

# ALBUQUERQUE CRIMINAL LAWYER BLOG

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## **10th Circuit Holds Common Drug Dealer Does Not Make a Conspiracy**

The 10th Circuit Court of Appeals ruled that a common drug supplier does not make a conspiracy. In *U.S. v. Caldwell*, Michael Caldwell was convicted for conspiracy to distribute marijuana with two other individuals based upon the mere presence of a common supplier to Caldwell and another party. The jury determined that the three men had entered into a single a three party conspiracy to distribute at least 100 kilograms of marijuana over a two-year period.

The defendant admitted to a conspiracy with his supplier but denied the conspiracy with respect to the third party. It may sound like an inconsequential rhetorical argument but the finding of the tri-party conspiracy had significant consequences for Caldwell's sentencing. Because of the jury's erroneous finding of a three party conspiracy, the quantity of marijuana involved in the alleged conspiracy pushed Caldwell into a higher sentencing category.

The facts are pretty straightforward. Caldwell had purchased marijuana from Herrera. Caldwell then sold the marijuana to other users. A friend of Caldwell's, Anderson, source had dried up. Caldwell introduced therefore introduced Anderson to Herrera. Anderson then began buying his marijuana from Herrera. Caldwell received no economic benefit for the introduction nor was he involved in the exchanges between Herrera and Anderson other than the initial introduction.

The 5th Circuit Court of Appeals found that no single tri-party conspiracy existed. Instead, the government had shown only the existence of multiple conspiracies. The court stated that it is often difficult to distinguish between a single large conspiracy and several small conspiracies. However, the Court stated that it would not uphold the finding of large scale conspiracy by "piling inference upon inference...The evidence supporting the conviction must be substantial and do more than raise a suspicion of guilt."

Citing *United States v. Sells* (10th Cir. 2007), the Court set forth the following requirements for a finding of a conspiracy:

(1) two or more persons agreed to violate the law, (2) the defendant was aware of the essential objectives of the conspiracy, (3) the defendant knowingly and voluntarily became a part of the conspiracy, and (4) the alleged co-conspirators were interdependent.

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The pivotal question according to the court was the existence of interdependence of the parties which is present only where the co-conspirators intended to act in concert for their shared and mutual benefit. Citing *U.S. v. Evans* (10th Cir.1992).

The court boiled the issue down to the question of whether "the mere introduction of a common supplier, made by one drug dealer to another, is sufficient to create a single conspiracy among all the dealers?" The court concluded that it was not.

The finding of a single large scale conspiracy created an erroneous factual basis for Caldwell's sentence. The court should not have included quantities sold by Herrera to Anderson. The case was therefore remanded to district court for resentencing based purely upon the transactions established at trial between Caldwell and Herrera.

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