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 REPLY BRIEF

Plaintiffs-Appellants:

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September _____, 2025.

ORAL ARGMENT NOT NEDED

TABLE OF CONTENT

TABLE OF AUTHORTIES

CASES;

STATUTES;

INTRODUCTION

Defendant-Appellee Ute Tribal Court Brief in Opposition fails to address the Plaintiff-Appellant claims. Rather than engage with the record and argument, Defendant-Appellee rely on conclusory assertions that unresolved and were irrelevant, the Indian canons of construction do apply.

ARGUMENT

I. THE U.S. DISTRICT COURT REVERSIBLY ERRED IN ADMITTING PLAINTIFF-APPELLANT'S IN VIOLATION OF RULE 702(b)

Opinion on an Ultimate Issue, Fed. R. Evid. Rule 704 Sec. Exception (b) provides that an expert witness must not state an opinion about whether the Plaintiff-Appellant Lynda Gardner, and Kandra Amboh, did or did not have mental state or condition that constitutes an element of the crime charged or Plaintiff claim of defense. Those matters are for the trier of facts alone. Fed. R. Evid. 704(b). An expert cannot expressly draw the conclusion that Plaintiffs acted reckless with their claims for relief. United States v. Wood, 207 F. 3d 1222, 1236 (10th Cir. 2000). Plaintiff Amboh was charged and ultimately was not convicted in any court of any crimes.

A. PLAINTIFF-APPELLANT'S DID NOT WAIVE THE EVIDENTIARY ERROR CLAIMS ON APPEAL.

The Defendant Ute Tribal Court main argument is that Plaintiff waived this evidentiary claim in closing because counsel concedes Plaintiffs conduct as reckless and

abandoned only defense to which recklessness was applied. Ute Tribal Defendants acted with malice to keep Lynda Gardner was who was not allowed a hearing to represent Ms. Amboh in Ute Tribal Court, which continues to this date.

1. TRIAL OF UTE TRIBAL COUNSEL DID NOT CONCEDE PLAINTIFF-APPELLANT BEHAVIOR WAS RECKLESS.

In support of its claim that trial counsel waived the rule 704(b) issue by repeatedly labeling Plaintiff behavior as reckless. The Ute Tribal Defendants sets out quotation from defense counsel's closing argument.

2. PLAINTIFF-APPELLANT AMBOH DID NOT ABANDON HER DEFENSE AGAINST THE FILED CHARGES.

Next, the Defendant Ute Tribal Court Defendants argues that Plaintiff waived the Rule 704(b)issue by discarding Plaintiff's defense to appeal the Tribal charges. Again, the Defendant Ute Tribal Defendants is grossly exaggerating with Plaintiff's defense actually did in the relief claims.

3. EVEN IF DEFENSE DEFENDANT=APPELLEE COUNSEL HAD CONCEDED RECKLESSNESS OR ABANDONED IT AS DEFENSE, THAT WOULD NOT HAVE WAIVED THE RULE 704(b) EVIDENTIARY ERROR.

Assuming for the sake of argument that defense counsel's closing argument conceded that Plaintiff's conduct was reckless and abandoned the charges defense, that still would not have constituted waiver of the Rule 704(b) issue on appeal.

Waiver is the intentional relinguishment or abandoned of known Civil Rights. United States v. Cruz-Rodriguez, 570 F. 3d 1179, 1183 (10th Cir. 2009). Waiver occurs when party deliberately considers an issue and make an intentional decision to forgo it. The waiver doctrine has been applied in situation of invited error. The Court typically finds waiver in cases where party has invited the error that it now seeks to challenge, or where party attempts to reassert an argument that it previously raised and abandoned. United States v. Zubia-Terres, 550 F. 3d 1202, 12205 (10th Cir. 2008).

Tellingly, the Defendant Ute Tribal Defendants cites no authority finding waiver under similar circumstances. Because counsel's alleged closing argument was in no way an intentional abandonment of the evidentiary error claimed Relief on appeal.

B. THE TESTIMONY DEFENDANT-APPELLANT VIOLATED RULE 704(b).

The Court on the other hand, has described extreme reckless as akin to an alternative culpable mental state or means of satisfying the element of malice. United States v. Visinaiz, 428 F. 3d 1300, 1307 (10th Cir. 2005).

C. THE ERROR WAS PREJUDICIAL

As explained in the opening brief, there is reasonable probability that, but for testimony, at least one juror would

have had reasonable doubt that Plaintiff was guilty of charges; That's because, (1) it bore directly on the only disputed element at trial, i.e., malice; (2) jurors are more likely to give significant weight to experts, especially law enforcement; (3) the Defendant Ute Tribal Court specifically referred to the testimony in closing; and (4) there is only slight difference between the charges. None of the Plaintiff opposing arguments undermine Plaintiff showing of prejudice.

The closing statement of its case-in-chief-the last topic addressed by its final witness. Due to the recent effect, the decision by Jury was likely to be given greater weight. United States v. Marks, 34 F. 4th 1142, 1165 n. 7 (10th Cir. 2022). While the Defendant claim this testimony was never mentioned again, the Defendant expressly referred the jury to testimony in support of its argument that Plaintiff acted within extreme recklessness.

