

TENTH CIRCUIT ORAL ARGUMENT CALENDAR

Tuesday, March 10, 2020
Denver, CO
Courtroom I

9:00 A.M.

Bacharach, Baldock & Murphy

19-4008 UT United States v. Mayville

1. Did law enforcement unreasonably extend the defendant's traffic stop by employing a time-consuming background check, and was there reasonable suspicion of impaired driving justifying the extension?

for the government: Stewart Young

for the defendant: Bretta Pirie (Utah FPD)

19-4070 UT United States v. Samora

1. Was there sufficient evidence to convict this defendant of constructively possessing a firearm?
2. Did the district court plainly err by instructing the jury that it could convict this defendant of constructively possessing a firearm, without instructing them that they had to find that he intended to control it?

for the government: Ryan Tenney

for the defendant: Jessica Stengel (Utah FPD)

19-8008 WY United States v. Goodman

1. Was the evidence sufficient to convict this defendant of involuntary manslaughter and assault?
2. Is the defendant's sentence, twice the high end of the Guidelines range, substantively unreasonable in this involuntary manslaughter case?
3. Were this defendant's confrontation rights violated when a government witness—who initially took blame for the vehicle accident at issue and later recanted—failed to appear and hearsay evidence about the witness's recantation was admitted?

for the government: Thomas Szott

for the defendant: Jason Wesoky (Denver, CO)

Tuesday, March 10, 2020
Denver, CO
Courtroom II

9:00 A.M.

Tymkovich, Seymour & Moritz

19-2058 NM United States v. Cortez

19-2059

1. Did law enforcement unreasonably extend the scope and duration of this traffic stop?
2. Did law enforcement unlawfully interrogate these defendants during a traffic stop without a *Miranda* advisory?

for the government: Jennifer Rozzoni

for the defendant: Meghan McLoughlin (New Mexico FPD)

19-2050 NM United States v. Pena

1. Did the district court's mistaken view of how the law might have applied in a hypothetical version of this case render this defendant's sentence procedurally unreasonable?
2. Is this carjacking defendant's above-guideline sentence (360 months, despite a guideline range of 123-138 months) substantively unreasonable?

for the government: Marisa Ong

for the defendant: Stephanie Wolf (New Mexico FPD)

19-2060 NM United States v. Madrid

1. Did the district court err by focusing on the "essential" nature of the defendant's role to deny a mitigating-role adjustment under § 3B1.2?
2. Was the district court's within-guidelines sentence substantively unreasonable, because it is twice as long as a coconspirator's sentence?

for the government: Jennifer Rozzoni

for the defendant: Hans Erickson (New Mexico FPD)

19-2081 NM United States v. Fields (submitted on the briefs)

1. Did the district court err in holding that this defendant was not eligible for a sentence reduction under the First Step Act?

for the government: Jennifer Rozzoni

for the defendant: James Langell (New Mexico FPD)

19-2125 NM United States v. Goebel

1. Was there sufficient reasonable suspicion and/or probable cause to stop this defendant based on a tip about a traffic violation, to prolong the stop, and eventually to arrest this defendant based on the discovery of a gun in a nearby backyard?
2. Did law enforcement unlawfully interrogate this defendant in violation of *Miranda*?

for the government: Aaron Jordan

for the defendant: Bernadette Sedillo (New Mexico FPD)

Tuesday, March 10, 2020
Denver, CO
Courtroom IV

9:00 A.M.

Hartz, Ebel & Matheson

19-6102 WOK United States v. Mannie

1. Did the district court impose a procedurally and substantively unreasonable sentence by refusing to grant the defendant's motion for relief under the First Step Act and refusing to hold a resentencing hearing?

for the government: Tim Ogilvie

for the defendant: Susan Otto (W..D. Oklahoma FPD)

19-6111 WOK United States v. Maytubby

1. Did the district court err by denying this First Step Act motion because the defendant's guidelines range remained unchanged?

for the government: Tim Ogilvie

for the defendant: Susan Otto (W.D. Oklahoma FPD)

