

C.A. No. 11-50311
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHN MALONEY,

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of California
Honorable Dana M. Sabraw, District Judge

MOTION TO SUMMARILY REVERSE THE CONVICTION,
VACATE THE SENTENCE AND REMAND TO THE DISTRICT COURT

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United States of America

I

INTRODUCTION

On September 19, 2013, this appeal was argued en banc before Judges Alex Kozinski, Harry Pregerson, Sidney R. Thomas, M. Margaret McKeown, Kim McLane Wardlaw, William A. Fletcher, Richard A. Paez, Johnnie B. Rawlinson, Richard R. Clifton, N. Randy Smith and Andrew D. Hurwitz.

II

MOTION

Pursuant to Fed. R. App. P. 27, Appellee United States of America respectfully moves the Court to summarily reverse the conviction, vacate the sentence and remand to the district court.

The United States Attorney, the Chief of the Criminal Division, the Chief of the Appellate Section and other senior attorneys in our office have reviewed the video of the en banc argument held in this case on September 19, 2013. We have also considered again the closing arguments made in this case in the district court. After conducting these reviews, we have concluded that no reference should have been made to luggage in rebuttal argument. We believe the interest of justice would best be served by summarily reversing the conviction, vacating the sentence and remanding to the district court.

Per the Court's suggestion, we have also determined to use the video of the argument as a training tool to reinforce the principle that all Assistant U.S. Attorneys must be aware of the rules pertaining to closing argument and must make every effort to stay well within these rules.

Mr. Maloney was released from custody on bond on July 24, 2013.
[CR 104.]

Mr. John Lemon, counsel for Appellant Maloney, does not oppose this motion.

Dated: October 7, 2013

Respectfully submitted,

s/Laura E. Duffy
LAURA E. DUFFY
United States Attorney

Attorney for Plaintiff-Appellee
United States of America

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

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