

TENTH CIRCUIT ORAL ARGUMENT CALENDAR

Tuesday, September 27, 2022

Denver, CO

Courtroom I

9:00 A.M.

Phillips, Lucero & McHugh

21-4003 UT United States v. Chatwin

1. Did this defendant's appeal waiver bar his post-conviction challenge to his conviction, or only his sentence?

for the government: Nathan Jack

for the defendant: Benji McMurray (Utah FPD)

21-3096 KS United States v. Spaeth

1. Did the district court err by holding that the reservation of rights in this appeal waiver in this defendant's plea agreement did not allow him to raise pre-plea government misconduct to challenge his conviction, or by holding that he was procedurally barred from doing so?

for the government: Bryan Clark

for the defendant: Paige Nichols (Kansas FPD)

Tuesday, September 27, 2022
Denver, CO
Courtroom II

9:00 A.M.

Moritz, Seymour & Ebel

20-8056 WY United States v. Massmann (submitted on the briefs)

20-8057

1. Did the district court err at revocation by imposing an additional term of supervised release that exceeds the statutory maximum permitted by the statute?

for the government: Timothy Forwood

for the defendant: Josh Lee (Colorado FPD)

21-1323 CO United States v. Trujillo

1. Did the district court err by relying on an incorrect interpretation of constructive possession in applying the enhancement under USSG § 2K2.1(b)(4)?

for the government: Michael Johnson

for the defendant: Candace Caruthers (Colorado FPD)

21-5074 NOK United States v. McKinney

1. Did the district court plainly err by failing to find a *Franks* violation because the trial testimony showed the officer made a reckless omission or misstatement in the affidavit authorizing the search warrant?

for the government: Leena Alam

for the defendant: Kathleen Shen (Colorado FPD)

21-5079 NOK United States v. Jones

1. Did the district court violate Rule 702 and the jury's role by allowing experts to testify that they believed the accusations against the defendant?

for the government: Leah Paisner

for the defendant: Dean Sanderford (Colorado FPD)

21-6127 WOK United States v. Diaz-Menera

1. Did the government breach the plea agreement by failing to move for the additional one-level reduction under USSG § 3E1.1 based on the defendant's objection to guidelines calculations?
2. Did the district court err by setting this defendant's level under USSG § 2S1.1(a)(1), because the proceeds were from drug sales, when it was undisputed that this defendant was not personally involved in drug distribution?

for the government: Nick Coffey

for the defendant: Dean Sanderford (Colorado FPD)

22-7000 EOK United States v. Booker

1. Did the district court plainly err by considering the need for retribution when sentencing this defendant on revocation of supervised release?

for the government: Linda Epperley

for the defendant: Dean Sanderford (Colorado FPD)

Tuesday, September 27, 2022
Denver, CO
Courtroom III

9:00 A.M.

Hartz, Murphy & Holmes

21-4133 UT United States v. Pehrson

1. Did the district court err by failing to perform its gatekeeper function and allowing the testimony of two medical experts?

for the government: Jennifer Williams

for the defendant: Freyja Johnson (Bountiful, UT)

Wednesday, September 28, 2022
Denver, CO
Courtroom II

9:00 A.M.

Holmes, Ebel & Eid

21-8079 WY United States v. Batara-Molina

1. Did the district court err when it denied this defendant's motion to suppress because law enforcement impermissibly extended the stop to conduct a criminal investigation without reasonable suspicion?

for the government: Jonathan Coppom

for the defendant: Josh Lee (Colorado FPD)

Wednesday, September 28, 2022
Denver, CO
Courtroom III

9:00 A.M.

Matheson, Kelly & Phillips

21-3071 KS United States v. Bush

1. Did the district court err by increasing this defendant's sentence based on judge-found facts about acquitted conduct?
2. Did the district court err in finding the drug quantity attributable to this defendant because the hearsay statements on which the findings were based were unreliable?
3. Did the district err by applying a USSG § 3B1.1 enhancement to this defendant?

for the government: Javier Sinha

for the defendant: John Arceci (Colorado FPD)

21-2099 NM United States v. Gonzales

1. Did the district court err when it admitted this defendant's un-Mirandized statements at the jury trial and does the error warrant reversal?
2. Did the district court err by admitting derivative physical evidence from the unwarned statements?
3. Does 18 U.S.C. § 922(g) exceed Congress's commerce clause authority?

for the government: Tiffany Walters

for the defendant: Leah Yaffe (Colorado FPD)

Thursday, September 29, 2022
Denver, CO
Courtroom II

8:30 A.M.

Matheson, Carson & Rossman

21-3202 KS United States v. Canada

1. Did the district court err when it determined that a warrantless “protective” search of this defendant’s vehicle did not violate the Fourth Amendment?

for the government: Molly Gordon

for the defendant: Dan Hansmeier (Kansas FPD)

21-7053 EOK United States v. Patterson

1. Did the district court err by applying the 4-point enhancement for unduly influencing a minor under USSG § 2A3.2(b)(2)(B)(ii)?
2. Did the district court err by applying the good faith exception to this search, where the law enforcement officer was acting outside his jurisdiction when conducting the investigation and search?

for the government: Kyle Easley

for the defendant: Michael Abel (Tulsa, OK)

Thursday, September 29, 2022
Denver, CO
Courtroom III

8:30 A.M.

McHugh, Baldock & Murphy

21-1286 CO United States v. Nevarez (submitted on the briefs)

1. Did the district court err by not giving a 2-level reduction for acceptance of responsibility, where the defendant conceded drug possession but contested only whether he intended to distribute?
2. Did the district court err by denying this defendant's motion to dismiss for speedy trial violations, when delays were based on multiple COVID-related orders?

for the government: Karl Schock

for the defendant: James Hankins (Edmond, OK)

21-2108 NM United States v. Livingston (submitted on the briefs)

1. Is this defendant's upward-variance sentence to 240 months substantively unreasonable?

for the government: Frederick Mendenhall

for the defendant: Theresa Duncan (Santa Fe, NM)

21-6111 WOK United States v. Pitts-Green (submitted on the briefs)

1. Is a pre-2008 Oklahoma drug conviction, which could have been for distribution of hemp, an ACCA predicate?

for the government: Bow Bottomly

for the defendant: Laura Deskin (Oklahoma FPD)

22-6025 WOK United States v. Maldonado-Passage

1. Did the district court erroneously sentence this defendant to consecutive sentences on two multiplicitous counts of 18 U.S.C. § 1958(a), because the two counts involved a common criminal objective and were part of the same course of conduct?

for the government: Steven Creager

for the defendant: Molly Parmer (Atlanta, GA)