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CASE NO. 25-5027

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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UNITED STATES OF AMERICA,  
*Plaintiff/ Appellee,*

v.

CAMERON LYNN  
*Defendant / Appellant.*

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On Appeal from the United States District Court  
for the Northern District of Oklahoma

*The Honorable Gregory K. Frizzell,*  
*United States District Judge*  
Case No. 4:24-CR-00076-GKF

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**RESPONSE BRIEF OF THE UNITED STATES**

*Oral argument is not requested*  
*There are no attachments to this brief*

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Clinton J. Johnson  
United States Attorney  
Northern District of Oklahoma

Steven J. Briden  
NH Bar ID# 267696  
Assistant United States Attorney  
110 W. 7th Street, Suite 300  
Tulsa, Oklahoma 74119  
918.382.2700  
steven.briden@usdoj.gov

*Attorneys for the United States of America*

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## Statement of Prior or Related Appeals

There are no prior or related appeals.

## Jurisdiction

A grand jury charged Lynn, an enrolled member of the Choctaw Nation, with first-degree murder and other violent crimes in Indian country; therefore, the district court had subject matter jurisdiction under 18 U.S.C. §§ 1153 and 3231. (R. Vol. I at 177–80). After a jury found Lynn guilty on all counts, the district court sentenced him to life plus ten years' imprisonment. (*Id.* at 1197–98). Lynn filed his timely notice of appeal on March 2, 2025. (*Id.* at 1204–05). This Court has appellate jurisdiction under U.S.C. § 1291.

## Issues Presented for Appeal

1. Whether the district court abused its discretion by admitting a copy of the Choctaw Nation's enrollment database as a business record under Fed. R. Evid. 803(6)?
2. Whether, after Lynn asked the Court to modify a pattern jury instruction with one sentence from *United States v. Hicks*, the district court abused its discretion by adding that sentence and the following?
3. Whether the district court erred in omitting disproving imperfect self-defense as an element in the murder instructions, when other instructions presented involuntary manslaughter as an alternative to murder, explained imperfect self-defense, and told the jury that if they find Lynn acted in imperfect self-defense, he would be guilty of involuntary manslaughter?

## Statement of the Case

### **I. Cameron Lynn walked into a homeless encampment in the middle of the night, shot Teresa Burke and then shot and killed Alcides Monroig.**

#### ***A. Lynn and his victims lived in separate campsites in a homeless encampment.***

After losing her housing, Teresa Burke had to make a “life on the streets.” (R. Vol. I at 709). She eventually met Jessie Walthers and Alcides Monroig, who offered to let her stay in their encampment. (*Id.* at 711). At their campsite near railroad tracks in Tulsa, Oklahoma, Burke and Walthers stayed in one tent and Monroig stayed in a different tent. (*Id.* at 713). On February 23, 2024, Burke, Walthers, and Monroig were in their tents. (*Id.* at 713–14).

Roughly 70 to 100 yards east of their campsite was another campsite. (R. Vol. I at 530–31). That night, Cameron Lynn and his brother Jason<sup>1</sup> were at that campsite. (R. Vol. I at 577–78). With them were Cara Campbell (Lynn’s common-law wife) and James “Cowboy” Ervin. (*Id.* at 449; 579). While at the campsite, they smoked cigarettes, weed, and methamphetamine. (*Id.* at 579).

#### ***B. Lynn left his campsite and shot Monroig and Burke.***

That night, Lynn was acting “kind of strange.” (R. Vol. I at 583). Lynn told the others that he “really, really don’t like the person that he’s going to

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<sup>1</sup> Because the Lynn brothers share a last name, this brief will refer to Cameron Lynn as “Lynn” and Jason Lynn as “Jason.”

become.” (R. Vol. I at 586). Lynn then left the camp and headed west, in the direction of the other campsite. (*Id.* at 587).

