

**Bar Association of the Fifth Federal Circuit
2018 Appellate Advocacy Seminar**

**Summary of Issues to be Orally Argued
On Tuesday, October 2, 2018**

West Courtroom

United States v. Broderick D. Mathes (No. 17-30749)

Broderick Mathes participated in a substantial Baton Rouge cocaine trafficking enterprise. His brother, Wilbert Mathes, was the operation's "kingpin." Cocaine shipments were received from Houston at Grav Custom Wheels and Accessories (Grav), where Broderick was employed on a work-release program. When law enforcement agents appeared at Grav in July 2011, Broderick flushed cocaine down the toilet. When agents searched Grav they found a gun under the counter and a safe containing more than \$65,000. Broderick, Wilbert, and others were charged with conspiracy with intent to distribute 500 grams or more of cocaine, possession with intent to distribute cocaine, possession of a firearm with intent to distribute cocaine, and three phone counts. Broderick cooperated with law enforcement almost immediately and for years following his arrest. He provided information about his and Wilbert's drug trafficking, drug trafficking in the Baton Rouge area, and homicides. He participated in a dangerous undercover heroin purchase and testified at Wilbert's trial despite alienation from his family and threats on his life.

Broderick pled guilty to all charges. He was determined to be a career offender under U.S.S.G. § 4B1.1 and an armed career criminal under 18 U.S.C. § 924(e) and U.S.S.G. § 4B1.4. After a three-level reduction for acceptance of responsibility, Broderick's total offense level was 31. With a criminal history category of VI, his Guidelines range was 188-235 years in prison. Because he was an armed career criminal, he faced a statutory mandatory minimum of 15 years in prison. When evidence revealed that the gun belonged to Grav's owner and that Broderick was not aware that it was under the counter, the government dismissed the gun charge against Broderick. Given the dismissal of the gun charge, Broderick was no longer deemed an armed career criminal, but his Guidelines range was unaffected. The government later filed a substantial assistance motion under U.S.S.G. § 5K1.1 seeking an 11-level reduction in Broderick's Guidelines range. The District Court granted the motion, overruled Broderick's objection to a two-level firearm enhancement, and calculated his Guidelines range as 70-87 months in prison. To the apparent surprise of counsel for Broderick and the government, the District Court then sentenced Broderick to 210 months in prison. Broderick appealed, contending that the District Court erred by imposing a large upward variance based in part on the government's dismissal of the gun charge. The government concedes that the District Court abused its discretion.

Dolores Margarita Gonzalez v. Norma A. Limon (No. 17-40944)

Dolores Margarita Gonzalez was born in Mexico in 1962. Her father, a U.S. citizen, and her mother, a Mexican citizen, were married in Texas in 1972. In 1984 the Immigration and Naturalization Service (INS) granted Gonzalez a certificate of U.S. citizenship. It later discovered that Gonzalez's father was a still legally married to his first wife at the time he married Gonzalez's mother. The INS determined that the marriage between Gonzalez's parents was not legally valid, that she was not properly legitimized, and that she could not derive citizenship through her father. Thus, in May 2006 the INS canceled Gonzalez's certificate of citizenship. The following month, she filed a motion to reconsider the cancellation with United States Citizenship and Immigration Services (USCIS). In September 2008 USCIS dismissed her motion, and she did not appeal. In May 2014 Gonzalez filed a second motion to reconsider with USCIS. The second motion was dismissed in November 2014. Gonzalez appealed the dismissal to USCIS's Administrative Appeals Office, which dismissed her appeal in January 2016.

