

TENTH CIRCUIT ORAL ARGUMENT CALENDAR

Tuesday May 11, 2021

Denver, CO¹

Courtroom I

9:00 A.M.

Bacharach, Ebel, McHugh

20-1128 CO Wimberly v. Williams

1. In this 28 U.S.C. § 2241 proceeding, does Mr. Wimberly's continued commitment, following the expiration of the statutory maximum for his underlying sex offense, without being afforded the procedural protections available to civil committees, violate the Equal Protection Clause or the Due Process Clause?

for the government: Ann Stanton

for the defendant: Katie Shen (Colorado FPD)

¹ All arguments will be held virtually via Zoom.

Wednesday, May 12, 2021
Denver, CO
Courtroom I

9:00 A.M.

Bacharach, Ebel, Phillips

20-3106 KS United States v. Hisey

2. Did the district court err when it held that Mr. Hisey's *Rehaif* claim in his § 2255 motion was procedurally barred?
3. Did the district court err when it refused to consider Mr. Hisey's pro se § 2255 motion which was filed before the counseled § 2255 motion?

for the government: Jared Maag

for the defendant: Grant Smith (Colorado FPD)

19-3173 KS United States v. Thompson (submitted on the briefs)

1. Did the district court err when it interpreted the Tenth Circuit's mandate to preclude consideration of the defendant's *Carpenter*-based argument on remand, and when it found that it could not consider arguments made on direct appeal even though the Supreme Court had vacated the judgment?

for the government: James Brown

for the defendant: Deborah Roden (Cheyenne, WY)

20-1183 CO United States v. Malone

1. Did the police officer impermissibly detour from the mission of the traffic stop by investigating other criminal activity, and did those actions impermissibly extend the stop in violation of the Fourth Amendment?

for the government: Cyrus Chung

for the defendant: Grant Smith (Colorado FPD)

Wednesday, May 12, 2021
Denver, CO
Courtroom II

9:00 A.M.

Tymkovich, Kelly, McHugh

20-2014 NM United States v. Lowell

1. Did the district court plainly err in accepting this guilty plea to carjacking resulting in death under 18 U.S.C. § 2119(3), because the factual basis established only carjacking under § 2119(1)?
2. Did the district court err by applying a cross-reference and sentencing this carjacking defendant under the first-degree murder guideline, § 2A1.1?

for the government: Marisa Ong

for the defendant: John Arceci (Colorado FPD)

20-8032 WY United States v. Harris

1. Did the district court err by denying the motion to dismiss because this defendant could not have been charged under state law, which served as the basis for his prosecution under the Assimilated Crimes Act?

for the government: Thomas Szott

for the defendant: Andrew Parnes (Ketchum, ID)

20-2073 NM United States v. Maley

1. Is this defendant entitled to § 2255 relief on his Fourth Amendment claims of illegal search and seizure and ineffective assistance of counsel?

for the government: Stephen White

for the defendant: Shira Kieval (Colorado FPD)

20-2126 NM United States v. Martinez

1. Does the district court have authority to impose a conditional discharge and probation under the Indian Major Crimes Act?
2. Did the district court err by imposing an enhancement for possession of a dangerous weapon, when the defendant used a hammer to break in a door?

for the government: David Patrick Cowen

for the defendant: Aric Elsenheimer (New Mexico FPD)

20-8029 WY United States v. Mjones

1. Did the district court err in holding that transmitting a threat in interstate commerce is a crime of violence under § 924(c)?
2. Did the district court plainly err in holding that transmitting a threat in interstate commerce is a crime of violence under the elements clause of § 924(c) because it can be committed recklessly?

for the government: Thomas Szott

for the defendant: John Arceci (Colorado FPD)

Wednesday, May 12, 2021
Denver, CO
Courtroom III

9:00 A.M.

Hartz, Holmes, Eid

20-3195 KS United States v. Hald

1. Whether the district court misapplied the necessary statutory steps when it denied Mr. Hald's motion to reduce sentence under 18 U.S.C. § 3582(c)(1)(A)(i)?

for the government: Jared Maag

for the defendant: Kayla Gassmann (Kansas FPD)

20-7047 EOK United States v. Wilcox

1. Did the district court abuse its discretion when it relied on a clearly erroneous factual finding to deny the defendant's motion to withdraw his guilty plea?

for the government: Linda Epperley

for the defendant: Dean Sanderford (Colorado FPD)

20-3208 KS United States v. Wesley (submitted on the briefs)

1. Did the district court abuse its discretion when it denied this defendant's motion for a reduced sentence under 18 U.S.C. § 3582(c)(1)(A)?

for the government: Jared Maag

for the defendant: pro se

20-3062 KS United States v. Baker

1. Must this defendant's § 924(c) convictions be vacated because Hobbs Act robbery is not categorically a crime of violence because it can be committed by a non-violent threat to harm property?