At the other campsite, Burke woke up when she heard someone walking in a garbage pile left by previous campers. (*Id.* at 717). Walthers asked, “Who’s out there?” (*Id.* at 720). Lynn said, “It’s Jason,” pretending to be his brother, who Walthers and Burke knew. (*Id.* at 604–05, 721). Walthers asked Lynn what he wanted, and Lynn claimed he wanted his “stuff back.” (*Id.* at 723). Walthers told Lynn to leave, and when they did not hear him move, Walthers and Burke unzipped their tent door to look out. (R. Vol. I at 723–24). Lynn kept telling them that he wanted his stuff back, and Walthers told him that they did not have his stuff, and that he should leave. (R. Vol. at 724). Lynn then told Burke and Walthers that he had a gun. (*Id.*). Walthers told Lynn that he did not “care about your gun. Get out of our camp.” (*Id.*).

Burke then told Walthers to shine a flashlight on Lynn. (*Id.*). Walthers also called out to Monroig for help. (*Id.* at 725). Monroig, from inside his tent, said, “Hey man, don’t make me come out there.” (*Id.* at 725–26). Lynn told them to turn the flashlight off and he would leave. (*Id.* at 726). However, as soon as Walthers turned the flashlight off, Lynn cocked his gun and opened fire. (*Id.*). Lynn first shot into Burke’s tent, striking her in the hip. (*Id.* at 729, 732). Lynn

then fired in Monroig's tent, striking him in the chest. (*Id.* at 729, 778).

Walthers used Burke's phone to call 911. (*Id.* at 731). Lynn fled before police arrived. (*Id.* at 730).

From the other campsite, Jason and Cowboy heard the gunshots. (*Id.* at 547, 610). Lynn came running from the direction of the other campsite and he was noticeably out of breath. (*Id.* at 550, 611). Lynn claimed that "people shined lights in his eyes and [were] aggressive." (*Id.* at 550). Lynn also claimed, "the white guy shot first." (*Id.* at 612). Lynn told Campbell to leave, then everyone else left the campsite. (*Id.* at 611).

***C. Police investigated the shooting and a grand jury indicted Lynn.***

Officers and EMTs quickly arrived at the crime scene. (R. Vol. I at 483–85). Monroig was unresponsive and Burke was taken to the hospital. (R. Vol. I at 868). Officers and EMTs could not revive Monroig. The police located and documented shell casings outside the tents and bullet holes in the tents. (R. Vol. I at 533). However, the police did not find any evidence of firearms or firearms paraphernalia inside Burke's or Monroig's tents. (R. Vol. I at 867).

Because Lynn had claimed he was Jason at the campsite, police initially detained Jason. (R. Vol. I at 869–70). However, it quickly became clear that

Lynn was the actual shooter, not Jason. (R. Vol. I at 625, 870). Jason told police that his brother carried a black Glock 19. (R. Vol. I at 850–81).

About five days after the shooting, the police began following Cara Campbell to try to find Lynn. (R. Vol. I at 626). They approached Campbell at a bonfire. (*Id.* at 628–29). One of the men with her was carrying a black Glock 19 pistol that Campbell had sold him. (R. Vol. I at 630, 679–680, 693). Police did ballistics testing on the Glock, and it matched the shell casings found on scene. (R. Vol. I at 873–75).

***D. After a trial, the jury found Lynn guilty on all counts.***

A grand jury charged Lynn with (1) first-degree murder in Indian country; (2) assault with a dangerous weapon with intent to do bodily harm in Indian country; (3) discharging a firearm during and relation to a crime of violence; and (4) assault resulting in serious bodily injury in Indian country. (R. Vol. I at 177–80). Lynn’s opening statement conceded that he shot Burke and Monroig. (R. Vol. I at 473). In closing, he argued that he went to Burke’s camp to get his things back, there was a confrontation, and when Walthers shined the flashlight in his face, Lynn fired. (R. Vol. I at 1086).