II. THE FAILURE TO INSTRUCT JURY THAT DEFENDANT-APPELLANT UTE TRIBAL COURT HAD TO DISPROVE IMPERFECT SELF-DEFENSE BEYOUND THE REASONABLE DOUBT WAS PLAINLY ERRONEOUD.

Before trial, the parties proposed stand alone instruction on imperfect-defense, which included that it was the Defendants burden to disprove it beyond the reasonable doubt. The elements of imperfect self-defense were incorporated into the charges and in instructions to the jury, and the Defendant burden was omitted.

Defendant failed to object do this omission. On appeal, Plaintiff claim is that the court's failure to instruct the jury on the Defendant burden was plain error. This Court has already held as such. United States v. Loften, 776 F. 2d 918 (10th Cir, 1985.

The Defendant argues that testimony was permissable because the Defendant did not expressly state the final conclusion or inference as to Plaintiff actual mental state. United States v. Schneider, 704 F. 3d 1287, 1294 (10th Cir. 2013). That's because, according to the Defendant, the jury still had to make the additional inference that Plaintiff was subjectively aware that the conduct created substantial risk, as the legal definition of recklessness requires. The Defendant Ute Tribal government is mistaken.

The Plaintiff implicitly found that the expert's opinion that Defendant Ute Tribal Court acted recklessly was irrelevant to charges.

A. PLAINTIFF-APPELLANT DID REQUEST, AND RECEIVE, AN INSTRUCTION ON IMPERFECT SELF-DEFENSE.

According to the Ute tribal Defendants, the first hurdle Plaintiff faces is that, when it comes to affirmative defenses, an instruction on the defense is not required if not requested by the Defendant. Plaintiff did request it here. United States v. Sage, 74 F. 1152, 1160 (10th Cir. 2023). The Defendant admits that parties jointly proposed instruction did

initially include imperfect self- defense. But it claims the court's revisited instructions did not. This is simply not true based upon there is no legal document written of Not Guilty by the sitting Pro Temp Judge Maria Cardoza on the trial.

To be sure, the instruction the U.S. District Court gave did not expressly refer to it as imperfect self-defense. But it is indisputable that's what the instruction was. It perfectly tracks this Court's precedent defining imperfect self-defense: the Plaintiff subjectively believed that the use of charges necessary to prevent charges or harm to himself or others, but his believe was not objectively or reasonable. United States v. Britt, 79 F. 4th 1280, 1287 (10th Cir. 2023). The defendant who acts in imperfect self-defense is guilty of charges. The District Court's instruction that Plaintiff is not guilty of charges if they act in self-defense, but it was not reasonable to think that the force used was necessary to defend himself against charges, is as the matter of law an imperfect self-defense instruction, one that was given at Plaintiff's request.

B. PLAINTIFF-APPELLANT WAS CLEARLY ENTITLED TO AN IMPERFECT SELF-DEFENSE INSTRUCTION.

Plaintiff is entitled to an instruction on any recognized defense for which there is evidence sufficent for

the reasonable jury to find an it favor. United States v. Teledo, 739 F. 562, 567 (10th Cir. 2014); United States v. Brun, 287 F. 3d 965, 974 (10th Cir. 2002). Under standard, Plaintiff was plainly entitled to a fair hearing.

The Court repeatedly held that Plaintiff is entitled to an instruction based on testimony that they feared for charges without any explicit testimony that they thought the use of force was necessary. United States v. Britt, 79 F. 4th 1280, 1291 (10th Cir. 2023): United States v. Teledo, 739 F. 3d 562, 567 (10th Cir. 2014). And claims of accident and self-defense are often mutually exclusive. Francis v. Miller, 557 F. 3d 894 (8th Cir. 2009); People v. Caris, 39 Cal. Rptr. 2d 304, 317 (Cal. App. 4th 1994). The use of force was an accident. United States v. Begay, 833 F. 2d 900, 901 (10th Cir. 1987); United States v. Woody, 55 F. 3d 1257, 1271 (7th Cir. 1995); United States v. Cree Ghost, 79 F. 4th 927, 938 (8th Cir. 2023).

C. THE REASONABLE JURY DID NOT CONVICT PLAINTIFF-APPELLANT IT CONSIDERED IMPRTFECT SELF-DEFENSE.

This reasonable probability is less than preponderance of the evidence. United States v. Benford, 875 F. 3d 1997, 1017 (10th Cir. 2017). Because this is the constitutional error, the Court applies the plain error standard less rigidly.

The jury's verdict sheds no light on whether it found

Plaintiff credible nor does it foreclose the possibility it Would have found the Ute Tribal Defendants failed to carry its burden to disprove imperfect self-defense.

CONCLUSION

This Court should vacate Ute Tribal Defendants conviction of Plaintiff that Ute Tribal Defendants are acting with malice based upon lacking to exercise proper due Process and equal protection of the law and remand for further proceedings that continues to burden Plaintiff Kandra Amboh and Lynda Gardner.

Respectfully submitted this 29 day of September, 2025.

Lynda Gardner

Kandra Amboh

CERTIFICATE OF SERVICE

I, hereby filed Copy of: **PLAINTIFF-APPELLANT'S REPLY BRIEF**, dated on ~~August~~ Sept 29 2025, which caused party of record to be served to:

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