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Appellate Highlights

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EDITOR'S NOTE: *The following appellate cases of interest were recently decided by the Utah Supreme Court, Utah Court of Appeals, and United States Tenth Circuit Court of Appeals. The following summaries have been prepared by the authoring attorneys listed above, who are solely responsible for their content.*

UTAH SUPREME COURT

State v. Malloy **2021 UT 3 (Jan. 21, 2021)**

The court of appeals affirmed the district court's denial of a motion to dismiss, relying on *State v. James* which held that because officers can direct a driver to leave a vehicle incident to a traffic stop, there is no "functional" or constitutionally relevant difference if the officer opens the car door. The supreme court **repudiated and otherwise limited James**, holding that "it can no longer be said that it makes no constitutional difference whether a police officer opens a car door or asks a driver to do so," based upon Fourth Amendment law developments shifting the focus from one of reasonable expectation of privacy to "an originalist, property-based inquiry." The court nevertheless affirmed the denial of the motion to suppress based upon the officer's objectively reasonable reliance on then-valid precedent.

Feldman v. Salt Lake City Corp. **2021 UT 4 (Jan. 28, 2021)**

Plaintiffs brought suit against a municipality after a family member was caught in a creek current while walking dogs in a historic nature park. The district court dismissed based on an application of Utah's Limitations on Landowner Liability Act. Reversing, the supreme court held (a) section 401 of the Act did not violate the Wrongful Death Clause of the Utah Constitution, but (b) the district court erred in granting the motion to dismiss because plaintiffs sufficiently alleged that the drowning was not caused by an inherent risk of the recreational activities at issue. In doing so, the court **clarified the test for determining whether a risk was an integral and natural part of a given activity under the Limitations on Landowner Liability Act.**

Kamoe v. Ridge **2021 UT 5 (Jan. 28, 2021)**

Kamoe entered a negotiated plea and was sentenced in a justice court proceeding. She then appealed to the district court but withdrew her appeal when that court denied her renewed motion to suppress. Back in justice court, Kamoe requested that the original judgment be reinstated. The prosecutor objected, arguing the operation of Utah Code § 78A-7-118(3) had voided the judgment upon Kamoe's appeal. That statute provides that an appeal of a negotiated plea voids the "negotiation with the prosecutor." Both the justice court and the district court agreed this language meant that the original judgment was voided by Kamoe's appeal. On appeal from the district court's denial of Kamoe's petition for extraordinary relief, the Utah Supreme Court reversed and remanded with instructions to restore the original judgment, holding **the plain language of § 78A-7-118(3) does not void any sentence or judgment entered by the justice court, only the negotiated plea between the defendant and prosecutor.**

Southern Utah Wilderness Alliance v. San Juan County Comm'n **2021 UT 6 (Feb. 25, 2021) and**

Southern Utah Wilderness Alliance v. Kane County Comm'n **2021 UT 7 (Feb. 25, 2021)**

In these two related appeals, the Utah Supreme Court held that **Southern Utah Wilderness Alliance both had standing to assert and had sufficiently pled a claim against San Juan and Kane County for violation of Utah's Open and Public Meetings Act based on meetings the County Commissions had with Ryan Zinke, the United States Secretary of the Interior.** The supreme court first clarified the distinction between standing and the merits of a claim. The district court erred in conflating the two when it held that SUWA lacked standing because the meetings with Secretary Zinke were not

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subject to the Open and Public Meetings Act, such that SUWA and its members were not denied any rights under the Act. The court additionally held that the district court erred in dismissing SUWA's claims under Rule 12(b)(6). Without deciding the proper interpretation of the term "meeting," the court held that SUWA had provided fair notice of the basis of its claim. "In the context of the Act, pleadings will provide defendants with adequate notice when they specifically identify the meeting or meetings at issue and contain 'reliable indicia that lead to a strong inference' that 'matters' under the public body's jurisdiction were discussed."

UTAH COURT OF APPEALS

Blank v. Garff Enterprises, Inc. 2021 UT App 6 (Jan. 22, 2021)

The court of appeals affirmed the district court's summary judgment and directed verdict dismissing the plaintiffs' claims against the manufacturer, retailer, and distributors of an automobile involved in a high-speed rear-end collision. The court held that **the district court was within its discretion to exclude untimely supplemental expert declarations that the plaintiffs attempted to offer in opposition to the defendants' summary judgment motion, which were not harmless or excused by good cause.** The court further held that the directed verdict dismissing the plaintiffs' negligent design claims was correct, where the plaintiffs had failed to present evidence that any defendants designed the automobile or its component parts.

