FILED
United States Court of Appeals
Tenth Circuit

November 4, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KORY BRYAN TUELL,

Defendant - Appellant.

No. 26-5086
(D.C. No. 4:24-CR-00099-GKF-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **HARTZ**, **MORITZ**, and **ROSSMAN**, Circuit Judges.

The government moves to enforce the appeal waiver in Kory Bryan Tuell's plea agreement pursuant to *United States v. Hahn*, 359 F.3d 1315, 1328 (10th Cir. 2004). It contends that "[i]n exchange for the Government's agreement to recommend a 25-year sentence and dismiss the pending indictment, Tuell agreed to plead guilty and waive his right to appeal a sentence of 25 years or less." Mot. at 2. It further explains that "[t]he district court imposed exactly the sentence the Government promised to recommend: 25 years." *Id.* Tuell responds that the waiver is unenforceable because the government breached the plea agreement by

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

"mischaracterizing" the nature of the killing at sentencing and arguing for "a murder sentence." Resp. at 5. We disagree. The express language of the plea agreement does not constrain the government's arguments for the 25-year sentence it agreed to recommend. We therefore grant the motion and dismiss the appeal.

BACKGROUND

A federal grand jury charged Tuell in an Indictment with First Degree Murder in Indian Country, in violation of 18 U.S.C. §§ 1151, 1153, and 1111. The government later charged Tuell by Felony Information with Voluntary Manslaughter in Indian Country, in violation of 18 U.S.C. §§ 1151, 1153, and 1112(a), and Carrying, Using, Brandishing, and Discharging a Firearm During and in Relation to a Crime of Violence, in violation of 18 U.S.C. § 924(c)(1)(A)(iii). Tuell pleaded guilty to both offenses pursuant to a Federal Rule of Criminal Procedure 11(c)(1)(B) plea agreement. In exchange, the Government agreed to recommend a 25-year sentence and to move to dismiss the Indictment at sentencing.

The plea agreement included a broad waiver of Tuell's appellate rights, including the right to appeal his conviction and sentence. But the waiver preserved Tuell's right to appeal a sentence that exceeded the term the government agreed to recommend, which was 25 years. Regarding the recommended sentence, the parties agreed to two stipulations:

> b. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the government agrees to recommend that the appropriate sentence in this case is a sentence of 25 years of imprisonment.
>
> c. The defense is free to argue for a sentence below the government's sentencing recommendation and for a sentence within or below the applicable Sentencing Guideline range as determined by the district court.

Mot., Attach. 1 at 14 ¶ 13.

At sentencing, the district court calculated the advisory sentencing guidelines range to be 63 to 78 months for voluntary manslaughter and a consecutive 120-month sentence for the § 924(c) offense, making the combined range 183 to 198 months. The government argued for an upward variance, asking the court to impose the 25-year or 300-month sentence it agreed to recommend in the plea agreement. As permitted by the plea agreement, Tuell argued for a slight downward variance, asking the court to impose a 15-year or 180-month sentence. The district court sentenced Tuell to 25 years in prison. He did not argue that the government had breached the plea agreement through its sentencing arguments or otherwise object. Consistent with the plea agreement, the government then moved to dismiss the Indictment, and the court granted the motion.

Despite the waiver in his plea agreement, Tuell filed a notice of appeal. The government has now moved to enforce the appeal waiver.

DISCUSSION

We will enforce an appeal waiver if (1) "the disputed appeal falls within the" waiver's scope; (2) "the defendant knowingly and voluntarily waived his appellate rights"; and (3) enforcing the waiver would not "result in a miscarriage of justice."

Hahn, 359 F.3d at 1325. The government argues that all three of these conditions are met in this case.

Tuell asserts that the *Hahn* analysis is irrelevant. He contends the appeal waiver is unenforceable because the government breached the plea agreement at sentencing in the way it characterized the killing and in its argument for the 25-year sentence. He therefore contends this court "must determine whether the government breached the plea agreement before enforcing the appeal waiver." Resp. at 11-12 (internal quotation marks omitted).

