NO. 25-4077

UNITED STATES COURT OF APPELS
FOR THE TENTH CIRCUIT

Lynda Gardner, and
Kandra Amboh,

Plaintiffs-Appellant,

v.

Ute Tribal Court of the
Uintah and Ouray Reservation,
Hon. Jeffrey Kurtz, Judge
And Jeff S. Rasmussen, Tribal
Prosecutor and Tribal Attorney

Defendant-Appelless,

On Appeal from the U.S. District Court for the
District of Utah, No. 2:25-CV-00106 Hon. David Barlow

PLAINTIFF-APPELLANT'S OPENING BRIEF OF
LYNDA GARDNER, AND KANDRA AMBOH

Plaintiffs-Appellants:

Lynda Gardner
Kandra Amboh
Post Office Box 472
Fort Duchesne, Utah 84026
Telephone: (435) 823-8227

Kandra Amboh
Post Office Box 536
Fort Washakie, Wy 84514
Telephone: (307) 349-8346

August 11, 2025.

QUESTION PRESENTED

When the only evidence offered to Charges was dismissed in Ute Tribal Court no conviction is the testimony of the Defendants Ute Tribal Court's cooperating witnesses. does it violate Constitutional guarantees of the fair trial, due process, and an impartial jury when the jury is permitted to take an official court document into its deliberations wherein the prosecutor stipulates the Defendant Ute Tribal Court's star witness is not testifying truthfully?

PARTIES TO THE PROCEEDING

Plaintiff-Appellant have Appealed from United States District Court of Utah as:

Lynda Gardner,
Post Office Box 472
Fort Duchesne, Utah 84025

Kandra Amboh,
Post Office Box 536
Fort Washakie, Wy 82514

the Defendant-Appellee as:

Jeffery S. Rasmussen,
UIT Prosecutor,
And UIT's Attorney
1900 Plaza Drive
Louisville, CO 80027

J. Preston Stieff,
J. Preston Stieff Law Offices, LLP,
311 South State Street, Suite 450
Salt Lake City, Utah 84111

Mary Cardoza Judge Pro Tem
Ute Indian Tribal Judge.
NW Inter-Tribal
Court System
2081844 Ave, West Suite 120
Lynwood, WA 98036

TABLE OF CONTENT

TABLE OF AUTHORTIE

CASES:

STAUTES:

PRIOR OR RELATED APPEALS

None

I. JURISDICTION

1. The district court of Utah has jurisdiction over this federal criminal case under District Courts, 18 U.S.C. 3231. The district court judgment appealed to Tenth Circuit Court of Appeals. The Tenth Circuit holds Federal Court may not convict Indian Country Defendants with lesser-included offenses not enumerated in Federal Statute. United States v. Hopson, Case No. 23-5056 July 30, 2025, and in United States v. Maryboy, Case No. 23-4117 May 29, 2025, the Tenth Circuit Reverses Indian Country Murder Conviction, Plaintiff Lynda Gardner, and Plaintiff Kandra Amboh, filed Gardner, et al., v. Ute Tribal Court, et al., filed Notice of Appeal, Case No. 2:25-CV-00106-DBB, on June 17, 2025. This Court has appellate jurisdiction under 18 U.S.C. 3742(a), and 28 U.S.C. 1291, and jurisdiction of this Court rests on 28 U.S.C. 1254(1).

I. CONSTITUTIONAL PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Constitution provides: No person shall . . . . Deprived of life, liberty, or property, without due process of law, . . . U.S. Const. 5th Amend. The Sixth Amendment to the United States Constitution provides; . . . . in all criminal prosecutions, the accused shall enjoy the right to the speedy

and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against them; to have compulsory process for obtaining witnesses in their favor, and have the assistance of counsel for their defense. U.S. Const. 6th Amend.

