult with him about an appeal, and did the district court apply the wrong law in denying his § 2255 petition?

for the government: James Brown

for the defendant: Branden Bell (Kansas FPD)

**Tuesday, November 13, 2018**  
**Courtroom II**

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**9:00 A.M.**

**17-2121 NM United States v. Lopez-Aguilar**

1. Does *Johnson* invalidate the residual clause of § 924(c), and is a Hobbs Act robbery a crime of violence for purposes of § 924(c)?

for the government: Paige Messec

for the defendant: Benjamin Gonzales (New Mexico FPD)

**Tuesday, November 13, 2018**  
**Courtroom IV**

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**9:00 A.M.**

**17-3223 KS United States v. Ash (Cross-Appeal)**  
**17-3245**

1. Are Kansas reckless aggravated battery and Missouri second-degree robbery crimes of violence for career-offender purposes?

for the government: James Brown

for the defendant: Dan Hansmeier (Kansas FPD)

**17-3242 KS United States v. Currie**

1. Did the prosecutor commit prejudicial misconduct in relation to this defendant's heat-of-passion defense?

for the government: Carrie Capwell

for the defendant: Paige Nichols (Kansas FPD)

**16-5165 NOK Johnson v. Carpenter (Death Penalty Appeal)**

1. Should the district court have granted habeas relief on this state capital defendant's claims that his trial and appellate counsel were ineffective?

for the government: Jennifer Crabb

for the defendant: Thomas Hird (Oklahoma FPD)

**Wednesday, November 14, 2018**  
**Courtroom III**

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**9:00 A.M.**

**17-1411 CO United States v. Molina-Villalobos**

1. Is this defendant entitled to safety-valve relief, and did the district court err in concluding otherwise?

for the government: Paul Farley

for the defendant: Timothy Kingston (Foley, AL)

**18-1031 CO United States v. Lozano**

1. Did the district court err in enhancing this drug defendant's sentence for maintaining a drug premises, under USSG § 2D1.1(b)(12)?
2. Did the district court err in subjecting this drug defendant to an aggravated-role enhancement under USSG 3B1.1(b)?

for the government: Marissa Miller

for the defendant: Ana Davide (Miami, FL)

**18-1020 CO United States v. Smith**

1. Did the district court plainly err when it used an incorrect sentence range as its starting point for this defendant's downward variant sentence?

for the government: Paul Farley

for the defendant: John Arceci (Colorado FPD)

**18-3003 KS United States v. Orozco (gov't appeal)**

1. Was the district court's finding in this drug case that an AUSA impermissibly threatened a witness clearly erroneous, or did the district court abuse its discretion when it dismissed this indictment with prejudice?

for the government: Carrie Capwell

for the defendant: James Campbell (Burlington, KS)

**18-4000 UT United States v. McRae**

1. Was this defendant's pro se notice of appeal timely filed?
2. Was this defendant improperly found incompetent and subjected to restoration procedures, and can a defendant whose competency is in question waive this issue or invite error by seeking a competency determination?

for the government: Jennifer Williams

for the defendant: Kathleen Shen (Colorado FPD)

**18-7012 EOK United States v. Johnson**

1. Did the district court procedurally err by refusing to consider varying downwards as a remedy for the government's apparently punitive refusal to recommend a third-level reduction for acceptance of responsibility?

for the government: Gregory Burris

for the defendant: Robert Williams (Oklahoma FPD)

**Wednesday, November 14, 2018**  
**Courtroom IV**

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**9:00 A.M.**

**17-7080 EOK United States v. Bowline**

1. Did this defendant waive his vindictive prosecution claim by failing to file a timely Rule 12 motion to dismiss, and should the district court have dismissed the indictment on vindictive-prosecution grounds?

for the government: Shannon Henson

for the defendant: Howard Pincus (Colorado FPD)

**18-5009 NOK United States v. Padilla**

1. Did the district court err in relying on the presentence report to establish contested relevant conduct?

for the government: Christopher Nassar

for the defendant: John Campbell (Tulsa, OK)

**18-6033 WOK United States v. Garcia**

1. Did the district court plainly err when it included this gun defendant's previous possession of a different gun a year earlier as relevant conduct?
2. Was the district court's above-guidelines sentence in this gun case substantively unreasonable?

for the government: Steven Creager

for the defendant: Lynn Hartfield (Denver, CO)

**16-6360 WOK Harmon v. Carpenter (Death Penalty Appeal)**

1. Is this Oklahoma capital defendant entitled to 28 U.S.C. § 2254 relief, or at least a hearing, on his claims of ineffective assistance of counsel, prosecutorial misconduct, and evidentiary error?

for the government: Jennifer Crabb

for the defendant: Patti Ghezzi (Oklahoma FPD)

**Friday, November 16, 2018**  
**Courtroom I**

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**8:30 A.M.**

**17-2220 NM United States v. Martinez-Romero**

1. Did the district court plainly err in imposing partially consecutive sentences without stating any reason for doing so?