***1. At trial, a Choctaw Nation enrollment coordinator presented information from the tribal database to establish Lynn's blood quantum and membership.***

In addition to testimony from the witnesses discussed above, Erica Tomlinson, the program coordinator in the Choctaw Nation enrollment department, testified to help establish that Lynn was a registered member, by blood, of the Choctaw Nation. (R. Vol. I at 793). Ms. Tomlinson testified about the purpose and function of the tribe's enrollment database, and she described the process that she and her supervisees follow when receiving and inputting information into the database. (R. Vol. I at 793, 813–14, 836–42). She established that the members of her department receive applications for CDIBs and that once they verify the documents, they have a duty to send them to BIA for review. (R. Vol. I at 794). Ms. Tomlinson explained that when the enrollment department received the CDIB approval back from BIA, if the person has also applied for tribal membership, the enrollment department approves them and enters their paperwork into the system. (R. Vol. I at 794–96). She testified that the database is non-public and that only employees of the tribal enrollment department and the BIA superintendent can even access the tribal database. (R. Vol. I at 806–07). Ms. Tomlinson also testified that the tribe relies on the database in its day-to-day activities. (*Id.* at 796). Her

testimony established that the process for sending and receiving documents back from the BIA had been the same since 1979, and that she was unaware of any changes to the tribe's enrollment process. (R. Vol. I at 813–14, 836–42). Ms. Tomlinson explained that when tribal members request confirmation of membership, the tribe relies on its database, not any underlying documents. (*Id.* at 796).

Tomlinson testified that she herself took the screenshot of the tribal database entry for Lynn before trial and authenticated the document. (*Id.* at 797–98). The tribal database showed that Lynn was approved for admission on September 20, 2001, and that his blood quantum is 63/128. (*Id.* at 804–805). The district court made factual findings that the database entry complied with Rule 803(6) and admitted the screenshot over Lynn's objection. (R. Vol. I at 848).

***2. Lynn sought to amend the self-defense instruction with a sentence from Hicks, but objected when the district court added another.***

In Lynn's proposed jury instructions, he asked for following language to be added to the pattern jury instruction on self-defense: "Self-defense only requires the defendant's reasonable belief that deadly force was necessary, not that he exercise a duty to retreat or recognize the unavailability of reasonable

alternatives.” (R. Vol. I at 264). To support the inclusion of this language, he cited *United States v. Hicks*, 116 F.4th 1109 (10th Cir. 2024). (*Id.*). In its preliminary jury instructions, the district court included that proposed language from *Hicks* and added the following sentence: “The jury may consider the defendant’s ability to retreat as a factor in assessing whether his use of deadly force was reasonably necessary to defendant himself under the circumstances.” (R. Vol. I at 911). During the jury instruction conference, Lynn objected to this addition, claiming it was “a misstatement of the law.” (*Id.*). The district court noted that it drew the language from *Hicks*, the case Lynn relied upon, but agreed to review the instruction and address it at the next instruction conference. (*Id.*).

In its final self-defense instruction, the district court included both the language proposed by Lynn, and the additional language from *Hicks*. (R. Vol. I at 1139). Lynn again objected to the sentence added by the court. (*Id.* at 1061). Lynn claimed that *Hicks* stood for the proposition that “a defendant does not have a duty to retreat or consider any alternatives,” and that the added sentence was “tantamount to burden-shifting.” (*Id.*). The district court noted that Lynn had asked for the language from *Hicks* and that the language the court added was included in the same paragraph. (*Id.* at 1066). The district

explained, “I think though, that if I include the first sentence from *Hicks*, I need to include the second.” (*Id.* at 1067). The district court rejected Lynn’s claim that the language amounted to “burden-shifting” and overruled the objection. (*Id.* at 1066–68).

***3. The district court instructed the jury about imperfect self-defense and involuntary manslaughter.***

Lynn’s proposed instructions did not request an imperfect self-defense instruction, and his proposed murder instruction did not reference imperfect self-defense. (R. Vol. I at 264, 271–278). In its draft jury instructions, the district court added an imperfect self-defense instruction. (R. Vol. I at 916). During the instruction conference, Lynn asked that the district court add an element to each murder offense, namely that “the killing was not done in imperfect self-defense.” (R. Vol. I at 916). He did not object to the language of the court’s imperfect self-defense instruction. The district court found that adding this language to the first-degree murder instruction was overly complex, especially considering that the imperfect self-defense instruction separately told the jury that if they find he acted in imperfect self-defense, they should find him guilty of involuntary manslaughter. (*Id.* at 917).