Anderson-Wallace v. Rusk 2021 UT App 10 (Feb. 4, 2021)

In this wrongful death case, the plaintiff argued that the semi-truck driver defendant negligently drove on the shoulder of a freeway exit, striking and killing the decedent. The driver and her employer argued that the decedent darted into the truck's lane of travel in a suicide attempt. They also sought to introduce evidence showing the decedent was seriously intoxicated at the time of the accident and had struggled with debilitating alcohol abuse in the months prior. The trial court excluded this evidence at trial, concluding that the risk of "unfair prejudice" to the plaintiff substantially outweighed the evidence's probative value under Utah R. Evid. 403. On appeal from a substantial jury verdict in favor of the plaintiff, the Utah Court of Appeals reversed, holding that **the trial court abused its discretion and prejudiced the defense by excluding the evidence of the decedent's intoxication and history**

of alcohol abuse. The evidence was highly probative on both the issue of liability and the extent of general damages, and any prejudice to the plaintiff was not "unfair" simply because it was damaging to the plaintiff's case.

Turpin v. Valley Obstetrics and Gynecology 2021 UT App 12 (Feb. 11, 2021)

This medical malpractice action involved the applicable standard of review of a district court's decision regarding whether the plaintiff had waived arbitration by substantially participating in the litigation. **Where the district court's decision compelling arbitration is based on documentary evidence alone, the appellate court will decide whether the plaintiff materially participated in the litigation before requesting arbitration and, if so, whether the defendants were prejudiced, giving no deference to the district court's decision.** Applying that standard of review, the court of appeals held that the defendants had not established the requisite prejudice.

State v. Valdez 2021 UT App 13 (Feb. 11, 2021)

Reversing convictions for kidnapping, robbery, and aggravated assault, the court of appeals held that **the defendant's right against self-incrimination under the Fifth Amendment was violated when the prosecution presented evidence that he refused to provide the swipe code to his cell phone to officers and relied upon that evidence in closing argument,** thereby inviting the jury to infer guilt from the defendant's silence.

TENTH CIRCUIT

Lance v. Morris 985 F.3d 787 (10th Cir. Jan. 19, 2021)

In this appeal from summary judgment in favor of county official defendants, **the Tenth Circuit adopted the Second Circuit's three-part test for determining whether a purported failure to train for a given situation shows deliberate indifference by policymakers in the context of 42 U.S.C. § 1983 claims.** The test asks (1) whether policymakers know "to a moral certainty that . . . employees will confront a given situation"; (2) whether the situation presents "a difficult choice of the sort that training or supervision will make less difficult"; and (3) whether a "wrong choice" by an employee "will frequently cause the deprivation of a citizen's constitutional rights."

United States v. Barrett**985 F.3d 1203 (10th Cir. Jan. 19, 2021)**

In this postconviction proceeding, the Tenth Circuit considered whether the district court erred in analyzing the prejudice prong of the ineffective assistance of counsel inquiry under the Sixth Amendment. Vacating the death sentence and remanding for resentencing, the Tenth Circuit held that **defense counsel's failure to present evidence of organic brain damage, bipolar disorder, and other mental impairments during the sentence phrase resulted in prejudice** because, upon balancing the aggravating and mitigating factors, there was a reasonable probability that at least one juror would have declined to recommend the death sentence.

United States v. Chavez**985 F.3d 1234 (10th Cir. Jan. 20, 2021)**

In this case involving a conviction for a felon in possession of a firearm, the Tenth Circuit reversed a denial of a motion to suppress. The district court denied the motion based upon the inventory search exception. **While the handgun was in plain view on the driver-side floorboard, which gave grounds for the officers' locating the handgun, the court held there was no exception to the Fourth Amendment that**

justified the search of the vehicle and the officers' taking possession of the gun. The owner of the car took possession of the vehicle, negating the inventory search, and there was no risk justifying the community caretaker exception.