for the government: Daniel Lerman

for the defendant: Howard Pincus (Colorado FPD)

20-7033 EOK United States v. Fonville (submitted on the briefs)

1. Did the district court plainly err by requiring this defendant to take any prescribed medication on supervised release because it failed to justify the condition with particularized findings and compelling circumstances?

for the government: Michael Qin

for the defendant: Dean Sanderford (Colorado FPD)

20-3228 KS United States v. Sands

1. Whether the district court misapplied the necessary statutory steps when it denied Mr. Sands' motion to reduce sentence under 18 U.S.C. § 3582(c)(1)(A)(i).

for the government: James Brown

for the defendant: Dan Hansmeier (Kansas FPD)

Friday, May 14, 2021
Denver, CO
Courtroom I

9:00 A.M.

Matheson, Murphy, Moritz

19-1482 CO United States v. Andasola

1. Did the district court violate Rule 605 and improperly add evidence when it told the jury that there was only one video in the case, when that contradicted the defendant's testimony?

for the government: J. Bishop Grewell

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

20-1006 CO United States v. Casados

20-1216

1. Did the district court plainly err by ordering restitution in excess of its statutory authority, specifically by ordering restitution for the expenses of the deceased victim's adult son and his family's travel expenses?

for the government: Paul Farley

for the defendant: David Norris (Phoenix, AZ)

20-1115 CO United States v. Velarde

1. Did the district court err by denying this defendant's motion for a new trial on the basis of new evidence about a witnesses' recantation and the victim's mental-health condition?
2. Did the prosecutor's misstatement of the defense expert's qualifications during closing argument render the trial fundamentally unfair?
3. Did the district court abuse its discretion by refusing to admit testimony that a witness saw the victim laughing after her testimony?
4. Should the Court reverse the conviction in light of the cumulative errors committed at trial?

for the government: J. Bishop Grewell

for the defendant: Mark Edward Scabavea (Lakewood, CO)

20-1228 CO United States v. Wells

1. Did the district court err by entering judgment under § 113(a)(1) because two counts were multiplicitous, or because the jury instruction failed to instruct the jury to find proof of all the elements?
2. Did the district court impermissibly relieve the government of its obligation to prove the requisite mens rea under § 2241?
3. Did the district court err by allowing the admission of evidence about a victim's risk of death, when there was no evidence she suffered an injury that risked death?
4. Did the district court commit a double-counting error when it applied both a § 2A3.1(b)(5) abduction increase and a use-of-force increase under § 2A3.1?
5. Did the district court erred when it applied a life-threatening-injury increase under § 3A3.1(b)(4)(B)?
6. Did the district court err by applying the § 3C1.1 enhancement on the basis of disputed facts, when the defendant was facing a criminal charge for the same conduct?

for the government: Jeffrey Graves

for the defendant: Ty Gee (Denver, CO)

20-4091 UT United States v. Loumoli

1. Does this defendant's collateral attack waiver, which precludes only a challenge to his sentence, bar his challenge to his § 924(c) conviction?
2. Is the collateral attack waiver unenforceable because the underlying guilty plea was not knowing and intelligent?

for the government: Ryan Tenney

for the defendant: Dean Sanderford (Colorado FPD)

Friday, May 14 2021
Denver, CO
Courtroom II

9:00 A.M.

Hartz, Phillips, Carson

19-4147 UT United States v. Koerber

1. After a government appeal and remand on a different issue, was the district court estopped from reconsidering its earlier suppression order, which was not appealed?
2. Was this indictment constructively amended at trial because the jury could have convicted on a fraud scheme that was not charged in the indictment?
3. Should the speedy trial dismissal of this case have been with prejudice because of the delay caused by government tactics and widespread government misconduct? And if not, was the re-indictment too late when it occurred more than 60 days after the dismissal without prejudice became final?
4. Did the district judge abuse his discretion by interfering with the defense case at trial, suggesting the defendant's guilt, interfering with the impeachment of witnesses, impugning the defense expert, and undermining the credibility of the defense?

for the government: Ryan Tenney

for the defendant: Dick Baldwin (Salt Lake City)

20-6064 WOK United States v. Komsonkeo (submitted on the briefs)

1. Did law enforcement have reasonable suspicion of drug trafficking sufficient to extend a stop for a minor traffic infraction?

for the government: Stanley West

for the defendant: Susan Otto (Oklahoma FPD)

20-6112 WOK United States v. Jones

1. Did the district court err by applying the career offender enhancement because this defendant's prior Oklahoma drug conviction is not a controlled substance offense under § 4B1.2?

for the government: Nick Coffey

for the defendant: Kyle Wackenheim (Oklahoma FPD)