We agree with Tuell that "[b]ecause an appellate waiver is not enforceable if the Government breaches its obligations under the plea agreement, we must first address whether the Government's conduct during sentencing constituted a breach." *United States v. Rodriguez-Rivera*, 518 F.3d 1208, 1212 (10th Cir. 2008) (citation and footnote omitted). Tuell did not object at sentencing or otherwise argue in district court that the government breached the plea agreement, so we review his argument for plain error. *United States v. Ruiz*, 125 F.4th 1342, 1348 (10th Cir. 2025). "Plain error occurs when there is (1) error, (2) that is plain, which (3) affects substantial rights, and which (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings." *United States v. Weiss*, 630 F.3d 1263, 1274 (10th Cir. 2010) (internal quotation marks omitted).

"In interpreting a plea agreement, we rely on general principles of contract law, and therefore look to the express language in the agreement to identify both the nature of the government's promise and the defendant's reasonable understanding of

this promise at the time of the entry of the guilty plea." *Rodriguez-Rivera*, 518 F.3d at 1212-13 (citation and internal quotation marks omitted). Considering the express language in the agreement, Tuell has not shown the government breached the plea agreement with its conduct at sentencing.[1]

Tuell complains about the arguments the government used at sentencing to justify its request for a 25-year sentence, asserting that the government was arguing for a murder sentence when he had pled guilty to voluntary manslaughter. But he does not point to any part of the plea agreement that restricts the language the government could use or otherwise limits the arguments the government could make in support of the 25-year sentence it agreed to recommend.

As the government argues persuasively in its reply brief:

> The government's argument advocated—in form and substance—the exact sentence it agreed to recommend.
>
> The basis of Tuell's argument to the contrary is a misunderstanding of the terms of the agreement. Tuell claims that the government breached the agreement by "using inflammatory language" at sentencing "to

[1] This case is unlike those where the government agreed to recommend a sentence within a Guidelines range, but then made arguments that undermined that recommendation. *See, e.g.*, *United States v. Cachucha*, 484 F.3d 1266, 1270 (10th Cir. 2007) (finding a breach of the agreement when the government crossed the line from being "'an unpersuasive advocate for the plea agreement'" to "'in effect, argu[ing] against it'" and explaining that the government agreed to recommend a within-Guidelines sentence but emphasized at sentencing that there were "'problem[s]' with a Guidelines-based sentence, that such a sentence was 'way too low' and 'incredibly low,' and that the Guidelines did not 'make sense to [him] as a professional prosecutor'" (citations omitted)); *Ruiz*, 125 F.4th at 1348-50 (assuming without deciding that plain error had occurred regarding a breach of the plea agreement where the government at sentencing raised issues about the defendant's criminal history that undermined its recommendation for a sentence at the low-end of the Guidelines range).

> mischaracterize the killing as a murder," when it had "acknowledged" in the agreement "that this crime was voluntary manslaughter." But the government never promised to "characterize" the killing in any particular way, nor did it agree to refrain from using "inflammatory" language; nor, most importantly, did it agree to refrain from comparing Tuell's conduct with second-degree murder. Rather, the government agreed to recommend a 25-year sentence.

Reply at 5-6 (brackets and citations omitted).

Again, the parties stipulated in the plea agreement that the government was going to recommend a 25-year sentence and Tuell could argue for a lower sentence. The government acted consistently with its promise and argued for a 25-year sentence. And Tuell acted consistently with his ability to argue for a lower sentence and argued for a 15-year sentence. The district court chose to impose a 25-year sentence. Tuell fails to demonstrate error, much less plain error, given these circumstances.

The government did not breach the plea agreement, and Tuell does not otherwise argue that his appeal waiver is unenforceable. Accordingly, we grant the motion to enforce the appeal waiver and dismiss this appeal.

Entered for the Court

Per Curiam