Gonzalez filed suit in April 2017, claiming derivative citizenship from her father and requesting a permanent injunction barring USCIS from denying the certificate of citizenship and a declaratory judgment that she is a United States citizen. The government filed a motion to dismiss for lack of subject matter jurisdiction, contending that the District Court lacked jurisdiction to consider the claim under 8 U.S.C. § 1503(a) because (1) Gonzalez failed to assert a cause of action within five years of the September 2008 final administrative decision canceling her certificate of citizenship and (2) Gonzalez failed to exhaust her administrative remedies by not appealing the September 2008 decision. The District Court granted the government's motion, and Gonzalez appealed. On appeal she argues that the five-year statute of limitations should be calculated from the January 2016 dismissal of her second motion to reconsider. While the appeal was pending, she also filed an action challenging the recent denial of her application for a U.S. passport.

Paul Poupart v. Howard Prince (17-30411)

Paul Poupart was arrested after being involved in a fight outside of a Metairie, Louisiana, bar. He was charged with second degree battery. The arresting officer was Jefferson Parish Detective Steve Higgerson, who worked a private detail at the bar. According to the bar's owner, Poupart appeared at the bar the day before the battery trial and told the owner to let Detective Higgerson know that if Higgerson showed up in court, Poupart would "go public" with some photographs of "a girl." The owner passed the message on to Detective Higgerson, who nonetheless testified against Poupart on the battery charges. Within a month of that trial, two photographs were posted on the internet depicting a scantily-clad woman posing on Higgerson's patrol car.

Lieutenant Bruce Harrison investigated Poupart's threat against Higgerson and eventually arrested Poupart on charges of public intimidation. Poupart contends that although he refused to be questioned without counsel present, Harrison persisted to persuade him to discuss the case, without providing a significant period of time before renewing the interrogation and without a fresh set of *Miranda* warnings. Poupart admitted to Harrison that he had taken the photographs but denied posting them on the internet. He also admitted to being at the bar the week before the battery trial. Poupart pled not guilty to the public intimidation charges. He moved to suppress his statements to Harrison, but the Louisiana trial court denied the motion. Poupart was convicted by a jury and sentenced as a fourth felony habitual offender to twenty years in prison, without benefit of probation or suspension of sentence. The Louisiana Fifth Circuit Court of Appeal affirmed, and the Louisiana Supreme Court denied Poupart's application for supervisory writs.

After unsuccessfully seeking post-conviction relief in state court, Poupart applied for federal habeas relief, contending that his *Miranda* rights were violated and that the trial court erred in denying his motion to suppress. The Magistrate Judge acknowledged that even after Poupart invoked his right to remain silent, Harrison continued to discuss the case with the admitted intent of wearing Poupart down and without issuing a fresh set of *Miranda* warnings after Poupart relented. The Magistrate Judge nonetheless recommended that Poupart's habeas petition be dismissed with prejudice, reasoning that the denial of Poupart's motion to suppress was not contrary to or an unreasonable application of clearly established federal law. Alternatively, the Magistrate Judge concluded that any error in admitting Poupart's statements was harmless. The District Court issued an order adopting the Magistrate Judge's report and recommendation and dismissed. Poupart sought and was granted a certificate of appealability from the Fifth Circuit. The Court now considers the merits of his argument that he is entitled to habeas relief because his *Miranda* rights were violated.

East Courtroom

Thad Everett Delaughter v. Ronald Woodall (16-60246)

Thad Everett Delaughter has suffered from rheumatoid arthritis since the age of two. By the age of seventeen, he had both hips and both knees replaced. Since 2006 he has been an inmate at facilities operated by the Mississippi Department of Corrections (MDOC). As early as 2010, he began complaining regularly to MDOC medical staff of severe pain in his hips. In September 2011 Delaughter was seen by an orthopedic specialist who determined that Delaughter needed reconstructive surgery due to damage caused by a failing hip replacement. In January 2014 Delaughter filed this § 1983 action seeking injunctive relief to obtain the surgery and damages for his pain and suffering caused by defendants' deliberate indifference to his medical needs in violation of the Eighth Amendment. Among the defendants named were the MDOC; Dr. Ronald Woodall, a physician who saw inmates at the South Mississippi Correctional Institute (SMCI); and Michael Hatten, the medical administrator at SMCI. The District Court permitted Delaughter to proceed in forma pauperis but denied his motions for appointed counsel.