The Ute Tribal Court is established under the same due process and procedures of the federal justice department under the Ute Law and Order Code in the Ute Tribal Court's, Indian Offenses cases in Indian Country. This same Ute Law and Order Code provides, for Lay Advocate to practice in Ute Tribal Court, when the individuals cannot afford licensed Attorney. Plaintiff Lynda Kozlowicz Gardner was approved and sworn in by Tribal Chief Judge Tahbone in 1998 of which Ms. Gardner acted to protect the Indian members from wrongful violation of Indian Country jurisdiction and the Indian civil rights Act. Plaintiff Amboh requested Lynda Kozlowicz Gardner assistance on her case in Tribal Court. The Tribal Judge Kurtz issued a false document stating Plaintiff Gardner is not allowed to practice in Tribal Court of which Gardner was permanently disbarred, that I was not served this document prior, until after Gardner filed for Brady violations by Tribal Court and

Tribal Prosecutor in Kandra Amboh's case. Plaintiff Kozlowicz filed appeal in Federal District Court on her right to work as Tribal Advocate that was granted by Federal Chief Judge Bruce Jenkins ruling against the County Judge Poulson case. The tribal court parties is acting to deny this federal court order.

STATEMENT OF THE CASE

In the charge on the Uintah and Ouray Indian Reservation for alleged Assault or Abuse without any physical evidence, just hearsay by family member's statement.
Ms. Kandra L. Amboh and her children are enrolled members of the Shoshone Nation that have separate sovereignty from the Ute Indian Tribe, that acted to take Amboh's children from her custody, and Ms. Amboh has been trying to get her two boys back from the Ute Tribal Court's actions of ignoring to return her boys.
This has caused Plaintiff Amboh to file in Federal District Court. Amboh and Gardner have jointly filed federal appeal, because the named Defendants are the parties that are involved in both Plaintiff's claims all under the Ute Tribal Court's authority.

The United States Court of Utah, and Ute Tribe of Utah presided over trial Charges that was dismissed in Ute tribal Court. The jury found Plaintiff Amboh not guilty and

discharging Ute Tribal Court Prosecutor's filed claims of criminal violence. Plaintiff was released without sentencing on any charges that was filed. Plaintiff Kandra Amboh and Lynda Gardner appealed, arguing that the Ute Tribal Court's witnesses improperly discussed Amboh's mental state without any evidence or medical information and that the Ute Tribal Court failed to instruct the jury on Amboh's right to self-defense.

The Amboh and Gardner request Tenth Circuit Court of Appeals review this case. Plaintiffs found that the witness testimony violated Federal Rule of Evidence 704(h), by stating on Plaintiff's mental state without any proof of documentation by a doctor, which could have influenced the jury's decision on the charges of recklessness. Amboh determined that the jury instructions were flawed because they did not require Amboh in Ute Tribal Court to disprove imperfect self-defense beyond the reasonable doubt for the charges. These errors were deemed to have affected Amboh's substantial rights and the fairness on the judicial proceedings. The Jury saw her rights were violated by hearsay statements by the Prosecutor's witnesses. Plaintiff Amboh has been requesting for a copy of the NOT GUILTY verdict of all charges from Pro Temp Judge Cardoza from Washington State, and which Kandra Amboh had filed for tribal court to return her Shoshone children, which been ignored by

the named tribal court Defendants.

Defendant's Violation of Kidnapping, 18 U.S.C. 1201 (a)(1), and Kidnapping in Indian country, 18 U.S.C. 1153, is also connected to the violation of not returning Plaintiff Shoshone Mother's Children; and Assaults within maritime and territorial jurisdiction against Amboh, 18 U.S.C. 113(a)(2). This has caused Plaintiff Amboh, extentive court costs and fees to get her own Shoshone children from Defendants conduct seems like ransom demands and denying to return Plaintiff Amboh's children. No one has acted to investigate where her children are, and Amboh has acted to contact the FBI in vernal, Utah to assist her, when Ben Jones contacted the BIA Chief of police Mr. Dodd to help getting her children. The Children were at Amboh's sister, Spring Celemente's home, where BIA Chief officer was physically attacked by Spring Celemente along with Spring's daughter, and her boyfriend to keep Kandra Amboh's children. This form of abuse is her sister Celemente's conduct.(abusive)

Plaintiff Amboh and Gardner submits Washington federal court confirm off-res trust land is Indian Country, United States v. Parision, Case No. 2:24-CR-00079-RLF-1,2,3 filed June 25, 2025 Hon. Rebbecca L. Kennell, United States District Judge (Order On Defendant Motion To Dismiss, To Exclude Expert Testimony, and To Reguire Proof Of Substantial Bodily Injury).

and the case, Ute Indian Tribe v. State of Utah, 790 F. 2d 1000 (10th Cir. 2015).

