

# TENTH CIRCUIT ORAL ARGUMENT CALENDAR

Monday, November 16, 2020

Denver, CO<sup>1</sup>

Courtroom IV

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9:00 A.M.

**19-4117 UT United States v. Romero (submitted on the briefs)**

1. Did police officers have reasonable suspicion to enter a hotel room and seize the occupants, based on a 911 call (which later turned out to be fabricated), when the call contained internal inconsistencies and was not corroborated?

for the government: Ryan Tenney

for the defendant: Bretta Pirie (Utah FPD)

**19-4121 UT United States v. Chavez**

1. Was there reasonable suspicion for a traffic stop, or did the officer unconstitutionally extend the defendant's detention?

for the government: Elizabethanne Stevens

for the defendant: Bel Ami de Montreux (South Jordan, UT)

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

**Tuesday, November 17, 2020**  
**Denver, CO**  
**Courtroom I**

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**9:00 A.M.**

**19-1243 CO United States v. Alfred**

1. Did the district court abuse its discretion by admitting social media posts about pimp culture from 2015 as evidence of the defendant's 2018 charges for enticing and facilitating prostitution, or by not excluding the posts under Rule 403?

for the government: Elizabeth Ford Milani  
for the defendant: Katie Shen (Colorado FPD)

**19-1432 CO United States v. Venezia**

1. Did the district court err by concluding that the impoundment and search of this defendant's vehicle was constitutional?

for the government: Elizabeth Ford Milani  
for the defendant: Dean Sanderford (Colorado FPD)

**19-1380 CO United States v. Allen**

1. Did this defendant's conviction and 13-month sentence violate due process, when applicable regulations provide for a sentence of up to 12 months?
2. Did the district court err by ordering restitution for losses caused by uncharged conduct and by relying only on unverified statements of losses?

for the government: Karl Schock  
for the defendant: Grant Smith (Colorado FPD)

**19-1440 CO United States v. Fifield**

1. Did the district court plainly err in calculating this defendant's criminal history score, by counting two sentences for failing to display proof of insurance separately when the tickets were imposed at the same time?

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

**19-1304 CO United States v. Maynard**

1. Was there sufficient evidence that the assets stolen in this case belonged to a qualifying "health care benefit program"?
2. Did the district court err by ordering restitution for the employer's promised matching 401(k) contributions, in addition to the employees' stolen contributions, or by ordering restitution for hospital bills paid by employee victims who did not receive the health insurance they paid for?
3. For a conviction for impeding the administration of tax law, did the district court err by calculating the loss as the entire tax debt owed by the two companies overseen by the defendant?

for the government: Aaron Teitelbaum  
for the defendant: Grant Smith (Colorado FPD)

**Tuesday, November 17, 2020**  
**Denver, CO**  
**Courtroom III**

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**9:00 A.M.**

**19-8067 WY United States v. Murray (submitted on the briefs)**

1. Did the district court err when it denied this defendant's motion to suppress by making factual findings unsupported by the record and by failing to hold an evidentiary hearing?

for the government: Jonathan Coppom

for the defendant: Deborah Roden (Cheyenne, WY)

**19-8083 WY United States v. Powell**

1. Did officers in this case conduct an impermissible warrantless search of a business by inspecting the curtilage of the home for 8 minutes after receiving no answer to their knock, and by pressing their faces against gaps in the structure, all along a closed garage door?

for the government: Jonathan Coppom

for the defendant: Steven Titus

**Thursday, November 19, 2020**  
**Denver, CO**  
**Courtroom II**

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**9:00 A.M.**

**19-2184 NM United States v. Perrault**

1. Was this priest, accused of sex offenses against children, deprived of his right to an impartial jury due to the venire's demonstrated sympathy for victims of sex offenses and panel members' descriptions of their poor opinions of him? And is that error a structural error requiring reversal, even absent an objection?
2. Did the jury instructions in this sexual-abuse trial overlap and lack specificity, to the point of allowing verdicts that were non-unanimous and violated the defendant's double-jeopardy rights?
3. Did the district court err by allowing the government to introduce hundreds of alleged incidents of prior sexual abuse?
4. Did multiple errors, including lack of an impartial jury, admission of prejudicial evidence, and erroneous jury instructions, mandate a new trial?
5. Did the district court err when it applied the § 3C1.1 enhancement, based on the defendant's trip out of the country after he discovered the investigation against him?

