

UNITED STATES COURT OF APPEALS **February 3, 2009**
TENTH CIRCUIT
Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARTIN SOTERO MENZOR,

Defendant-Appellant.

No. 08-1195

District of Colorado

(D.C. No. 1:07-CR-00115-DME-1)

ORDER AND JUDGMENT*

Before **LUCERO, MURPHY** and **McCONNELL**, Circuit Judges.

Defendant-Appellant Martin Menzor appeals his conviction for possession of a firearm or ammunition after prior conviction for a felony, in violation of 18 U.S.C. § 922(g)(1). The sole issue raised on appeal is that the Tenth Circuit Pattern Jury Instruction defining reasonable doubt, which was used in his case, unconstitutionally diminishes the proof required for conviction. As he recognizes in his brief, this argument is foreclosed by circuit precedent. *United States v.*

*After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). This case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

Conway, 73 F.3d 975, 980 (10th Cir. 1995). The argument is presented solely for preservation of the issue for potential en banc or Supreme Court review.

The judgment of the United States District Court for the District of Colorado (Ebel, J., sitting by designation), is **AFFIRMED**.

Entered for the Court,

Michael W. McConnell
Circuit Judge