Plaintiff Amboh and Gardner Constitution requires state and federal governments to supply counsel to indigents at government expense when the prosecution may result in imprisonment Argersinger v. Hamlin, 407 U.S. 25 (1972). The fears of saddling the tribes with an excessive financial burden and the shortage of lawyers in Indian country apparently influenced Congress. Tom v. Sutton, 522 F. 2d 1101 (9th Cir. 1976).

REASON FOR GRANTING THE PETITION

II. ISSUES PRESENTED

1. Did an expert witness testify that Amboh's conduct was reckless that violate Rule 704(b);

2. Did the district court of Utah plainly err in dismissing this case in failing to recognize civil rights violations or investigate the Tribal Court BIA Officer signed statement had to disprove imperfect self-defense beyond the reasonable doubt in order to prove Amboh was guilty of crime, of which evidence physical were not found for alleged abuse.

3. Do these two errors cumulatively require reversal.

III. INTRODUCTION

3. The Tribal Court BIA Officer expert witness was permitted to testify that Amboh's conduct was the ultimate

expression of recklessness. This clearly violated Rule 704(b)'s prohibition against experts offering an opinion about whether the Amboh had reasonable doubt, that Amboh was not acting in imperfect self-defense - i.e., that Amboh subjectively acted in self-defense, albeit unreasonably, on the contrary Independently and cumulatively, these errors warrant reversal.

IV. STATEMENT OF THE CASE

4. Tribal Court requires that BIA Officer to testify if Officer witnessed physical evidence that was not indicted on one of the charges while within Indian Country. BIA did not appear in violation of Charges 18 U.S.C. 1153(a), and discharging filed charges and in relation to the crime of violence in violation of Penalties, 18 U.S.C. 924(c)(1)(a)(iii), Amboh Plead not guilty and proceeded to trial.

V. AT TRIAL, THE ONLY DISPUTED ELEMENT IS WHETHER AMBOH ACTED WITH THE REQUISITE

5. At Tribal Court, the BIA Officer was not present in the Courtroom and did not testify on his signed statement, and was the jury instructed that Amboh was shoshone Indian, the offense took place in Indian Country, and that charges was the crime of violence under 924(c). The only disputed element was Pro Temp Judge Cardoza, Prosecutor Rasmussen acted malice.

VI. THE BIA OFFICER DID NOT TESTIFY THAT AMBOH'S CONDUCT WAS THE ULTIMATE EXPRESSION OF RECKLESNESS.

The Tribal Court main witness was BIA Officer. The BIA Officer presented his signed statement in this case, including family witnesses to his report. BIA Officer did not investigate the charges being applied by Prosecutor. BIA Officer did not testified that the charges was functional and it was effectively point of aim, impact, meaning that wherever the charges was pointed, that's where the charges would ultimately land.

VII. THE JURY IS NOT INSTRUCTED THAT, TO CONVICT AMBOH OF CHARGES, THE TRIBAL COURT, AND FEDERAL MUST DISPROVE IMPERFECT SELF-DEFENSE BEYOND THE REASONABLE DOUBT.

6. Before Tribal Court, the BIA Officer as an Indian with malice aforethought against non-member Indian and BIA Officer as an Indian acknowledged, that took place in Indian Country.

VIII. IN CLOSING THE TRIBAL COURT AND FEDERAL MAIN THEORY IS THAT AMBOH AND GARDNER ACTED WITH EXTREME RECKLESNESS, AND IT EXPRESSLY REFERS TO BIA OFFICER BIAS CONDUCT.

