

TENTH CIRCUIT ORAL ARGUMENT CALENDAR

Tuesday, September 22, 2020

Denver, CO¹

Courtroom I

9:00 A.M.

Tymkovich, Baldock & Phillips

19-1229 CO United States v. Williams

1. Did the district court sentence this defendant to restitution in excess of the statutory maximum by imposing restitution for losses and victims beyond those encompassed by the single wire fraud conviction?
2. Is this defendant's 84-month sentence for a wire-fraud conviction, an upward departure due to criminal-history underrepresentation, substantively unreasonable?

for the government: Elizabeth Milani

for the defendant: Beale Tejada (Denver, CO)

2:00 P.M.

Tymkovich, Briscoe & Bacharach

20-4056 UT United States (Appellant) v. Maumau

1. Did the district court err when it granted this defendant's motion for compassionate release for "extraordinary and compelling reasons", based on a change in the mandatory sentencing statute which drove the original sentence?

for the government: Ryan Tenney

for the defendant: John Gleeson (New York, NY)

¹ All September Session arguments will be held virtually via Zoom.

Tuesday, September 22, 2020
Denver, CO
Courtroom III

9:00 A.M.

McHugh, Ebel & Eid

19-6075 WOK United States v. Wieck

1. Did the district court miscalculate loss and restitution based on “unpaid revenue” in this fraud case?
2. Did the district court err when it held that this defendant relocated his fraudulent scheme from Oklahoma to Mexico for the purpose of evading law enforcement, and applied a two-level “relocation” enhancement (USSG § 2B1.1(b)(10)(A)) on that basis?
3. Did the district court err at this fraud and money-laundering trial when it admitted evidence that the defendant beat his wife?

for the government: Julia Barry

for the defendant: Josh Lee (Colorado FPD)

19-6167 WOK United States v. Donovan

1. Is this defendant’s sentence procedurally or substantively unreasonable because it was based on facts not supported by the record?

for the government: Charles Brown

for the defendant: Caleb Kruckenberg (Falls Church, VA)

19-7048 EOK United States v. Wilson

1. Did the district court err by calculating personal-use drug quantity amounts as relevant conduct in this drug-trafficking case?

for the government: Linda Epperley

for the defendant: Lance Hopkins (Tahlequah, OK)

19-7055 CO United States v. Logsdon

1. Did the district court err by applying the arson cross-reference in USSG § 2B1.1 in this false-statement case, and if so, should the government be allowed to present additional evidence on remand?

for the government: Linda Epperley

for the defendant: Gary Davis (Tulsa, OK)

19-4140 UT United States v. Egli

1. Did the district court plainly err by imposing a blanket ban on internet use as a special condition of supervised release?

for the government: Jennifer Williams

for the defendant: Jessica Stengel (Utah FPD)

Wednesday, September 23 2020
Denver, CO
Courtroom I

9:00 A.M.

Holmes, Seymour & Moritz

19-3062 **KS** **United States v. Henson**

1. Did the district court err by giving an instruction allowing this defendant doctor to be convicted for issuing a prescription either outside the scope of professional or without legitimate medical purpose, and not requiring both?
2. Is this defendant doctor's life sentence procedurally unreasonable because the district court did not properly consider all the sentencing factors?
3. Is this defendant doctor's life sentence substantively unreasonable for an 21 U.S.C. § 841 offense?
4. Did the district court's finding of a conflict of interest impermissibly deprive this defendant of his choice of counsel?
5. Did the district court err by giving a deliberate ignorance/willful blindness instruction in this drug-conspiracy case involving a doctor?

for the government: James Brown

for the defendant: Blair Westover (Chicago, IL)

19-3135 **KS** **United States v. Golightley**

1. Is evidence that a threat was sent over the internet, standing alone, insufficient to prove that a threat charged under 18 U.S.C. § 1030 was transmitted in interstate commerce?
2. Did the district court err in classifying and sentencing seven counts under 18 U.S.C. § 1030 as felonies absent a unanimous jury verdict based on proof beyond a reasonable doubt that each offense independently caused a felony-triggering loss?
3. Did the district court plainly err by imposing conditions of supervised release that: (1) require this defendant to "take prescribed medications as directed," and (2) authorize a probation officer to require the defendant to inform third parties that he poses a risk to them?

for the government: Alan Metzger

for the defendant: Paige Nichols (Kansas FPD)

19-3147 **KS** **United States v. Castillo-Quintana (submitted on the briefs)**

1. Did the district court err by considering, at sentencing, charges that were dismissed with prejudice for lack of evidence?
2. Did the district court err by including packages that were not weighed in its drug-quantity findings?
3. Did the district court err when it found that this defendant possessed a firearm in connection with this offense and added a 2-level enhancement on that basis?
4. Did the district court err when it denied this defendant a § 3D1.2 reduction for being a minimal participant?
5. Did the district court err when it found that this defendant possessed a weapon in connection with his drug offense and was therefore not safety-valve eligible?

