

# TENTH CIRCUIT ORAL ARGUMENT CALENDAR

Tuesday, January 18, 2022  
Denver, CO<sup>1</sup>  
Courtroom II

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9:00 A.M.

Matheson, Ebel, Phillips

21-1076 CO United States v. Bosman

1. Did the district court err by denying this defendant's motion to suppress where the police ordered the defendant out of a car and to crawl onto the ground, at gunpoint, when he was asleep in a car with someone the police were arresting, who said that the defendant had a gun?

for the government: Candyce Cline

for the defendant: Howard Pincus (Colorado FPD)

21-6017 WOK United States v. Jeffers (submitted on the briefs)

1. Was this defendant seized when an officer attempted to make a traffic stop and followed the defendant, when no actual traffic violation had occurred?

for the government: Daniel Gridley

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

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<sup>1</sup> All arguments will be held virtually via Zoom.

**Wednesday, January 19, 2022**  
**Denver, CO**  
**Courtroom I**

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**9:00 A.M.**

**Hartz, Kelly, Murphy**

**20-4003 UT United States v. Babcock**

1. In this 28 USC § 2255 habeas case, does this defendant's Utah drug offense qualify as controlled substance offense under § 4B1.2 because it can be committed by an offer to sell?
2. Was defense counsel ineffective for failing to raise this objection at sentencing?

for the government: Elizabethanne Stevens

for the defendant: Benji McMurray (Utah FPD)

**21-4116 UT United States v. Shamo**

1. Does this defendant's life sentence for convictions related to fentanyl violate the Eighth Amendment?
2. Was there sufficient evidence that the defendant willfully distributed a substance prohibited under § 848?
3. Did the district court err by admitting website photos because they were hearsay and unauthenticated?

for the government: Jennifer Williams

for the defendant: William Lunn (Tulsa, OK)

**21-1041 CO United States v. Colbert (submitted on the briefs)**

1. Is this defendant's above-guidelines-range sentence substantively unreasonable?
2. Did the district court commit procedural error when it refused to rule on the central guideline dispute?

for the government: Michael Johnson

for the defendant: Robert Fishman (Denver, CO)

**21-2031 NM United States v. Nunez-Rosas**

1. Did the district court err when it refused to vary downward based on the defendant's stale criminal history?
2. Is the within-guidelines-range sentence substantively unreasonable in light of the stale criminal history?

for the government: Rachel Feuerhammer

for the defendant: Andre Poissaint (New Mexico FPD)

**21-8010 WY United States v. Shakespeare**

1. Did the district court err in applying 18 U.S.C. § 3583(k) at a revocation hearing, where both the Supreme Court and the Tenth Circuit had previously been found the statute unconstitutional?

for the government: Francesco Valentini

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

**21-3128 KS United States v. Battle (submitted on the briefs)**

1. Did the district court abuse its discretion in denying the defendant's compassionate release motion when it found that the defendant's lengthy sentence that would not be authorized under current law and the defendant's age and rehabilitation were not extraordinary and compelling reasons warranting a reduction?

for the government: Jared Maag

for the defendant: Matthew Robinson (Covington, KY)

Wednesday, January 19, 2022  
Denver, CO  
Courtroom II

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9:00 A.M.

Moritz, Baldock, Eid

21-2048 NM United States v. Delgado-Salazar (submitted on the briefs)

1. Did the district court err when it found that this defendant's consent to a law enforcement search of his luggage was voluntary?

for the government: Matthew Nelson

for the defendant: Roman Romero (Albuquerque, NM)

Wednesday, January 19, 2022  
Denver, CO  
Courtroom III

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9:00 A.M.

**Bacharach, Ebel, Carson**

**20-2158 NM United States v. Salas**

1. Did the district court plainly err when it imposed an above-stat.-maximum sentence on the § 922(g) count?
2. Did the district court plainly err at sentencing by relying on unsupported facts to vary upward?

for the government: Aaron Jordan

for the defendant: Howard Pincus (Colorado FPD)

**20-8075 WY United States v. Deluca**

1. Did officers unlawfully seize the defendant because it is not unlawful under Wyoming law to display a valid temporary permit and a state-issued license plate simultaneously?
2. Did the district court violate Rule 12(d) by failing to make a factual finding on whether the drug dog was trained to alert on THC, a chemical found in legal and illegal substances?

for the government: Timothy Forwood

for the defendant: Grant Smith (Colorado FPD)

**21-1065 CO United States v. Stan (submitted on the briefs)**

1. Is the 6-year term of supervised release substantively unreasonable?

for the government: Michael Johnson

for the defendant: Meredith Esser (Colorado FPD)

**21-2026 NM United States v. Astorga**

1. Did the district court err by applying a manager/supervisor enhancement under USSG § 3B1.1(b)?
2. Did the district court inadequately explain the sentence?
3. Did the district court err by imposing a no-spousal-contact condition of supervised-release condition?