In its final instructions, the district court offered a self-defense instruction before any of the substantive offense instructions. (R. Vol. I at 1139). The

district court offered separate instructions on first-degree murder, and each lesser-included offense. (*Id.* at 1142–49). Both murder instructions required the jury to find that “the killing was not done in self-defense.” (*Id.*). The district court also included a separate imperfect self-defense instruction that defined imperfect self-defense, explained the difference between imperfect and normal self-defense, and directed the jury that, “[a] defendant who acts in imperfect self-defense commits involuntary manslaughter.” (*Id.* at 1150). The court reinforced that by adding language to the involuntary manslaughter instruction explaining that “[a] person may commit a lawful act in an unlawful manner, or without due caution and circumspection, if he acts in ‘imperfect’ self-defense.” (R. Vol. I at 1149).

***4. The jury convicted Lynn of all crimes charged in the indictment.***

The jury convicted Lynn of first-degree murder in Indian country, assault with a dangerous weapon in Indian country, discharging a weapon during and in relation to a crime of violence, and assault resulting in serious bodily injury in Indian country. (R. Vol. I at 1106–07). The district court sentenced him to life in prison. (*Id.* at 1198).

### **Summary of the Argument**

The district court properly admitted the Choctaw Nation's enrollment database entry for Lynn because it qualified as a business record under Rule 803(6). Erica Tomlinson from the Choctaw Nation explained how they keep and manage the database, how they enter information into it, and that they use it daily to assist Nation members. For the regular business of the nation, they use the database, not individual records. She also established that the tribe reviews applications for certificates of degree of Indian birth before the applications are sent to the Bureau of Indian Affairs, and then the BIA approves and issues the CDIBs. The Nation's enrollment database is kept in the ordinary course of business, by persons with personal knowledge or a business duty to maintain the records, and the records are made close in time to a member's enrollment in the tribe.

Additionally, the blood quantum reference in the database entry does not constitute "hearsay within hearsay" because the tribe separately reviews each application for a CDIB to make sure the tribe can actually connect the applicant to the Dawes Roll, and the blood quantum information is kept by the tribe. Even if the information did come from an outside source, that source

would be the BIA, which has a business duty to transmit that information to the tribe, and the document the lists the blood quantum is self-authenticating.

Even if the district court erred by admitting the database entry, that error was harmless under either the constitutional or non-constitutional error standard. The government presented uncontested testimony from Lynn's brother that Lynn is an enrolled member of the Choctaw Nation, that he has some quantum of blood, and engaged in social activities with the tribe. Even without the database entry, the admission of this evidence ensures, beyond a reasonable doubt, that the erroneous admission of the document was harmless.

Because Lynn raises a completely distinct challenge to the district court's self-defense jury instruction on appeal than he did in the district court, this argument was not preserved. Under his new argument, Lynn invited any error by the district court when he requested additional language from *Hicks* regarding the duty to retreat. Regardless, any error was not plain because the instruction adequately stated the controlling law and provided the jury an accurate understanding of the issues and standards. Even if the instruction was erroneous, any error did not affect Lynn's substantial rights and was harmless because neither party argued that the duty to retreat applied.

The district court did not abuse its discretion by explaining imperfect self-defense in a separate instruction instead of including it in the first-degree murder instruction, because there is no functional difference between offering a mitigation instruction separately or offering it as a part of the instruction itself. Taken together, the instructions cogently explained the elements of first-degree murder and each of the three lesser-included offenses and made clear that the government bore the burden of rebutting Lynn's self-defense argument. Even if district court erred in failing to include an explanation of imperfect self-defense in the first-degree murder instruction, that error was harmless because the jury convicted Lynn of premeditated murder, which is fundamentally incompatible with imperfect self-defense. A jury could not simultaneously conclude that Lynn premeditated first-degree murder and also that he acted in self-defense, whether perfect or imperfect. Moreover, substantial evidence supported premeditated murder, and no evidence suggested that Lynn faced any harm from his victims shining a flashlight in his face.