19-7009 EOK United States v. Cristerna-Gonzalez

1. Was it plain error to allow the government to make a propensity argument based on Rule 404(b) evidence?
2. Was it reversible error under Rules 401 or 403 to allow testimony about a drug cartel in Mexico, when there was no evidence connecting the defendant to any cartel?
3. Was it plain error to allow two law enforcement officers to testify about the typical practices of drug trafficking?
4. If not individually reversible, do multiple evidentiary and argument errors require a new trial in this drug-distribution case?

for the government: Linda Epperley

for the defendant: Shira Kieval (Colorado FPD)

19-7022 EOK United States v. White (submitted on the briefs)

1. Did the district court err in applying an aggravating-role enhancement under § 3B1.1 because there was insufficient evidence that the defendant directed or controlled any other participants in this drug-distribution scheme, or that there were 5 or more participants?

for the government: Linda Epperley

for the defendant: Warren Gotcher (McAlester, OK)

19-7043 EOK United States v. Neugin

1. Did the officer conduct a search when he moved a camper's hatch and then opened the hatch to look inside, and if so was that search justified by plain view or consent?

for the government: Linda Epperley

for the defendant: Neil Van Dalsem (E.D. Oklahoma FPD)

19-3043 KS United States v. Stein

1. Did the district court err in denying the motion to suppress because the warrant lacked probable cause and particularity, or because it found there was no *Franks* violation?

2. Did the district court err in holding that the good faith exception was an independent reason to deny the motion to suppress, even if the warrant was deficient?

for the government: Alisa Philo

for the defendant: Meredith Esser (Colorado FPD)

Thursday, March 12, 2020
Denver, CO
Courtroom I

8:30 A.M.

Phillips, McKay & Moritz

19-1068 CO United States v. Harris (submitted on the briefs)

1. Did the district court have jurisdiction, two days after the sentencing, to reconsider the sentence in this drug-trafficking case based on its own reconsideration of the reasonableness of the sentence?

for the government: Karl Schock

for the defendant: Andrew Poland (Lakewood, CO)

19-1197 CO United States v. Serr

1. Must this drug-defendant's conviction for conspiracy to distribute methamphetamine be reversed because: (1) there was insufficient evidence of the single, overarching conspiracy charged in the indictment; (2) the variance between the indictment and proof at trial about the number of conspiracies warranted a new trial; (3) coconspirator statements that occurred after the defendant left the conspiracy were admitted against him; or (4) the government failed to prove the quantity and purity of the methamphetamine?

for the government: Paul Farley

for the defendant: Peter Bornstein (Greenwood Village, CO)

19-1203 CO United States v. Zarate-Suarez (submitted on the briefs)

1. Was there sufficient evidence supporting application of an enhancement under USSG § 2D1.1(b)(2) for using or making a credible threat of violence?
2. Was there sufficient evidence supporting application of an enhancement under USSG § 3B1.1(a) for being an organizer or leader in this drug case?

for the government: Paul Farley

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

19-1221 CO United States v. Ramon

1. Did the district court err by ordering this defendant's sentence for a supervised release violation to run consecutive to a federal sentence that is yet to be imposed, when 18 U.S.C. § 3584(a) gives discretion to make that determination to the later-sentencing federal court?

for the government: Michael Johnson

for the defendant: Mark Baker (Albuquerque, NM)

19-2114 NM United States v. Serna (submitted on the briefs)

1. Did the district err in finding that this defendant's seizure in a public park was supported by reasonable suspicion of a drug sale?

for the government: Thomas Outler

for the defendant: Eric Hannum (Albuquerque, NM)

Thursday, March 12, 2020
Denver, CO
Courtroom II

8:30 A.M.

Briscoe, Kelly & Carson

18-2010 NM United States v. Manzanares

1. Are the New Mexico crimes of armed robbery, aggravated assault, and aggravated battery violent felonies for ACCA purposes, and should the district court have granted this defendant 28 U.S.C. § 2255 relief?

for the government: Paige Messec

for the defendant: Margaret Katze (New Mexico FPD)

19-2028 NM United States v. Channon (Brandi) (submitted on the briefs)

1. The Tenth Circuit remanded this fraud case for further proceedings regarding forfeiture. The district court refused to hold an evidentiary hearing on remand. Did the district court violate the mandate, or otherwise err in revising its forfeiture order?

for the government: Paige Messec

for the defendant: James Hankins (Edmond, OK)

19-2029 NM United States v. Channon (Matthew)