Pertinent to this appeal, the District Court granted motions for summary judgment in favor of Hatten and Dr. Woodall. It determined that Hatten was immune from suit in his official capacity under the Eleventh Amendment and that he was entitled to qualified immunity in his individual capacity. As for Dr. Woodall, the District Court concluded that Delaughter failed to present sufficient evidence to establish deliberate indifference. Delaughter appealed, and the Fifth Circuit appointed appeal counsel. On appeal, Delaughter asks that the Fifth Circuit vacate the summary judgment granted to Hatten, reverse the summary judgment granted to Dr. Woodall, remand the matter, and appoint counsel to represent him in the District Court proceedings.

JCB Incorporated v. The Horseburgh & Scott Company (17-51023)

JCB Incorporated d/b/a Conveying & Power Transmission Solutions (CPTS) provides independent sales representation to manufacturers in the conveying and power transmission industries. The Horseburgh & Scott Company (Horseburgh) manufactures and supplies gears, gearboxes, and related metal components in the steel, oil and gas, mining, and sugar industries. In November 2013 CPTS and Horseburgh entered into an agreement whereby CPTS would serve as an independent sales representative for Horseburgh in exchange for a defined commission on each of CPTS's sales. The parties terminated the agreement effective March 2015 and signed a termination agreement that included a provision about payment of remaining commissions owed to CPTS. In May 2016 CPTS filed suit for unpaid commissions, along with statutory damages of three times the amount of unpaid commissions, plus attorney's fees and costs under the Texas Sales Representative Act, Tex. Bus. & Com. Code § 54.001, *et seq.* According to CPTS, about \$90,000 in earned commissions remained unpaid when it filed suit. Within a few months of the litigation, Horseburgh paid the commissions, with interest. The District Court entered summary judgment in favor of Horseburgh, concluding that it did not owe penalties or fees under the Sales Representative Act because it paid the commissions. CPTS appealed, contending that the District Court erred in failing to award it penalties and fees. At issue is whether Horseburgh should have been held liable for penalties and fees under the Texas law.

YPF S.A. v. Apache Overseas, Incorporated (17-20802)

YPF S.A. and YPF Europe (YPF) entered into a purchase agreement with Apache Overseas, Inc. and Apache International Finance III S.A.R.L (Apache) whereby YPF would purchase certain Argentinian assets, including stock and debts, from Apache and its affiliates. The purchase agreement provided that after the closing the consideration paid by YPF would be adjusted based on a number of factors relating to expenses and accruals of the acquired companies. The agreement also provided that if the parties could not agree on the amount of the adjustment, they would refer the dispute to an independent accountant for final determination. The purchase agreement stated that the independent accountant would be KPMG and that KPMG partners Ginger Menown and Diego Bleger would make the determination jointly. After the parties submitted their dispute to Menown and Bleger, Menown informed them that she was leaving KPMG. Almost one month after Menown's date of departure, Menown and Bleger provided the parties with a determination. In total, the arbitrators determined that YPF was owed an adjustment of more than \$9.8 million. Apache objected to the adequacy of the reasoning in the determination and requested additional information that it contended it needed to assess whether any mathematical errors had occurred. In a letter signed by Bleger and another KPMG partner, KPMG denied Apache's request for supporting reasoning.

YPF then filed an application to confirm the arbitration award in the District Court. Apache opposed the motion to confirm and filed a cross-motion to vacate the award. Apache argued that the motion should be vacated because (1) the unilateral replacement of Menown with another KPMG partner violated the terms of the arbitration agreement, and (2) the arbitrators deprived Apache of its contractual right to challenge mathematical errors in the determination by failing to provide the requisite reasoning to support the determination. The District Court granted YPF's motion to confirm the award. Apache appealed, again arguing that Menown's replacement with another partner violated the terms of the parties' agreement and that it had been deprived of its right to challenge mathematical errors.