7. In closing, the Tribal Court and Federal Court's Dismissal briefly asserts that Amboh and Gardner claims intended to file challenging authority to the filed tribal charges against Amboh, because the appointed public defender does not file documents in court on behalf of his clients, but

the Public Defender primarily focused on its theory that Amboh was guilty of charges, because Amboh did not want to plea bargain to any charges filed is extremely reckless. Indeed, the Tribal Court and the federal court shows federal law does not have responsibility to hear Indian cases based on MS. Amboh own account on violation of Indian civil rights. According to the Tribal Court, and federal statute of Congressional acts, because Amboh admitted that the charges came up directly one sided in line with Amboh requesting her Children be returned and the charges pointed right at Amboh's knowledge of Indian law.

IX. THE TRIBAL COURT JURY FINDS AMBOH NOT GUILTY ON CHARGES, AND THE COURT IMPOSED THE CASE WAS CLOSED.

8. The jury returned verdict finding Amboh not guilty of charges and violating 18 U.S.C. 924(c), Amboh timely filed the notice of appeal based upon the tribal court parties refusing to return or deal with the tribal court's taking of Amboh's children, which caused Amboh and Gardner to file in federal court for violations of civil Rights, because there are unfinished issues remaining to settle, but being ignored, as to the Ute Tribal Court did not afford Plaintiff Lynda Gardner a hearing on the facts of Gardner's lay advocate right to practice in Ute Tribal Court.

X. SUMMARY OF ARGUMENT

9. Rule 704(b) provides; in a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the prior of fact alone. Fed. R. Evid. 704(b). An expert cannot expressly draw the conclusion that a defendant acted with malice. United States v. Wood, 207 F. 3d 1222, 1231 (10th Cir. 2000). Tribal Court BIA Officer Defendants repeatedly testified that Plaintiffs conduct was reckless. In doing so, be clearly violated Rule 704(b), that Tribal Court BIA Officer Defendants opined only that a hypothetical person was reckless does not render his testimony permissible. The Supreme Court just recently made clear that Rule 704(b) bars an expert's testimony that a hypothetical person in the defendant's shoes has the requisite mental state. Diaz v. United States, No. 23-14, WL. 3056012 (U.S. June 20, 2024).

10. When defendant raises an affirmative defense that negates an essential element of the offense, such as malice. The jury must be instructed that the Tribal Court, and federal has the burden to disprove the affirmative defense beyond reasonable doubt. United States v. Lofton, 776 F. 2d 918, 921 (10th Cir, 1985). The district court failed to instruct the jury that the Tribal Court, and federal had to prove beyond

reasonable doubt that Plaintiffs did not act in imperfect self-defense, an affirmative defense that negates malice. United States v. Britt, 79 F. 4th 1280, 1287 n. 7 (10th Cir. 2023). Not only that, the charges instruction erroneously indicated that the jury could find Plaintiffs guilty even if Plaintiffs was subjectively acting in self-defense, which is the essential element of imperfect self-defense. These instructional errors warrant reversal.

11. Even assuming for the sake of arguments that neither error independently prejudiced Amboh and Gardner, this Court should reverse based on cumulative error.

XI. ARGUMENT THE DISTRICT COURT REVERSIBLE ERRED IN ALLOWING BIA OFFICER TO TESTIFY ON AMBOH'S CONDUCT WAS RECKLESS.

12. Rule 703(b) provides, in criminal case, an expert witness must not state an opinion about whether the Plaintiffs did or did not have mental state or condition that constitutes an element of the crime charged or of defenses. Those matters as the error of fact alone. Fed. R. Evid. 704(b). Tribal Court Officer repeatedly testified that Amboh's conduct was reckless. In doing so, he clearly violated Rule 704(b).

XII. PRESERVATION AND STANDARD OF REVIEW.

13. Defendant's did not object when officer Defendants first testified that Plaintiff's conduct was grossly negligent

reckless. When the tribal court continued this line of questioning on redirect examination, defendant objected to the Ute Tribal Court question, how reckless is that act, when Objection was overruled, and defendants objected to the ute tribal court's follow up question as to how conduct compared to extreme recklessness, and that objection was sustained.