for the government: James Brown

for the defendant: Robert Calbi (Kansas City, MO)

19-3148 KS United States v. Ellis

1. Did the district court fail to make the required particularized findings in support of its relevant conduct findings, or did it err when it ruled that certain drug purchases were within the scope of the conspiratorial agreement and should be attributed to this defendant as relevant conduct?

for the government: Carrie Capwell

for the defendant: Christopher Joseph (Topeka, KS)

19-3217 KS United States v. Salazar

1. Did the district court impose an illegal sentence when, without a jury finding of guilt beyond a reasonable doubt, it imposed a 10-month prison sentence upon revocation, when the defendant had already served 115 months of a statutory maximum 120-month prison sentence for his underlying felon-in-possession offense?

for the government: John Pellettieri (US DOJ)

for the defendant: Dan Hansmeier (Kansas FPD)

20-1173 CO United States v. Lawless

1. Is this defendant's 144-month above-guidelines sentence for arson procedurally or substantively unreasonable, where the court treated some improper factors as aggravating and refused to consider multiple facts as mitigating?
2. Is this defendant's 144-month above-guidelines sentence for arson procedurally or substantively unreasonable, where the court treated some improper factors as aggravating and refused to consider multiple facts as mitigating?

for the government: Karl Schock

for the defendant: Josh Lee (Colorado FPD)

Thursday, September 24, 2020
Denver, CO
Courtroom I

9:00 A.M.

Lucero, Kelly & Bacharach

19-2121 NM United States v. Martinez-Torres

1. Did the stop of this defendant's vehicle violate the Fourth Amendment because it lacked reasonable suspicion of careless driving, because the stop was impermissibly extended, because the consent to search the car was invalid, or because the search exceeded the consent?

for the government: Nicholas Ganjei

for the defendant: Sylvia Baiz (New Mexico FPD)

19-2119 NM United States v. Gomez-Arzate

1. Was there probable cause for a traffic stop where the vehicle drove onto the fog line, and even if there was, did the officer unlawfully extend the stop? And did the stop become a consensual encounter, and if so, was the consent valid, or did the search exceed the scope of the consent?

for the government: Nicholas Ganjei

for the defendant: Michael Garey (Santa Ana, CA)

19-1158 CO United States v. Tignor

1. Is this defendant's pre-*Rehaif* 18 U.S.C. § 922(g) guilty plea invalid because the defendant was not advised that he had to know he had the status of a prohibited person?

for the government: Karl Schock

for the defendant: Kathleen Shen (Colorado FPD)

19-1268 CO United States v. Romero-Lopez

1. Did the district court plainly err by finding that this defendant had admitted to being "found in" the United States on a later date than the defense argued, which triggered application of a different sentencing guideline manual (and a higher range)?

for the government: Marissa Miller

for the defendant: Meredith Esser (Colorado FPD)

19-2175 NM United States v. Ruiz

1. Did the government present sufficient evidence that a codefendant carried a firearm, where it did not offer the firearm in evidence and did not offer testimony sufficient to establish that the firearm was real?

for the government: Nicholas Ganjei

for the defendant: Kari Converse (New Mexico FPD)

19-2186 NM United States v. Pacheco-Espinoza (submitted on the briefs)

1. Did the district court plainly err by focusing on the guidelines range and deterrence, and failing to consider evidence about this defendant's life and circumstances or rehabilitation?
2. Is this defendant's within-guidelines sentence substantively unreasonable in light of his personal characteristics and history, post-offense rehabilitation, and family circumstances?

for the government: Tiffany Walters

for the defendant: Rachel Nathanson (New Mexico FPD)

Thursday, September 24, 2020
Denver, CO
Courtroom II

9:00 A.M.

Tymkovich, Briscoe & Murphy

19-1125 CO United States v. Henry (submitted on the briefs)

1. Did the district court err when it concluded that it was required to reimpose previous conditions of supervised release, upon revocation, and if so, is this defendant entitled to resentencing?

for the government: Karl Schock

for the defendant: Tim Kingston (Foley, AL)

19-2142 NM United States v. Ybarra (submitted on the briefs)

1. Is New Mexico aggravated battery a violent felony under ACCA?

for the government: Paige Messec

for the defendant: Mallory Gagan (New Mexico FPD)

19-2196 NM United States (Appellant) v. Dutch

1. Did the district court violate the Tenth Circuit's mandate when it reimposed the same sentence at resentencing, after the Tenth Circuit ruled that the defendant was ACCA-eligible?

for the government: Paige Messec

for the defendant: Brian Pori (Albuquerque, NM)

