

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

United States v. Cantrell

433 F.3d 1269 (9th Cir. 2006) · No. Nos. 03-30562, 03-30563, 03-30565, 03-30567, 03-30568, 04-30026, 04-30028 · Decided January 13, 2006

SUMMARY

The Ninth Circuit addressed consolidated appeals involving defendants convicted of methamphetamine-related offenses and challenges to their sentences. The court held that Newton Cantrell was entitled to a limited remand under *United States v. Booker* because the record did not establish whether his sentence would have been materially different under advisory Sentencing Guidelines. The court rejected the other defendants' challenges to drug-quantity findings, evidentiary reliability, role adjustments, and other Guidelines applications, affirming in part and remanding in part.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Ninth Circuit                                                                                                                                                                                                                                                                                                                                                          |
| WRITING FOR THE COURT | Gould, Circuit Judge; Pregerson, Circuit Judge; Graber, Circuit Judge                                                                                                                                                                                                                                                                                                                                         |
| JURISDICTION          | Federal                                                                                                                                                                                                                                                                                                                                                                                                       |
| DECIDED               | January 13, 2006                                                                                                                                                                                                                                                                                                                                                                                              |
| DOCKET                | Nos. 03-30562, 03-30563, 03-30565, 03-30567, 03-30568, 04-30026, 04-30028                                                                                                                                                                                                                                                                                                                                     |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Consolidated appeals from federal criminal sentences imposed after jury convictions for methamphetamine conspiracy and related offenses. The defendants challenged Booker-related sentencing issues and alleged misapplications of the Sentencing Guidelines.                                                                                                                                                 |
| STANDARD OF REVIEW    | The court reviewed the district court's interpretation of the Guidelines de novo, its application of the Guidelines to the facts for abuse of discretion, and its factual findings for clear error. It reviewed the ultimate sentence for reasonableness under 18 U.S.C. § 3553(a) when no material Guidelines-application error existed. Unpreserved Booker error was reviewed under plain-error principles. |
| PRECEDENTIAL VALUE    | Published Ninth Circuit opinion; precedential                                                                                                                                                                                                                                                                                                                                                                 |
| PARTIES               | Newton James Cantrell, Sr., Angela Daniel Walker, Jack V. Coversup, Theresa Ann Walker, Jeanine Lucille Renz v. United States of America                                                                                                                                                                                                                                                                      |

## TOPICS

sentencing guidelines

sentencing

criminal procedure

due process

appellate procedure

## PRACTICE AREAS

federal criminal law

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evidence at sentencing

## QUESTIONS PRESENTED

1. Whether Newton Cantrell's sentence required a limited remand because the record did not reliably establish whether the district court would have imposed a materially different sentence under advisory Sentencing Guidelines after Booker.
2. Whether the district court violated Angela Walker's due process rights by limiting repetitive cross-examination of a sentencing witness and relying on that witness's testimony to determine drug quantity.
3. Whether Angela Walker was entitled to a minor-participant reduction under U.S.S.G. § 3B1.2(b).
4. Whether the district court clearly erred in attributing at least 500 grams of methamphetamine to Theresa Walker and Jeanine Renz for Guidelines purposes.
5. Whether Jack Coversup was entitled to reductions for acceptance of responsibility or minimal participation under U.S.S.G. §§ 3E1.1 and 3B1.2.

## HOLDINGS

1. When an unpreserved Booker error may have affected a defendant's substantial rights and the record does not reliably show whether the sentence would have been materially different under advisory Guidelines, the appropriate remedy is a limited remand to the sentencing court under Ameline.
2. After Booker, a material error in calculating the applicable Guidelines range remains grounds for resentencing; appellate courts review Guidelines interpretation de novo, factual findings for clear error, and application of the Guidelines to facts for abuse of discretion before considering the reasonableness of the overall sentence.
3. A district court may limit repetitive sentencing cross-examination after determining that the subject has been exhausted, and may rely on testimony that is sufficiently reliable and corroborated without violating due process.
4. A defendant seeking a minor- or minimal-participant reduction must show that she was substantially less culpable than her co-participants; merely being less culpable or among the least culpable is insufficient.
5. A district court does not clearly err in attributing drug quantities for Guidelines purposes when the attribution is supported by reliable testimony and the record as a whole makes the finding plausible.
6. A defendant who proceeds to trial may qualify for an acceptance-of-responsibility reduction in appropriate circumstances, including when the defendant contests factual guilt but demonstrates genuine contrition; however, the reduction may be denied when the defendant fails to truthfully admit the offense conduct.

7. A defendant convicted as the sole participant in the offense of conviction must produce evidence that the relevant conduct involved more than one participant and that the defendant was relatively minor compared with those participants before receiving a § 3B1.2 reduction.