14. At minimum, Amboh's objection preserved Amboh's of error as to Officer's signed statement against Amboh's conduct constituted the ultimate expression of recklessness without physical. Arguably, it is sufficient to preserve plaintiff's claim of error as to the entire line of questioning. Under similar circumstances, this court held such interspersed objections to the form of questioning was sufficient to preserve claim of error as to the entire line of questioning, even where defense of Defendants failed to object. United States v. Burgess, 99 F. 4th 1175, 1189 (10th Cir. 2024)(Burgess acknowledges not initially objecting to this line of questing, But, because plaintiff eventually did intersperse objections during this challenged cross-examinations, plaintiffs will review this prosecutorial misconduct argument de novo.).

15. To the extent that Plaintiff's claim is preserved, this Court's review is for abuse of discretion. United States v. Wood, 207 F. 3d 1222, 1235 (10th Cir. 2000)(Under that

standard, this Court will reverse 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.

XIII. DEFENDANTS TESTIMONY VIOLATES RULE 704(b)

16. Rule 704(b) provides, in criminal case, an expert witness must not state an opinion about whether the defendant did or did not have the mental state or condition that constitutes an element of the crime charged or of the defense. Those matters are for the trier of fact alone, Fed. R. Evid. 704(b), in other words, an expressly cannot expressly draw that conclusion that defendant actions. United States v. Wood, 207 F. 1222, 1236 (10th Cir. 2000)(quoting United States v. Richard, 969 F. 2d 849, 855 (10th Cir. 1992). That's exactly what Officer did here. Defendant repeatedly opined that Plaintiff's conduct was reckless, e.g., gross negligent reckless, reckless, and the ultimate expression of recklessness, and recklessness is qualifying for both charges and the lesser included offense of crime. Defendants testimony violated Rule 704(b).

XIV. THE ERROR WAS PLAIN

17. An error is plan if it is clear or obvious under current well-settled law of this court or the Supreme Court. United States v. Cantu, 964 F. 3d 924, 915, (10th Cir. 2020).

In light of this Court's opinion, it is clear and obvious that an expert may not testify that defendant's conduct is reckless where recklessness is component of the offense, and the Supreme Court's decision in Diaz make clear the rule bars an expert's testimony that hypothetical in the defendant's shoes has the requisite mental state.

XV. THE IMPERMISSIBLE TESTIMONY AFFECTED SUBSTANTIAL RIGHTS

18. To meet the third prong of plain error - an effect on substantial rights - Plaintiff's must demonstrate the reasonable probability that the outcome of the trial would have been difference but for the error. To be clear, the question is not whether, omitting the inadmissible statements, the record contains sufficient evidence for the jury to convict the defendant. United States v. Tome, 61 F. 3d 1446, 1455 (10th Cir. 1995). Nor is the reasonable-probability standard. . . . The same as, and should not be confused with, the requirement that the defendant prove by the preponderance of the evidence that but for error things would have been different. United States v. Starks, 34 F. 4th 1142, 1157 (10th Cir. 2022). It is only whether there is the reasonable probability that the results would have been different.

19. The risk of prejudice is compounded when the testifying expert is the police officer, Such expert testimony

by government agents is especially problematic because juries may place greater weight on evidence perceived to have the imprimature of the government. United States v. Brooks, 736 F. 3d 931, 931 (10th Cir. 2013). When the expert is the government law enforcement agent testifying on behalf of the prosecution about participation in prior and similar cases, the possibility that the jury will give undue weight to the expert's testimony is greatly increased. United States v. Alvarez, 837 F. 2d 1024, 1030 (11th Cir. 1988). Agent impermissible expert testimony was likely to have an outsized influence on the jury.