## Argument

### **I. The district court did not abuse its discretion by admitting a copy of the Choctaw Nation’s enrollment database as a business record under Fed. R. Evid. 803(6).**

#### ***A. Record Reference***

Lynn objected to the admission of a copy of the Choctaw Nation’s enrollment database entry showing his tribal membership and blood quantum. (R. Vol. I at 798, 808, 817, 831–838, 848). The district court overruled Lynn’s objection, finding the database entry complied with Rule 803(6). (*Id.* at 848).

#### ***B. Standard of Review***

This Court reviews a district court’s evidentiary rulings for an abuse of discretion. *United States v. Silva*, 889 F.3d 704, 709 (10th Cir. 2018). However, this Court will not “disturb the district court’s ruling absent a distinct showing it was based on a clearly erroneous finding of fact or an erroneous conclusion of law or manifests a clear error of judgment.” *United States v. Batton*, 602 F.3d 1191, 1196 (10th Cir. 2010). Because hearsay determinations are particularly fact and case specific, this Court’s review is “especially deferential.” *Id.* Reversal is not appropriate if the district court’s decision “falls within the

bounds of permissible choice in the circumstances.” *United States v. Hinson*, 585 F.3d 1328, 1336 (10th Cir. 2009).

***C. The district court did not err because the Choctaw Nation enrollment database entry was properly admitted under the business record exception to the rule against hearsay.***

The Cherokee National enrollment database entry was properly admitted because the tribe maintains it in its ordinary course of business; it is kept up to date by individuals with personal knowledge of the information contained within it; and the sources, methods, and circumstances by the which the record is maintained are trustworthy.

To convict Lynn of the Indian country offenses, government needed to prove that Lynn was an Indian at the time of the offense. *United States v. Hatley*, 153 F.4th 1112, 1123 (10th Cir. 2025). One method to prove Indian status “is to adduce a tribal document containing such information.” *Id.* at 1124 (*citing United States v. Wood*, 109 F.4th 1253, 1257 (10th Cir. 2024)). However, if the document does not bear a federal seal, it is not self-authenticating and must be admitted under an exception, such as the business records exception. *Id.* “To satisfy Rule 803(6), the government must demonstrate that the tribal record (1) was prepared in the normal course of business, (2) was prepared at or near the time of the events recorded, (3) is based on the personal knowledge of the

entrant or of a person who had a business duty to transmit the information to the entrant, and (4) indicates the sources, methods, and circumstances by which the record was made trustworthy.” *Id.*; Fed. R. Evid. 803(6)(A)–(C).

At issue is only whether the government showed that the document was made at or near the time of the events recorded by a person with personal knowledge or a business duty to transmit the information. Apl’t Br. at 16–18. First, Rule 803(6) does not require that the government produce the author of an item, or even that the witness have personal knowledge of the actual creation of the document itself. *See Federal Deposit Ins. Corp. v. Staudinger*, 797 F.2d 908, 910 (10th Cir. 1986); *see also United States v. Keplinger*, 776 F.2d 678, 693 (7th Cir. 1985). This makes sense, because to do otherwise “would eviscerate the business records exception” if the proponent had to provide a witness with specific knowledge of the document in question. *Keplinger*, 776 F.2d at 694. The rule only requires that a witness have “sufficient knowledge of the record keeping system that produced the document.” *Staudinger*, 797 F.2d at 669–70. This is because business records “have a high degree of reliability because businesses have incentives to keep accurate records” *United States v. Gwathney*, 465 F.3d 1133, 1140 (10th Cir. 2006). That is especially true here because the records in question here pertain to tribal membership which

has significant cultural, political, and economic importance to the tribe and its members.