for the government: Tiffany Walters

for the defendant: Josh Lee (Colorado FPD)

**21-8013 WY United States v. Biggs Farley**

1. Did the district court commit plain procedural error when it stated that it was Congress's intent that § 2251 child-porn-production sentences run consecutively, as well as when it viewed the guidelines' sentencing table as applying to each count of conviction, rather than all convictions?
2. Is this defendant's 630-month sentence for production of child pornography substantively unreasonable?

for the government: Timothy Forwood

for the defendant: Josh Lee (Colorado FPD)

**21-3043 KS United States v. Adams**

1. Does a Kansas aggravated battery conviction qualify as a crime of violence under § 4B1.2(a)(1), where it can be committed against the unborn, and the statute has a causation element not a violent force element?

for the government: Bryan Clark

for the defendant: Dan Hansmeier (Kansas FPD)

**Thursday, January 20, 2022**  
**Denver, CO**  
**Courtroom I**

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**8:30 A.M.**

**Hartz, Holmes, Bacharach**

**20-2180 NM United States v. Topete-Madrueno**

1. Did the district court err by permitting the government to introduce evidence that was disclosed late, in piecemeal fashion, and in violation of the court's discovery orders?
2. Did the district court err by finding that the warrant to search a home was still supported by probable cause at the time the search was executed?
3. Did the district court err by holding that this defendant did not have standing to object to the search of a car because he was not the registered owner?

for the government: Mark Pfizenmayer

for the defendant: Marshall Ray (Albuquerque, NM)

**20-3198 KS United States v. Alcorta**

1. Is this defendant entitled to § 2255 relief based on his claims of conflicted counsel or ineffective assistance of counsel?

for the government: James Brown

for the defendant: Rick Bailey (Wichita, KS)

**21-2003 NM United States v. Leal**

1. Did the government engage in outrageous conduct that violates due process by using a paid informant who targeted this heroin-addicted defendant with diminished cognitive abilities?
2. Was there sufficient evidence that this defendant participated in a methamphetamine conspiracy?

for the government: Tiffany Walters

for the defendant: Scott Davidson (Albuquerque, NM)

**20-3184 KS United States v. Cortez-Nieto**

**20-3189 United States v. Cervantes-Aguilar**

1. Did the district court err when it sua sponte convicted this defendant of lesser-included offenses despite the government's waiver of that result?
2. Did the district court err by instructing the jury that "the possible guilt of others should not enter your thinking," and refusing to clarify that the jurors could consider the possible guilt of testifying witnesses when evaluating their credibility?
3. Did the prosecutor misstate the law when she told the jurors that "the possible guilt of others should not enter your thinking"—and therefore they should not consider the cooperators' motive to testify falsely?

for the government: James Brown

for defendant Cortez-Nieto: Paige Nichols (Kansas FPD)

for defendant Cervantes-Aguilar: Candace Caruthers (Colorado FPD)

Thursday, January 20, 2022  
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Courtroom III

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8:30 A.M.

Matheson, Phillips, Moritz

**19-6122 WOK United States v. Burris**

1. Did the district court err by refusing to determine the correct guidelines range before considering whether to exercise its discretion to grant a reduction under Section 404 of the First Step Act?

for the government: Steven Creager

for the defendant: Laura Deskin (Oklahoma FPD)

**20-6118 WOK United States v. Draine**

1. Did the district court err by admitting a 911 call because there was an insufficient foundation or because admission of the call violated the defendant's confrontation rights?
2. Did the district court err by allowing a lay witness to offer expert opinion testimony about the significance of drug quantities and characteristics of drug distribution, or by allowing expert witnesses to testify to the defendant's mental state or intent to distribute drugs?

for the government: Ashley Altshuler

for the defendant: Adam Mueller (Denver, CO)

**21-6035 WOK United States v. Southard**

1. Did the district court err by imposing a § 2K2.1(b)(1)(B) increase because the defendant's drug possession was not a "felony offense"?
2. Did the district court commit procedural error by varying upward based on unsupported facts and by starting at the statutory maximum, rather than the guidelines range?

for the government: Bow Bottomly

for the defendant: Laura Deskin (Oklahoma FPD)

**21-7005 EOK United States v. Caudle (submitted on the briefs)**

1. Was the *Terry* pat down search unconstitutional?

for the government: Linda Epperley

for the defendant: Warren Gotcher (McAlester, OK)

**21-7022 EOK United States v. Grist**

1. Did the district court abuse its discretion in denying the defendant's compassionate release motion?

for the government: Linda Epperley

for the defendant: Erika Page (Blue Bell, PA)

**21-6043 WOK United States v. Escarsiga (submitted on the briefs)**

1. Did the district court err by applying a § 3B1.1(b) increase?
2. Was any error harmless because the sentencing court stated it would impose the same sentence without the challenged enhancement?

for the government: Steven Creager

for the defendant: John Kirby (San Diego, CA)