

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

March 22, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GABRIEL MANUEL LUCERO,

Defendant - Appellant.

No. 22-2018
(D.C. No. 2:19-CR-00138-KG-1)
(D. N.M.)

ORDER AND JUDGMENT*

Before **PHILLIPS, MURPHY**, and **ROSSMAN**, Circuit Judges.

This matter is before us on the parties’ *Joint Motion to Vacate Oral Argument, Vacate Judgment, and Remand for Further Proceedings*. Upon careful consideration, the joint motion is GRANTED as follows.

The March 23, 2023 oral argument in this matter is VACATED, and all counsel are excused from attendance. This matter is REMANDED to the district court with instructions to (1) vacate its judgment and sentence, (2) consider whether the United States’ concession regarding the invalidity of the state cellphone search

* In light of the parties’ joint motion, oral argument is not necessary, and this matter is submitted on the briefs. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

warrant affects the district court's ruling that the 67-day delay in obtaining the federal search warrant was reasonable, and (3) conduct any other proceedings that it deems necessary or advisable to bring this case to a conclusion.

The Clerk shall issue the mandate forthwith.

Entered for the Court,

Per Curiam