19-2174 NM United States v. Ramos-Burciaga

1. Was this defendant bus passenger seized within the meaning of the Fourth Amendment when a DEA agent asked several questions, showed his badge, and asked three times to search her backpack, and even if she was, was her consent voluntary?

for the government: Emil Kiehne

for the defendant: Alejandro Fernandez (Albuquerque, NM)

19-2200 NM United States v. Quezada-Lara (submitted on the briefs)

1. Was the officers' warrantless search of this defendant's bedroom in his mother's house unlawful, because his grandfather did not have actual or apparent authority to consent to the search, and because any consent he may have given was not voluntary because of the grandfather's dementia and inability to speak English?
2. Can the officer's entry onto property be justified as a protective sweep if no arrest occurs, or must a protective sweep of a home be incident to arrest?

for the government: Emil Kiehne

for the defendant: Robert Bowles (Albuquerque, NM)

Thursday, September 24, 2020
Denver, CO
Courtroom III

9:00 A.M.

Phillips, Baldock & McHugh

19-2111 NM United States v. Palillero

1. Was the evidence sufficient to convict this defendant of sexual assault under 18 U.S.C. § 2242 where there was no forensic evidence and the victim's account of the assault changed multiple times?
2. Is this defendant's 121-month sentence for sexual assault substantively unreasonable?
3. Did multiple pro-prosecution rulings by the district court result in cumulative error that warrants reversal of this sexual-assault conviction?
4. Did the district court erroneously exclude the defendant's DNA expert because the notice of intent to offer the testimony was untimely or deficient?

for the government: Matilda Villalobos

for the defendant: Scott Davidson (Albuquerque, NM)

19-2123 NM United States v. Chavez

1. Did the district court err by denying this defendant's motion to suppress, based on a conclusion that the evidence was discovered during a proper inventory search?

for the government: Dustin Segovia

for the defendant: William Lunn (Tulsa OK)

19-2132 NM United States v. Ybarra Cruz

1. Did the stop of this defendant's vehicle lack reasonable suspicion or probable cause either because it was based on an unreliable informant's tip about drug trafficking, or because driving on a lane line is not a traffic violation?
2. In this trial of a confidential informant who raised a public authority defense, did the government prove beyond a reasonable doubt that he did not reasonably believe he was acting as an authorized government agent?
3. Did the district court plainly err by not instructing the jury on a duress defense?

for the government: Allison Jaros

for the defendant: Bernadette Sedillo (New Mexico FPD)

19-2156 NM United States v. Miller

1. Is this defendant's 36-month sentence for assault causing bodily injury, based on a DWI incident, substantively unreasonable?
2. Did the district court plainly err by granting unlimited discretion to the probation officer to require this defendant to submit to drug testing?

for the government: Frederick Mendenhall

for the defendant: Devon Fooks (New Mexico FPD)

19-2160 NM United States v. Perea

1. Does this defendant's intellectual disability, which impairs his ability to process verbal information, render him incompetent to stand trial?

for the government: Alexander Uballez

for the defendant: Sylvia Baiz (New Mexico FPD)

Thursday, September 24, 2020
Denver, CO
Courtroom IV

9:00 A.M.

Hartz, Matheson & Carson

19-1256 CO United States v. Robinson

1. Was there sufficient evidence of intent to engage in prostitution with a minor to convict this defendant of sex trafficking of children?
2. Is this defendant's 188-month sentence for child-sex-trafficking substantively unreasonable, in part because of sentencing entrapment by the government?
3. Did the district court err by refusing to require the government to disclose information about a confidential informant, so that the defense could call her as a witness?
4. If not individually reversible, do multiple evidentiary errors require a new trial in this child-sex-trafficking case?
5. Did the district court err by refusing to instruct the jury on entrapment in this child-sex-trafficking case?
6. Did the district court plainly err by allowing the government to introduce only portions of a defendant's comments on social media, excluding potentially exculpatory statements?
7. Was it error for the district court to admit testimony from a law enforcement agent about "pimping" culture and methods, and was the agent allowed to testify as both a fact and expert witness without proper instructions?

for the government: J. Bishop Grewell

for the defendant: Ryan Ray (Tulsa, OK)

19-1298 CO United States v. Silva

1. Did the district court plainly err by setting this defendant's base offense level at 20, based on a crime-of-violence conviction that does not independently receive criminal-history points?

for the government: J. Bishop Grewell

for the defendant: John Arceci (Colorado FPD)

19-7049 EOK United States v. Barrett (death penalty)

1. Did the district court err when it held (contrary to the magistrate judge's determination) that trial counsel's deficient performance in the penalty phase did not prejudice this capital defendant?

for the government: Jeffrey Kahan

for the defendant: David Autry (Oklahoma City, OK)