for the government: John Balla

for the defendant: Kathleen Shen (Colorado FPD)

**18-2020 NM United States v. Easley (gov't appeal)**

1. Did the district court err when it granted this defendant's motion to suppress, taking race and other factors into account to find an unlawful seizure as opposed to a consensual encounter?

for the government: Paige Messec

for the defendant: Brian Pori (New Mexico FPD)

**18-2022 NM United States v. Hall**

1. Did the district court erroneously enhance this defendant's bank-robbery sentence for possession of a dangerous weapon under USSG § 2B3.1(b)(2)(E)?

for the government: George Kraehe

for the defendant: Devon Fooks (New Mexico FPD)

**18-2023 NM United States v. Joseph**

1. Did the district court err in departing upwards in this checkpoint evasion case without sufficient notice or explanation?

for the government: Paige Messec

for the defendant: Amanda Skinner (New Mexico FPD)

**18-2037 NM United States v. Milne**

1. Was the government's testing of only 1 of 12 bundles of marijuana sufficient to establish quantity for relevant-conduct purposes in this drug-conspiracy case?
2. Was the evidence sufficient to prove both knowledge and quantity in this drug-conspiracy case?
3. Was the government's testing of only 1 of 12 bundles of marijuana sufficient to establish quantity for relevant-conduct purposes in this drug-conspiracy case?
4. Did the district court erroneously add obstruction points under USSC § 3C1.1 based on this defendant's trial testimony, without specifying what parts of the defendant's testimony it deemed perjurious?
5. The question in this defendant's drug-conspiracy trial was whether he knew that the burlap bags he was transporting contained marijuana. The bags were sealed and odor-free in the car. Did the district court abuse its discretion when it allowed the government to display the marijuana unsealed and strong-smelling to the jury?
6. Did the district court abuse its discretion in allowing a codefendant's lawyer to elicit testimony that this defendant had a tiny amount of (uncharged) heroin in his pocket, in violation of Federal Rules of Evidence 402, 403, and 404(b)?

for the government: John Balla

for the defendant: Rachel Nathanson (New Mexico FPD)

**18-2039 NM United States v. Yazzie**

1. Is this defendant's 24-month revocation sentence substantively unreasonable?
2. Did the district court err when it imposed a special condition of supervised release (take all prescribed mental-health medications) without making the required particularized findings?

for the government: Paige Messec

for the defendant: Brian Pori (New Mexico FPD)

**Friday, November 16, 2018**  
**Courtroom IV**

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**8:30 A.M.**

**17-1405 CO United States v. Thomas**

1. Is Colorado distribution of an imitation controlled substance a “controlled substance offense” for career-offender purposes?

for the government: Bishop Grewell

for the defendant: Jacob Rasch-Chabot (Colorado FPD)

**17-1455 CO United States v. Medina**

1. Did the district court err in denying this defendant’s motion to dismiss on Sixth Amendment speedy-trial grounds?

for the government: Andrea Surratt

for the defendant: Antony Noble (Lakewood, CO)

**17-3238 KS United States v. Ackerman**

1. Did the government waive any good-faith argument on remand by insufficiently briefing it in this defendant’s first appeal, and, if not, does good faith excuse the warrantless search of this defendant’s email?
2. Did this defendant have standing to challenge the search of his email (before it was delivered to its intended recipient) under either a trespass theory or a privacy theory?

for the government: John Taddei

for the defendant: Dan Hansmeier (Kansas FPD)

**18-8004 WY United States v. Smith**

1. Did the district court err under USSG § 2B3.1 in applying the five-level enhancement for possessing a “firearm” instead of a three-level enhancement for a “dangerous weapon” given the evidence in this case?

for the government: Stuart Healy

for the defendant: Jacob Rasch-Chabot (Colorado FPD)

**18-8007 WY United States v. Martinez**

1. Did the district court deprive this defendant of his due process and statutory rights (under 18 U.S.C. § 3006A(e)(1)) by denying funds for a mental-health expert and excluding evidence at trial of his mental-health history?
2. Did the district court abuse its discretion under F.R.E. 608(a) by preventing this defendant—whose credibility the government attacked during cross-examination—from presenting evidence of his truthful character?

for the government: Timothy Forwood

for the defendant: Neil Van Dalsem (Oklahoma FPD)

**17-1197 CO United States v. Isabella**

1. Were the two counts charged in this case under 18 U.S.C. §§ 2422(b) and 2251 (production of pornography and enticement to travel) multiplicitous?
2. Was the evidence sufficient in this case to establish violations of 18 U.S.C. §§ 2422(b) and 2251 (production of pornography and enticement to travel)? Were these two counts multiplicitous?
3. Was evidence of non-criminal (but nonetheless inflammatory) pictures and communications irrelevant and unduly prejudicial in this pornography/enticement case?

for the government: Bishop Grewell

for the defendant: Ronald Gainor (Longmont, CO)