20. To be clear, that Agent opined only that hypothetical person was reckless does not render his testimony permissible. It has long been established in this Circuit and the majority of other that Rule 704(b) cannot be circumvented by speaking in terms of the hypotheticals. United States v. Dennison, 937 F. 2d 559, 565 (10th Cir. 1991)(Although Dr. Siegal's testimony was premised on the hypothetical person suffering borderline personality and couch in terms of the characteristics of the illness itself, the necessary inference was that the instant defendant did not have the capacity to form specific intent at the time of his crimes because of the combined effects of his intoxication and mental illness. Under Rule 704(b) such an inference is for the jury to make, not an

expert witness.). United States v. Levine, 80 F. 3d 129, 134 (5th Cir. 1996)(The majority opinion in other circuit appears to be that under Rule 704(b) hypothetical questions mirroring the fact patterns of the evidence in the trial case are violative of the rule when the answering testimony contains the necessary inference as to whether the defendant did or did not have the mental state or condition constituting An element of the crime charged or of the defense thereto.).

21. In, the Supreme Court confirmed this in Diaz v. United States, No. 23-14, 2024 WL 30560012 (U.S. June 20, 2023), the Supreme Court held that an expert's opinion that most drug couriers known they are transporting drugs did not violate Rule 704(b) because the expert witness did not state an opinion about whether petitioner herself had the particular mental state. The Court clarified that the rule is violated where an expert opines that all people in the defendant's shoes have the requisite mental state. The phrase all people in the defendant's shoes includes, of course, the defendant himself. So, when the expert testified that all people in the defendant's shoes have the requisite mental state, the expert also opined that the defendant had that mental state. The expert thus stated an opinion on the defendant's mental state, an ultimate issue reserved for the jury, in violation of Rule 704(b), the government conceded that Rule 704(b) bars an

expert from opining that the hypothetical person who matches the defendant's description (say, the hypothetical woman who drives the care full of drugs across the border) will have the mental state required for conviction.

22. Further, increasing the likelihood that the error was prejudicial is that the Defendant Ute Tribal Court's closing emphasize that the jury should convict Plaintiff of Charges based on recklessness, and it even highlighted Agent testimony in support. United States v. Griffith, 65 F. 4th 1216, 1220 (10th Cir. 2023)(When the prosecution uses closing argument to emphasize the disputed evidence, that emphasis could suggest an impact on the outcome.). United States v. Irvin, 682 F. 3d 1254, 1264 (10th Cir. 2012)(recognizing that the prosecutor's own estimation of his case . . . . At the time is the highly relevant measure now of the likelihood of prejudice. United States v. DeLoach, 504 F.2d 185, 192 (D.C. Cir. 1974)).

XVI. THE PLAIN ERROR WARRANTS REVERSAL

23. This court should vacate Plaintiff's convictions of tribal court because the error seriously affect the fairness, integrity, or public reputation of judicial proceedings. That is arguably true in any case where there is the reasonable probability that the defendant would not have been convicted of the offense. Because there is the reasonable probability

that the defendant would not have been convicted absent the error here. Ignoring it would offend core notions of justice and seriously affected the fairness, integrity, and public reputation of judicial proceeding, it is specially true here. That because, although the relatively fine line separates charges was dismissed, the difference in penalties was devastating for Plaintiff's Charges was dismissed in Ute Tribal Court is the crime of violence under Penalties, 18 U.S.C. 924, no sentence.

XVII. THE DISTRICT COURT OF UTAH PLAINLY ERRED IS FAILING TO INSTRUCT THE JURY THAT THE DEFENDANT UTE TRIBAL COURT HAD TO DISPROVE IMPERFECT SELF-DEFENSE BEYOND THE REASONABLE DOUBT.

24. When the defendant raises an affirmative defense that negates an essential element of the offense, such as malice, the jury must be instructed that the Defendant Ute Tribal Court has the burden to disprove the affirmative defense beyond the reasonable doubt to obtain the conviction. United States v. Lofton, 776 F. 2d 918, 921 (10th Cir. 1985). The district court failed to do that here. That is, the district court failed to instruct the jury that the Defendant Ute Tribal Court had to prove beyond the reasonable doubt that Plaintiff's did not act in imperfect self-defense, an affirmative defense that negates malice. United States v. Britt, 79 F. 4th 1280, 1287 n. 2 (10th Cir. 2023), Not only that, the charge Was dismissed in Ute Tribal Court instruction

erroneously provided the jury could find him guilty even if he was subjectively acting in self-defense, which is the essential element of Imperfect self-defense. These instructional error warrant reversal.