1. The Tenth Circuit remanded this fraud case for further proceedings regarding forfeiture. The district court refused to hold an evidentiary hearing on remand. Did the district court violate the mandate, or otherwise err in revising its forfeiture order?

for the government: Paige Messec

for the defendant: Katayoun Donnelly (Denver, CO)

19-1191 CO United States v. Jackson

1. Was there probable cause to arrest and search this defendant, based on the officer's observations of the defendant's interaction with other suspects and a confidential informant, and did the defendant abandon a gun at the scene?

for the government: Conor Flanigan

for the defendant: Andres Guevara (Denver, CO)

19-2046 NM United States v. Martinez

1. Whether New Mexico residential burglary and robbery count as predicate violent felonies under ACCA.

for the government: Paige Messec

for the defendant: Alonzo Padilla (New Mexico FPD)

Thursday, March 12, 2020
Denver, CO
Courtroom III

8:30 A.M.

Hartz, Murphy & Matheson

18-6219 WOK United States v. Wilfong (submitted on the briefs)

1. Did the district court err by denying a motion for sanctions in a § 2255 proceeding, where the defendant alleged that the government breached the plea agreement by asserting that he qualified for an ACCA enhancement? And if so, what is the remedy?

for the government: Steven Creager

for the defendant: Michael Reese (Cheyenne, WY)

19-8034 WY United States v. Koch

1. Did the district court plainly err in this child pornography case by imposing a special condition prohibiting this defendant from possessing adult pornography or any “sexually stimulating” material?

for the government: Timothy Forwood

for the defendant: Dean Sanderford (Colorado FPD)

19-6074 WOK United States v. Orozco-Rivas (submitted on the briefs)

1. Was there reasonable suspicion of criminal activity to justify detaining this defendant pending a dog sniff?

for the government: Mary Walters

for the defendant: Julia Summers (W.D. Oklahoma FPD)

19-6116 WOK United States v. Brook

1. Should evidence from a search of this defendant’s vehicle be suppressed, where the vehicle was impounded on private property contrary to law enforcement rules, and because there was no probable cause?

for the government: Steven Creager

for the defendant: Edward Blau (Oklahoma City, OK)

19-6043 WOK United States v. Cantu

1. Whether Oklahoma controlled-substance distribution offenses count as predicate serious drug offenses under ACCA.

for the government: Steven Creager

for the defendant: Shira Kieval (Colorado FPD)

Thursday, March 12, 2020
Denver, CO
Courtroom IV

8:30 A.M.

Lucero, Holmes & Eid

19-3003 KS United States v. Purvis

1. Did the district court procedurally err by failing to recognize its discretion to vary downward?

for the government: James Brown

for the defendant: David Magariel (Kansas FPD)

19-3049 KS United States v. Ockert

1. Did the district court err in finding that two lane departures provided reasonable suspicion for a traffic stop?
2. Does the “plain view” exception excuse these officers’ warrantless search of this defendant’s car?

for the government: James Brown

for the defendant: Brent Owen (Denver, CO)

19-3105 KS United States v. McKinney

1. Did the district court err when it held a defendant ineligible for relief under the First Step Act solely because his guidelines range remains unchanged? And if so, can a district court deny relief under the Act because the guidelines range has not changed, without considering anything else?

for the government: Jared Maag

for the defendant: Dan Hansmeier (Kansas FPD)

19-3113 KS United States v. Delgado-Lopez

1. Did the district court err when it relied on improper factors and speculation to deny this defendant’s request for a minor-role reduction?

for the government: James Brown

for the defendant: Kayla Gassmann (Kansas FPD)

19-8021 WY United States v. Dominguez

19-8022

1. Whether the district court erred in denying this defendant’s motion to withdraw his plea, when the First Step Act (passed on the same day as the change of plea) substantially changed the punishment he was facing, or because of ineffective assistance of counsel?

for the government: Stuart Healy

for the defendant: Grant Smith (Colorado FPD)

19-8036 WY United States v. Coombs

1. Did the district court err in adding a 2-level enhancement to this assault defendant’s sentence for more than minimal planning under USSG § 2A2.2(b)(1)?
2. Is this assault defendant’s within-guideline sentence substantively unreasonable?

for the government: Chris Martens

for the defendant: Megan Hayes (Laramie, WY)