Ms. Tomlinson's testimony shows that the tribal database entries are made at or near the time of the events recorded, namely contemporaneously with enrollment with the tribe. It also shows that these records are made by people with personal knowledge of the documents because the employees review the application documents to make sure they comply with BIA and tribal rules. Also, these tribal employees have a business duty to transmit the CDIB applications to the BIA, and then they have a business duty to process the applications and enter information into the enrollment database.

This case is distinguishable from *Harper*. In *Harper*, the government offered a letter from the tribe, created three weeks prior to trial, that attested to the defendant's enrollment date and degree of Indian Blood. *United States v. Harper*, 118 F.4th 1288, 1297, 1300 (10th Cir. 2024). The letter was signed by an employee of the tribe, but the government did not call that employee to testify. *Id.* at 1300. The government represented that the letter was an "original" document because it reflected information contained in the tribal enrollment database. *Id.* This Court held that the letter was inadmissible hearsay because the government did not establish that the letter was not created for the purpose

of litigation, it did not establish that it was necessary to offer the verification letter instead of the database itself, and it did not lay a proper foundation for the letter. *Id.* As this Court explained in *Hatley*, the real problem in *Harper* was that the letter appeared to be made for the purpose of litigation, and the witness who testified lacked personal knowledge of the letter's contents. 153 F.4th 1112, 1125 (10th Cir. 2025).

Unlike *Harper*, here, the government offered an entry from the database itself, not a summary letter created for trial. The database was not created for the purpose of trial, but as a part of the Nation's regularly conducted business. The government's witness herself made the copy of the database entry, and she testified as to how the information in the database is created and entered. The district court did not clearly err in making factual findings supporting the exhibit's admission under 803(6), nor did it abuse its discretion by admitting the tribal database entry.

***D. The tribal database entry showing Lynn's degree of Indian blood was not inadmissible hearsay.***

Nor, contrary to Lynn's assertion, was the degree of Indian blood contained in Lynn's tribal database entry hearsay within hearsay. It is not unusual for business records to contain information collected from other sources. *United States v. Gwathney*, 465 F.3d 1133, 1141 (10th Cir. 2006). If an outsider to a

business provides information included in a business record, those statements must also fall within a hearsay exception to be admissible. *Id.* “The essential component of the business records exception is that each actor in the chain of information is under a business duty or compulsion to provide accurate information.” *United States v. McIntyre*, 997 F.2d 687, 699 (10th Cir. 1993). “If any person in the process is not acting in the regular course of business, then an essential link in the trustworthiness fails.” *Id.*

First, Lynn’s degree of Indian blood information did not come from an outside source, but from the applicant and the Choctaw Nation itself. The Nation processes applications for CDIB cards before sending them to the BIA. (R. Vol. I at 794). That application must show that the applicant is a direct descendant of someone on the final Dawes Roll. (*Id.*). The tribe reviews these documents and confirms each applicant’s blood quantum by checking “everyone’s documents all the [way] back to that enrollee to make sure [they] have the birth certificates.” (*Id.* at 795). The tribe also keeps copies of those documents. (*Id.*). The database entry relevant to Lynn’s Indian status was not whether he had a CDIB card, but only his blood quantum, information verified by the tribe before it is ever sent to the BIA. *Prentiss II* does not require the government to prove that a person has a CDIB card, it requires that it show

that he has Indian blood. *United States v. Prentiss II*, 273 F.3d 1277, 1280 (10th Cir. 2001) (the government must show a defendant “has some Indian blood,” to prove he is an Indian).