A. PRESERVATION AND STANDARD OF REVIEW.

25. Plaintiff's did not object to this Court's review is for plain error. United States v. Jones, 74 F. 4th 1064, 1068 (10th Cir. 2023). Plaintiff's can satisfy all four prongs of plain error. I.e., (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. This is particularly true given that this Court relaxes the plain error standard where, as here, there is potential constitutional error. United States v. Benford, 875 F. 3d 1007, 1016 (10th Cir. 2017)(We apply plain error less rigidly when reviewing the potential constitutional error.

B. THE DISTRICT COURT WAS DISMISSED IN UTE TRIBAL COURT INSTRUCTION OMITTED THE DEFENDANT UTE TRIBAL COURT'S BURDEN TO DISPROVE IMPERFECT SELF-DEFENSE AND ERRONOUSLY INDICATED THE JURY COULD CONVICT EVEN IF PLAINTIFF'S SUBJECTIVELY ACTED IN SELF-DEFENSE.

26. The prosecution in the criminal case must prove beyond the reasonable doubt every element of the charge. United States v. Lofton, 776 F. 2d 918, 920 (10th Cir. 1985)(citing In re Winship, 397 397 U.S. 385, 364 (1970)), to obtain the conviction for charges Defendant Ute Tribal Court

must establish beyond the reasonable doubt that the defendant acted with malice. When the defendant raises an affirmative defense that negates malice, the defendant Ute Tribal Court must prove beyond the reasonable doubt the absence of the defense. (The prosecution must prove beyond the reasonable doubt the absence of the heat of passion on sudden provocation when the issue is properly presented in the case. (quoting United States v. Toledo, 739 F. 3d 562, 568-89 (10th Cir. 2014); United States v. Britt, 79 F. 4th 1280, 1287 (10th Cir. 2023)(same as to self-defense because it is directed toward negating the element of criminal intent).

C. THE ERROR IS PLAIN

27. Generally, an error is plain if it is clear or obvious under current, well-settled law of this court or the Court. United States v. Venjohn, __ 4th ___ 2024 WL 288831 (10th Cir. June 10, 2024). In light of this Court's decision, the error is plain. To be sure, concerned the affirmative defense of heat of passion whereas Plaintiff's claim is as to imperfect self defense. there is no meaningful distinction between the laws in this context. That is, there is no conceivable reason why the district court would be required to instruct the jury of the Defendant Ute Tribal Court's burden to disprove heat of Passion but it wouldn't be required to instruct the jury of the Defendant Ute Tribal Court's burden

to disprove imperfect self defense. Both are affirmative defense that reduce an offense from charges by negating the element of malice. The entire justification for requiring such the burden instruction for heat of passion is that it negates the element of malice. When the defendant raises an affirmative defense that negates malice, the Defendant Ute Tribal Court must prove beyond the reasonable doubt the absence of the defense. The prosecution must prove beyond the reasonable doubt the absence of the heat of passion on sudden provocation when the issue is properly presented in the case. (quoting Mullaney v. Wilbur, 421 U.S. 684, 697-98 (1975); United States v. Corrigan, 548 F. 2d 879 (10th Cir. 1977)(same as to self-defense because it is directed toward negating the element of criminal intent).

28. The theory of defense and of the Defendant Ute Tribal Court's duty to prove beyond the reasonable doubt the absence of heat of passion in order to obtain the conviction. Because imperfect self-defense is such the malice-negating affirmative defense, the district court erred in not instructing the jury on the Defendant Ute Tribal Court burden to disprove it. Imperfect self-defense is when the defendant subjectively acts in self-defense but is criminaly negligent in doing so. United States v. Toledo, 739 F. 3d 562, 568-89 (10th Cir. 2014), in other words. The defendant subjectively