for the government: Sean Sullivan

for the defendant: Aric Elsenheimer (New Mexico FPD)

**19-3220 KS United States v. Cade**

1. Did the district court err when it found a witness's statements to be voluntary and the admission of those statements not to violate due process, when the statements were made at the police station, after police kicked down the witness's door and ordered her out of the house?

for the government: James Brown

for the defendant: Howard Pincus (Colorado FPD)

**19-6182 WOK United States v. Jones**

1. Did the district court err when it denied this defendant's motion to suppress, because officers illegally searched a third party's shop to arrest him, without sufficient evidence that he lived at the shop or was inside the shop?

for the government: Steven Creager

for the defendant: Ryan Villa (Albuquerque, NM)

**19-6188 WOK United States v. Kaspereit**

1. Was the evidence presented at trial sufficient to establish that there was a valid order of protection entered against this defendant, that he had the opportunity to participate in a hearing about the order, and that he knew there was an order of protection against him, when he stated he was not a prohibited person and to purchase a firearm? Did the district court err by failing to instruct the jury that he had to know he was a prohibited person?
2. Is this defendant's statutory-maximum 120-month sentence for firearms possession by a prohibited person, a sentence four times the guidelines range, substantively unreasonable?

for the government: McKenzie Anderson

for the defendant: John Cannon (Edmond, OK)

**20-6014 WOK United States v. Robertson**

1. Did the district court err by failing to address this defendant's request for a downward variance, and should the case be remanded for the court to explain or rule on the request?

for the government: Timothy Ogilvie

for the defendant: Paul Lacy (Oklahoma FPD)

**Thursday, November 19, 2020**  
**Denver, CO**  
**Courtroom III**

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**9:00 A.M.**

**19-2096 NM United States v. Sloan**

1. Was the trial evidence sufficient to establish that the victim was under 12, as required for a conviction under 18 U.S.C. § 2241(c)?
2. Do three plain sentencing errors, considered cumulatively, require resentencing in this case, when each error individually would arguably be harmless?

for the government: Nicholas Ganjei

for the defendant: John Arceci (Colorado FPD)

**19-1442 CO United States v. Lujan**

1. Were this defendant's due process rights violated by the prosecutor's improper statements, including misstatements of the evidence and references to evidence outside the record?
2. Did the district court err by admitting evidence of prior bad acts for an improper purpose under Rule 404(b)?

for the government: Brian Dunn

for the defendant: Ryan Ray (Tulsa, OK)

**18-1296 CO United States v. Jumaev**

1. Did a six-year delay in this terrorism case violate the defendant's constitutional speedy trial right?
2. Was the government's warrantless surveillance of this terrorism defendant under the Foreign Intelligence Surveillance Act unconstitutional? And/or was disclosure of the FISA materials required for litigation of this suppression issue? Was the defendant entitled to notice of other surveillance tools used by the government?
3. Did the district court err in declining to impose sufficient sanctions for the government's repeated discovery violations?

for the government: Joseph Palmer

for the defendant: Caleb Kruckenberg (Washington, D.C.)

**18-1366 CO United States v. Muhtorov**

1. Did a six-year delay in this terrorism case violate the defendant's constitutional speedy trial right?
2. Was the government's warrantless surveillance of this terrorism defendant under the Foreign Intelligence Surveillance Act unconstitutional? And/or was disclosure of the FISA materials required for litigation of this suppression issue? Was the defendant entitled to notice of other surveillance tools used by the government?

for the government: Joseph Palmer

for the defendant: Patrick Toomey (New York, NY)