#### KEY QUOTATIONS

*“Booker's mandate that appellate courts should review sentences for "reasonableness," 125 S.Ct. at 765-67, applies only to our review of the ultimate sentence; after Booker we continue to review "the district court's interpretation of the Sentencing Guidelines de novo, the district court's application of the Sentencing Guidelines to the facts of [a] case for abuse of discretion, and the district court's factual findings for clear error.”*” (433 F.3d at 1276)

*“Accordingly, we hold that a material error by the district court in calculating the applicable Guidelines range is grounds for resentencing, just as it was before Booker.”* (433 F.3d at 1277)

*“Because the district court did not unreasonably restrict A. Walker's ability to test Morales's reliability through cross-examination, the question is whether the district court abused its discretion in determining that Morales's testimony was sufficiently reliable to satisfy the due process concern that a defendant not "be sentenced on the basis of materially incorrect information.”*” (433 F.3d at 1279)

*“It is not enough that a defendant was less culpable than his or her co-participants, or even that he or she was among the least culpable of the group, because a minimal or minor participant adjustment under § 3B1.2 is available only if the defendant was "substantially" less culpable than his or her co-participants.”* (433 F.3d at 1280)

*“We confronted this same issue in United States v. McKinney, another case where "the district court appeared to assume, that a defendant who goes to trial can only receive the reduction if the trial is limited to issues unrelated to factual guilt.”*” (433 F.3d at 1282)

#### FACTUAL BACKGROUND

Federal, local, and tribal law-enforcement agencies conducted a five-year investigation into a methamphetamine and marijuana distribution conspiracy in and around the Fort Peck Indian Reservation and northeastern Montana. Several defendants were convicted of conspiracy to distribute methamphetamine or related drug offenses, and the district court attributed substantial drug quantities to them based largely on trial evidence, presentence information, and testimony from Mario Morales. The district court imposed lengthy prison terms under the mandatory Guidelines regime in effect before Booker.

#### PROCEDURAL HISTORY

After a jury trial, Newton Cantrell, Angela Walker, Theresa Walker, Jeanine Renz, and James Murphy were convicted of methamphetamine conspiracy, while Jack Coversup was acquitted of conspiracy but convicted of possession with intent to distribute methamphetamine. The district court imposed sentences using the then-mandatory Federal Sentencing Guidelines. The Ninth Circuit had previously affirmed the convictions in a memorandum disposition and considered only sentencing issues in this published opinion. The court affirmed the sentences of Angela Walker, Theresa Walker, Coversup, and Renz, and remanded Newton Cantrell's sentence

for an Ameline limited remand because the record did not establish whether the district court would have imposed a materially different sentence under advisory Guidelines.

## DISPOSITION

other

## REMAND INSTRUCTIONS

As to Newton Cantrell, the district court must follow the limited-remand procedures outlined in *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005), and determine whether it would have imposed a materially different sentence had it known that the Guidelines were advisory. The sentences of Angela Walker, Theresa Walker, Jack Coversup, and Jeanine Renz were affirmed.

## CASES CITED

- *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005)
- *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc)
- *United States v. Kimbrew*, 406 F.3d 1149 (9th Cir. 2005)
- *United States v. Moreno-Hernandez*, 419 F.3d 906 (9th Cir. 2005)
- *United States v. Weiner*, 578 F.2d 757 (9th Cir. 1978) (per curiam)
- *United States v. Adams*, 694 F.2d 200 (9th Cir. 1982)
- *United States v. Petty*, 982 F.2d 1365 (9th Cir. 1993), amended by 992 F.2d 1015 (9th Cir. 1993)
- *United States v. Johansson*, 249 F.3d 848 (9th Cir. 2001)
- *United States v. Chee*, 110 F.3d 1489 (9th Cir. 1997)
- *United States v. Sanchez*, 908 F.2d 1443 (9th Cir. 1990)
- *United States v. Awad*, 371 F.3d 583 (9th Cir. 2004)
- *United States v. Petti*, 973 F.2d 1441 (9th Cir. 1992)
- *United States v. Johnson*, 297 F.3d 845 (9th Cir. 2002)
- *United States v. Benitez*, 34 F.3d 1489 (9th Cir. 1994)
- *United States v. Andrus*, 925 F.2d 335 (9th Cir. 1991)
- *SEC v. Rubera*, 350 F.3d 1084 (9th Cir. 2003)
- *United States v. Velasco-Medina*, 305 F.3d 839 (9th Cir. 2002)
- *United States v. McKinney*, 15 F.3d 849 (9th Cir. 1994)
- *United States v. Nielsen*, 371 F.3d 574 (9th Cir. 2004)
- *United States v. Ochoa-Gaytan*, 265 F.3d 837 (9th Cir. 2001)
- *United States v. Webster*, 996 F.2d 209 (9th Cir. 1993) (per curiam)
- *United States v. Demers*, 13 F.3d 1381 (9th Cir. 1994)
- *United States v. Walker*, 993 F.2d 196 (9th Cir. 1993)
- *United States v. Cortez-Arias*, 403 F.3d 1111 (9th Cir.), amended by 425 F.3d 547 (9th Cir. 2005)

- United States v. Menyweather, 431 F.3d 692 (9th Cir. 2005)

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