believed that the use of deadly force was necessary to prevent death or great bodily harm to himself or others. But his belief was not objectively reasonable. United States v. Britt, 79 F. 4th 1280, 1287 (10th Cir. 2023). The defendant who acts in imperfect self-defense is not guilty of charges because the defense operates to negate the matter element. That is, the defendant Amboh, and Gardner in Ute Tribal Court is not guilty of charges because the defense operates to negate the malice element. (cleaned up). That is, the defendant Ute Tribal Court who prove an imperfect self-defense does not have the requisite to be guilty of charges. Hence, In order to prove the elements of malice beyond the reasonable doubt, it is the Defendant Ute Tribal Court's burden to prove beyond the reasonable doubt that the defendant was not acting in imperfect self-defense. There is at least the reasonable probability that one juror would have found the Defendant Ute Tribal Court failed to prove beyond reasonable doubt that Plaintiff's did not subjectively act in self-defense.

Accordingly, there is at least the reasonable probability that one juror would have found the Defendant Ute Tribal Court failed to prove beyond reasonable doubt that Plaintiff's did not subjectively act in self-defense.

D. THERE IS THE REASONABLE PROBABILITY THE JURY WOULD NOT HAVE CONVICTED PLAINTIFF'S OF CHARGES ABSENT THE ERROR.

Plaintiff's can meet the third prong of plain error because there is the reasonable probability that the outcome of the trial would have bee n different but for the error. That is, had the district court properly dealt with the Plaintiffs claims, the Defendant Ute Tribal Court had to disprove imperfect self-defense beyond the reasonable doubt, there is the reasonable probability (i.e., less than the preponderance) that at least one juror would would have had reasonable doubt that Plaintiff's was guilty of charges, the Court had no trouble concluding that this same instructional error affects substantial and fundamental rights. This Court should easily reached the same conclusion here.

E, THE FOURTHPRONG OF PLAIN ERROR IS SATISFIED

As discussed above, the mere fact that there is the reasonable probability that the Plaintiff's not have been convicted of the greater offense but the error is reason enough for this Court to exercise its discretion to vacate the conviction. That is especially true here given that Plaintiff's is currently not serving time.

The plaintiff's trial, an error is plain if it is clear or obvious at the time of the appeal. United States v. Salas, 889 F. 3d 681, 686-87 (10th Cir. 2018), accord Henderson v. United States, 568 U.S. 266, 276 (2013), In any event, as noted above, this Court long held that 704(b) cannot be

circumvented by posing hypothetical.

Such the defendant Ute Tribal Court is not entitled to the complete Acquittal, but rather is guilty of charges. That is because the defendant who commits the charges during an imperfect self-defense has caused the charges while defending themself. The lawful act, but did so in an unlawful manner by using excessive force. United States v. Brown, 287 F. 3d 905, 975 (10th Cir. 2002).

F. THIS COURT CAN REVERSE BASED ON CUMULATIVE ERROR

If this Court agree that the district court erred with respect to the Rule 704(b) violation and the instructional error, then it may proceed to consider whether the error were prejudicial under the cumulative-error analysis. United States v. Starks, 34 F. 4th 1132, 1169, 70 (10th Cir. 2022), that is, this Court may consider whether their cumulative effect on the outcome of the trial is such that collectively they can no longer be determine to be harmless.

XVIII. CONCLUSION.

This Court should remand the named Tribal Defendants of not being involved claims;

1, returning Amboh's shoshone children, and

2, have hearing on Gardner's lay Advocate right to continue her practice in Ute Tribal Court, and for any further proceedings that this court deems right and just, for all the

irreparable harm that was caused.

STATEMENT CONCERNING ORAL ARGUMENTS

Oral argument is required because party's believe it will aid the Court's resolution of the issues raised in this appeal.

Respectfully submitted this 11 day of August, 2025.

Lynda Gardner

Kandra Ambon

CERTIFICATE OF SERVICE

I, hereby filed Copy of: **PLAINTIFF-APPELLANT'S OPENING BRIEF OF LYNDA GARDNER, AND KANDRA AMBOH,** dated on August 11 2025, which caused party of record to be served to:

Jeffrey S. Rasmussen
1900 Plaza Drive
Louisville, CO 80027

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