Even if the blood quantum contained in the tribal database entry was external information from the BIA, the Choctaw Nation’s record remains admissible. A business record remains admissible even if it contains information that comes from an outside source, as long as the outside source was under a business duty to provide accurate information. *United States v. Ary*, 518 F.3d 775, 785–86 (10th Cir. 2008). In *Ary*, the government admitted museum curator inventory records as business records. One of the curators testified that, if a record lacked information, he would try to track down invoices and documentation that came with the artifact and he would add that information to the inventory record. *Id.* at 787. This Court held that, even though that additional information came from an outside source, it was not hearsay because those outside sources were under a business duty to provide accurate invoices. *Id.* “Therefore no link in the trustworthiness chain was broken,” and both the records created by the curators and the documents upon which they relied fell into the business records exception. *Id.*

Similarly, no link in the trustworthiness chain is broken when the tribe relies on a BIA CDIB document in its enrollment database. The tribe and the BIA work hand in hand to verify an applicant's blood quantum. The BIA relies on documents collected and reviewed by the tribe, and the tribe in turn relies on the BIA's approval when finalizing its enrollment. They both have a business duty to provide accurate information to each other. Moreover, government documents are even more reliable than business documents.

*United States v. Walker*, 85 F.4th 973, 981 (10th Cir. 2023) (CDIB card issued by the BIA bearing federal seal was self-authenticating under Rule 902(1)(A) and (1)(B), and therefore admissible without any of the formalities required to admit a business record). So even if the tribal database relied on Lynn's CDIB card to obtain his blood quantum, instead of the reverse, the CDIB card was self-authenticating, solving any hearsay-within-hearsay issue.

***E. Any error in admitting the database entry was harmless because Lynn's brother testified to both blood quantum and enrollment.***

In any event, any error in admitting the tribal database entry to establish Lynn's blood quantum was harmless, given that his brother Jason testified they had both been enrolled in the Choctaw Nation as children and had CDIB cards.

Contrary to Lynn’s assertion, the government need not meet the higher burden of showing any error was harmless beyond a reasonable doubt. Apl’t Br. at 16–19. This Court has recently applied the “non-constitutional harmless error” standard to a district court’s erroneous admission of a tribal document containing hearsay. *United States v. Hatley*, 153 F.4th 1112, 1127 (10th Cir. 2025) (“If a party objects to a district court’s evidentiary ruling based solely on the Federal Rules of Evidence, we review for non-constitutional harmless error”) (alterations in the original). This Court will not reverse such an error unless it prejudicially affects a substantial right of a party. *Id.*

However, under either standard, any error in admitting the tribal database entry was harmless. Lynn’s brother, Jason, testified that he is an enrolled member of the Choctaw Nation and had been since he was a child. (R. Vol. I at 571). He testified that Lynn was also enrolled as a child. (*Id.* at 571–72). Jason testified that the two attended the Choctaw Nation yearly festival and that they had both gone to tribal hospitals. (R. Vol. I at 572–73). Jason confirmed that he had a CDIB card, and that he had seen Lynn’s CDIB card. (R. Vol. I at 573).

As Tomlinson testified, an individual can only get a CDIB card or enroll in the Choctaw Nation if they have at least some quantum of Indian blood. Lynn

did not cross-examine Jason regarding his tribal membership, nor did he attack the underlying requirements for enrollment in his cross-examination of Tomlinson. Nor did Lynn even raise tribal status in his opening statement or closing argument. Even without the tribal database entry, the uncontroverted testimony from his brother that Lynn was an enrolled member of the Choctaw Nation and establishing that he had at least some quantum of Indian blood was so overwhelming that it is clear beyond a reasonable doubt that the admission of the database entry was harmless. *Cf. Walker*, 85 F.4th at 85 F.4th at 983 (“close relationship was sufficient” to allow niece to testify about her uncle’s lack of tribal membership).

The contrast between these facts and those in *Wood* and *Harper* reinforces this conclusion. In *Wood*, this Court found that an “extremely limited examination” failed to establish Wood’s girlfriend’s basis of knowledge about his status, and none of the questions established that Wood had a quantum of Indian blood or that he was even enrolled in a tribe. 109 F.4th 1253, 1266–68 (10th Cir. 2024). Similarly, in *Harper*, the Court rejected reliance on a partially completed medical form from an Indian clinic and a note referencing “help for glasses from the tribe” to show harmlessness, finding that neither document established that Harper had Indian blood, or that he was recognized by an

Indian tribe. *Id.* at 1301. Here, the testimony from Lynn’s brother directly addressed enrollment and recognition with the Choctaw Nation and established that Lynn had a CDIB card. Combined with Tomlinson’s testimony about CDIB cards and enrollment, this testimony went far beyond the evidence deemed insufficient to show harmlessness in *Wood* and *Harper*. Accordingly, even if the entry from the tribal database maintained in the regular course of tribal business was erroneously admitted, that error was harmless.