United States v. Salazar**987 F.3d 1248 (10th Cir. Feb. 16, 2021)**

Challenging the revocation of his term of supervised release and reimprisonment of ten months, the defendant argued that the district court imposed an illegal sentence because the combined term of the original sentence and ten additional months exceeded the statutory maximum. Affirming, the Tenth Circuit held **18 U.S.C. § 3583 authorizes revocation and resulting additional incarceration even when the total term exceeds the maximum possible under the statute.** In doing so, the court rejected the defendant's argument that *Johnson v. United States*, 529 U.S. 694 (2000), required aggregation of the imprisonment and reimprisonment.

Carlile v. Reliance Standard Life Ins. Co.**988 F.3d 1217 (10th Cir. Feb. 22, 2021)**

This appeal arose from a dispute between an employee and an ERISA plan administrator over entitlement to long-term disability

benefits. The relevant policy language provided coverage to an “active, Full-time employee” when the disability arose, but the administrator argued that the employee was not “active” because his termination was pending at the time of the disability. The Tenth Circuit agreed with the district court that **the phrase “active Full-time employee” was ambiguous and that it should be construed in favor of the employee finding coverage.**

United States v. Benton

988 F.3d 1231 (10th Cir. 2021) (Feb. 23, 2021)

In this criminal appeal, the Tenth Circuit joined the Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits to hold that *Rehaif v.*

***United States*, 139 S. Ct. 2191 (2019), did not require the government to prove that a defendant charged with possession of a firearm by a restricted person knew that his restricted status meant he could not legally possess a firearm.** Instead, *Rehaif* requires that the government prove (1) that the defendant possessed a firearm and (2) that he knew of his restricted status when he did so.

United States v. Mora

989 F.3d 794 (10th Cir. 2021) (Feb. 24, 2021)

In this alien smuggling case, police received a 911 call which led them to a Walmart parking lot with 14 individuals without IDs. The 911 caller mentioned a tractor trailer, which the police connected with defendant. The officers performed a “protective sweep” of the defendant’s home, which led to discovery of a gun safe and ammunition. The officers then used that information to obtain a warrant. On appeal challenging convictions related to the weapons, **the Tenth Circuit held there were no exigent**

circumstances to justify the protective sweep or based upon alleged alien safety. The officers arrived at the home before the suspect, negating any alien safety claim, and detained the suspect and his wife outside the home, negating any claim regarding officer safety. With the gun safe and ammunition information excised from the warrant, there was no probable cause justifying the warrant.

Tanner v. McMurray

989 F.3d 860 (10th Cir. 2021) (Mar. 2, 2021) and

Estate of Jensen by Jensen v. Clyde

989 F.3d 848 (10th Cir. 2021) (Mar. 2, 2021)

These cases both involved 42 U.S.C. § 1983 claims based upon pre-trial inmate deaths while in custody and claims of deliberate indifference involving private contractors working at the jail. In both cases, private contractors asserted qualified immunity. In *Tanner*, the Tenth Circuit reversed summary judgment for defendants based upon qualified immunity holding that “[n]either historical justifications of special government immunity nor modern policy considerations support[ed] the extension of a qualified immunity defense to . . . private medical professionals employed full-time by a multi-state, for-profit corporation systemically organized to provide medical care in correctional facilities.” In contrast, the court in *Clyde* reversed a denial of qualified immunity to a private on-call doctor working at a jail finding that the doctor “was carrying out government responsibilities” and that “policy considerations,” including “protecting against ‘unwarranted timidity on the part of public officials’” and “ensuring ‘that talented candidates are not deterred by the threat of damages suits from entering public service,’” justified allowing the doctor to assert qualified immunity.

S. Furniture Leasing, Inc. v. YRC, Inc.

989 F.3d 1141 (10th Cir. Mar. 3, 2021)

The Tenth Circuit affirmed the district court’s dismissal of this putative class action against several trucking companies for allegedly overcharging shippers by using inflated shipment weights when determining shipment prices. The court **interpreted § 13710(a)(3) of the Trucking Industry Regulatory Reform Act and held that the 180-day time limit described in that section applies to all claims brought by a shipper seeking to contest shipment charges, and not just to actions before the Surface Transportation Board.** The court held that the plaintiffs’ claims were time-barred because they were not brought within 180 days.