

UNITED STATES COURT OF APPEALS

OCT 20 2011

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

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| <p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>CHARLES W. MCCALL,</p> <p style="text-align: center;">Defendant - Appellant.</p> |
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No. 10-10111

D.C. No. 3:00-cr-00505-WHA-3
Northern District of California,
San Francisco

ORDER

Before: KOZINSKI, Chief Judge, N.R. SMITH, Circuit Judge, and BLOCK,
Senior District Judge.*

The memorandum filed on July 5, 2011 is hereby amended. The changes are
as follows:

Page 2, Line 8 Insert <3. McCall’s defense theory was adequately covered by
the combination of the reckless disregard instruction and the good
faith instruction. And “it is not reversible error to reject a
defendant’s proposed instruction on his theory of the case if other
instructions, in their entirety, adequately cover the defense
theory.” *United States v. Romm*, 455 F.3d 990, 1002 (9th Cir.
2006) (quoting *United States v. Mason*, 902 F.2d 1434, 1438 (9th
Cir. 1990)).> before <3. It is>

* The Honorable Frederic Block, Senior District Judge for the U.S.
District Court for Eastern New York, sitting by designation.

Page 2, Line 8 Replace <3. It is> with <4. Even if there were an error in the jury instructions, it is>

Page 2, Line 9 Delete <even>

Page 2, Line 16 Replace <the jury likely> with <the jury would have likely>

With these amendments, the panel has voted unanimously to deny the petition for panel rehearing and the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no active judge has requested a vote on whether to rehearing the matter en banc. Fed. R. App. P. 35.

The petition for rehearing and the petition for rehearing are DENIED. No further petitions shall be entertained.