

TENTH CIRCUIT ORAL ARGUMENT CALENDAR

Friday, September 13, 2019
University of Wyoming, Laramie, WY
Brimmer Moot Courtroom – Room 178

9:00 A.M.

18-1206 CO United States v. Hutson (submitted on the briefs)

1. In this sovereign citizen's false-claims prosecution under 18 U.S.C. § 287, did the district court err in (1) denying the defendant's First-Amendment-based motion to dismiss; (2) defining "claim" for the jury; and (3) not instructing the jury on specific intent?

for the government: J. Bishop Grewell

for the defendant: Katayoun Donnelly (Denver, CO)

18-1135 CO United States v. Wyatt

1. Did the district court erroneously omit willfulness from the elements of conspiracy under 18 U.S.C. § 371? Was the evidence sufficient to support this defendant's conspiracy convictions?
2. Did the prosecutor commit reversible misconduct while cross-examining this defendant?

for the government: James Murphy

for the defendant: William Lunn (Tulsa, OK)

TENTH CIRCUIT ORAL ARGUMENT CALENDAR

Tuesday, September 24, 2019
Denver, CO
Courtroom I

9:00 A.M.

18-1299 CO United States v. Williams (Electronic Frontier Foundation, Amicus Curiae)

1. Did the warrantless seizure (by a border agent) and eventual search of this defendant's laptop violate the Fourth Amendment?

for the government: Marissa Miller

for the defendant: Josh Lee (Colorado FPD)

18-1254 CO United States v. Fernandez-Barron

1. Did the district court erroneously rely on testimony that—even if false—was immaterial to enhance this defendant's sentence on obstruction grounds under USSG § 3C1.1?

for the government: Karl Schock

for the defendant: Ty Gee (Denver, CO)

18-1357 CO United States v. Brewington

1. Did the district court erroneously exclude as irrelevant evidence proffered by this fraud defendant in support of his mistake defense?
2. Did the district court erroneously exclude as hearsay evidence proffered by this defendant for a non-hearsay purpose?
3. Did the district court erroneously hold this fraud defendant responsible at sentencing for a victim's "substantial financial hardship" under USSG § 2B1.1(b)(2)(A), when the hardship was not sufficiently attributable to this defendant (as opposed to his codefendant)?

for the government: John-Alex Romano

for the defendant: Josh Lee (Colorado FPD)

18-1365 CO United States v. O'Neal

1. Did the district court err in concluding that admission of this defendant's un-*Mirandized* statements at her firearms trial was harmless?

for the government: Paul Farley

for the defendant: Howard Pincus (Colorado FPD)

18-1468 CO United States v. Lovato

1. Is Colorado attempted second degree assault a crime of violence for USSG § 2K2.1 purposes?
2. Did the district court plainly err when it imposed a special condition of release obligating this defendant to take any medication prescribed to him, without making required findings?
3. Did the district court erroneously admit an entire 911 call at trial as a present sense impression?

for the government: Paul Farley

for the defendant: Shira Kieval (Colorado FPD)

Tuesday, September 24, 2019
Denver, CO
Courtroom II

9:00 A.M.

17-6233 WOK United States v. Godlock

1. After *Stokeling*, is a 1993 Oklahoma first-degree robbery an ACCA predicate?

for the government: Jacquelyn Hutzell

for the defendant: Jeffrey Byers (Oklahoma FPD)

18-5087 NOK United States v. Leffler

1. Was the evidence sufficient in this § 924(c) case to establish the necessary nexus between the gun and the defendant's alleged drug trafficking?

for the government: Christopher Nassar

for the defendant: Meredith Esser (Colorado FPD)

18-5124 NOK United States v. Hamilton

1. Did the district court impose a procedurally erroneous upward departure based on improper factors and without the required notice? Is this defendant's above-guideline sentence procedurally erroneous even if it was a variance rather than a departure?
2. Is this fraud defendant's above-guideline sentence substantively unreasonable?

for the government: Kevin Leitch

for the defendant: Gary Udashen (Dallas, TX)