**Thursday, November 19, 2020**  
**Denver, CO**  
**Courtroom IV**

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**9:00 A.M.**

**19-3030 KS United States v. Stein**  
**19-3034 United States v. Allen**  
**19-3035 United States v. Wright**

1. Did the district court err by refusing to instruct the jury on entrapment in this terrorism case?
2. Did the district court err in denying this defendant's Jury Act challenge, 28 U.S.C. § 1861, based on the court's practice of calling petit jurors only from certain geographic districts?
3. Did the district court err by apply a terrorism enhancement under USSG § 3A1.4?
4. Whether the government's knowing admission and publication of untruthful transcripts violated defendant Wright's due process rights?
5. Whether the district court abused its discretion in admitting coconspirator statements under Rule 801(d)(2)(E)?
6. Whether the district court erred in denying defendant Wright's motion for judgment of acquittal with respect to the 18 U.S.C. § 1001(a)(2) charge?
7. Whether cumulative error (violations of Rule 106 and the defendant's right to cross-examine an adverse witness) at defendant Wright's trial amounts to reversible error?

for the government: Erin Flynn

for defendant Stein: Meredith Esser (Colorado FPD)

for defendant Allen: Paige Nichols (Kansas FPD)

for defendant Wright: Kari Schmidt (Wichita, KS)

**19-3265 KS United States v. Williams**

1. If this traffic stop was not escalated into an arrest, did the officers impermissibly extend the stop beyond its purpose without reasonable suspicion?
2. Did the officers' display of force, by pulling their guns, transform this traffic stop into a de facto arrest at the outset, without probable cause?

for the government: Jared Maag

for the defendant: Lindsay Runnels (Kansas City, MO)

**19-3177 KS United States v. Gaines**

1. Was there reasonable suspicion, based on an anonymous 911 call, to stop this defendant?

for the government: Carrie Capwell

for the defendant: Paige Nichols (Kansas FPD)

**Thursday, November 20, 2020**  
**Denver, CO**  
**Courtroom II**

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**9:00 A.M.**

**19-2092 NM United States v. Sanchez**

1. Did the district court err in finding that this defendant's encounter with the police was consensual?
2. Did the district court err when it denied this defendant's motion to suppress evidence because the government failed to prove reasonable suspicion to detain him or probable cause to arrest him and search his jacket?
3. Should this defendant's statement be suppressed because it was obtained in violation of Miranda?
4. Should this defendant's conviction be vacated because the government failed to allege and prove that he knew of his felon status?
5. Do convictions for New Mexico aggravated battery and burglary qualify as violent felonies under ACCA?
6. Did the district court err in sentencing this defendant under ACCA, based on this defendant's prior Colorado robbery conviction?

for the government: Christopher McNair

for the defendant: Margaret Katze (New Mexico FPD)

**19-2153 NM United States v. Mercado-Garcia**

1. Did the stop and search of this defendant's car violate the Fourth Amendment because it was impermissibly extended, and because the defendant did not consent to the search?
2. Did the district court err under the Fifth or Sixth Amendments by prohibiting the defense from providing information about implicit racial and ethnic prejudices to potential jurors?

for the government: Tiffany Walters

for the defendant: Irma Rivas (New Mexico FPD)

**19-2161 NM United States v. Torres**

1. Was law enforcement's search of this vehicle valid, either because there was probable cause or because there was consent to search?
2. Did law enforcement's pat down of this defendant violate the Fourth Amendment, because there were no facts suggesting the defendant was armed and dangerous?
3. Did the stop of this defendant's vehicle violate the Fourth Amendment, because it lacked reasonable suspicion, because a completed parking violation did not justify the stop, and/or because the police impermissibly extended the stop? And did the district court apply an incorrect legal standard by reviewing the magistrate judge's finding "in the light most favorable to the government?"

for the government: Joni Stahl

for the defendant: Amanda Skinner (New Mexico FPD)

**19-2154 NM United States v. Perez-Perez**

1. Was this defendant's guilty plea to possessing a firearm while unlawfully present in the United States not voluntary and intelligent, when he was incorrectly told that the prohibition applies to all aliens?

for the government: Tiffany Walters

for the defendant: Shira Kieval (Colorado FPD)

**19-2199 NM United States v. Campbell (submitted on the briefs)**

1. Did the district court engage in impermissible double-counting by applying a 5-level enhancement under § 2A1.1(b)(3)(A), for assault causing serious bodily injury, and a 2-level enhancement under § 2A2.2(b)(7), for an assault conviction under 18 U.S.C. § 111(b)?
2. Is this defendant's low-end guidelines sentence of 151 months substantively unreasonable because the court did not consider the § 3553(a) factors?

for the government: Emil Kiehne

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