18-7051 EOK United States v. Hammers

1. Was the evidence sufficient to sustain this defendant's conspiracy convictions?
2. Are this judge's rulings against this defendant reason to assign the case to a different judge on remand?
3. Did the district court erroneously enhance this conspiracy defendant's sentence for obstruction of justice under USSG § 3C1.1 after finding that he committed perjury at trial, despite the fact that the jury acquitted him on all substantive counts?
4. Did the district court erroneously increase this conspiracy defendant's sentence for disrupting a governmental function, under USSG § 5K2.7?
5. Did the prosecutor in this case commit reversible misconduct by misstating the evidence?
6. Did the district court erroneously exclude as hearsay this defendant's alleged coconspirator's suicide note, in which the coconspirator took sole responsibility for the crimes, thereby exonerating the defendant?

for the government: Linda Epperley

for the defendant: Ryan Ray (Tulsa, OK)

18-7059 EOK United States v. Miller

1. Did the district court constructively amend this defendant's enticement indictment through its jury instructions at trial?

for the government: Linda Epperley

for the defendant: Barry Derryberry (Oklahoma FPD)

19-7006 EOK United States v. Mendenhall

1. Did the district court plainly err by ordering restitution for conduct that was not the basis for the offense of conviction?

for the government: Linda Epperley

for the defendant: Berry Derryberry

Thursday, September 26, 2019
Denver, CO
Courtroom II

8:30 A.M.

18-2121 NM United States v. Abdeljawad

1. Did the district court err under USSG § 2D1.1 in refusing to consider the impact of inert plant material on the potency of this defendant's synthetic marijuana?

for the government: Kristopher Houghton

for the defendant: Vincent Ward (Albuquerque, NM)

18-2154 NM United States v. Zayas

1. Did the district court err in denying this child-abuse defendant's presentencing motion to withdraw her plea, based on the court's failure to ensure that the defendant understood the elements of the crime to which she was pleading?

for the government: Jennifer Rozzoni

for the defendant: Mary Stillinger (El Paso, TX)

18-2174 NM United States v. Russell

1. Did the district court abuse its discretion by excluding evidence proffered in this sexual assault case under FRE 412 relevant to show an alternate source for the complainant's injuries?

for the government: Paige Messec

for the defendant: Alicia Lopez (Albuquerque, NM)

18-3173 KS United States v. Russian (submitted on the briefs)

1. Did the district court reversibly err in denying this defendant's invocation of his right to represent himself on a limited remand to reconsider a condition of supervised release that the district court chose not to impose?

for the government: James Brown

for the defendant: pro se

18-3232 KS United States v. Aaron

1. Did the district court abuse its discretion by departing upwards in this gun case based on a discouraged factor and without making required findings?

for the government: James Brown

for the defendant: Paul McCausland (Wichita, KS)

Thursday, September 26, 2019
Denver, CO
Courtroom III

8:30 A.M.

18-4004 UT United States v. Fagatele

1. Is Utah third-degree reckless aggravated assault a crime of violence for career-offender purposes?

for the government: Ryan Tenney

for the defendant: Jessica Stengel (Utah FPD)

19-4000 UT United States v. Johnson

1. Did the district court abuse its discretion in refusing to conduct a de novo resentencing after an unlimited remand for resentencing, to correct an error in its loss calculation at the original sentencing?

for the government: Ryan Tenney

for the defendant: John Markham (Boston, MA)

18-8069 WY United States v. Carter (submitted on the briefs)

1. Did the district court erroneously apply a cross-reference in USSG § 2K2.1(c) without sufficient reliable evidence to increase this defendant's base offense level?
2. Is this defendant's sentence substantively unreasonable?

for the government: Mark Klaassen

for the defendant: Ann Taliaferro (Salt Lake City, UT)

18-1342 CO United States v. Rubbo

1. Did the government breach its plea agreement with this cooperating defendant (and can the Tenth Circuit reach this question notwithstanding the defendant's appeal waiver)?

for the government: Marissa Miller

for the defendant: Rick Bailey (Wichita, KS)

19-2010 NM United States v. Martinez (gov't appeal)

1. Did the district court err in finding that an encounter between this defendant and Border Patrol agents was a seizure, as opposed to a consensual encounter?
2. Did the district court err in finding that the Border Patrol unlawfully subjected this defendant to custodial interrogation without *Miranda* warnings?

for the government: John Anderson

for the defendant: Rachel Nathanson (New Mexico FPD)