**II. After Lynn sought to modify a pattern jury instruction with language from *United States v. Hicks*, the district court did not plainly err by amending the instruction with that language and the following sentence.**

***A. Record Reference***

In Lynn’s proposed jury instructions, he amended this Court’s pattern self-defense instruction with a sentence from *United States v. Hicks*, 116 F.4th 1109 (10th Cir. 2024). (R. Vol. I at 264). The district court agreed to include that sentence and but added the next sentence from *Hicks* as well. (R. Vol. I at 1061). Lynn objected to the addition, claiming it shifted the burden. (*Id.* at 1061–68). The district court overruled Lynn’s objection. (*Id.* at 1068). Lynn never suggested to the district court that the instruction was not appropriately tailored to the facts of the case.

***B. Standard of Review***

Properly preserved claims of instructional error are reviewed for an abuse of discretion. *United States v. Benvie*, 18 F.4th 665, 669 (10th Cir. 2021). The jury instructions as a whole are reviewed de novo to determine whether the instructions “adequately stated the governing law and provided the jury with an accurate understanding of the issues and standards applicable.” *United States v. Pacheco*, 154 F.3d 1236, 1238 (10th Cir. 1998). “[H]owever, this standard only applies when the challenge to the jury instructions raised on appeal was preserved in the district court.” *United States v. Paycer*, 154 F.4th 1261, 1280 (10th Cir. 2025). “Unpreserved challenges to jury instructions are reviewed under the plain error standard.” *Id.*

To properly preserve a jury instruction challenge, it is not enough to just challenge the instruction broadly. *Paycer*, 154 F.4th at 1282–83 (“It matters not that Paycer objected to the entirety of the instruction in the district court”). The objection must be “sufficiently specific to provide the district court an opportunity to correct its action in the first instance.” *Id.* (citing *United States v. Holloway*, 826 F.3d 1237, 1251 (10th Cir. 2016)).

Here, Lynn did not preserve the argument he now raises on appeal. Based on Lynn’s proposed self-defense instruction, the district court added the

following two sentences based on language from *Hicks*: “Self-defense only requires the defendant’s reasonable belief that deadly force was necessary. A defendant has no duty to retreat or recognize the unavailability of reasonable alternatives.” (R. Vol. I at 1139). The district court added the following sentence from *Hicks*: “However, you may consider the defendant’s ability or opportunity to retreat as a factor in assessing whether his use of deadly force was reasonably necessary to defend himself under the circumstances.” (*Id.*).

During the first instruction conference, Lynn objected to the district court’s addition and argued that it was a misstatement of the law. (R. Vol. I at 911). The district court explained that it had gotten “that language from a case that you cited so we’ll obviously have another jury instruction conference.” (*Id.*). At the second instruction conference, Lynn again objected that the added language was a misstatement of the law and that it amounted to burden-shifting. (R. Vol. I at 1061–62). Lynn did not argue, as he now claims on appeal, that the district court erroneously “failed to ‘tailor’ the self-defense instruction to the ‘peculiar’ facts of Mr. Lynn’s case.” Apl’t Br. at 28.

Lynn claims this objection was preserved because, when asked by the district court what “recognize the unavailability of reasonable alternatives” meant, counsel for Lynn stated:

No, Your Honor. Because I'd ask that it not be included. But I'll also state that the government has not put forth specific alternatives to this jury. And so, again, it is burden-shifting and leaving the jury to hypothesize as to what these number of alternatives could have or should have been. That's clear in *Hicks* as well.

(R. Vol. I at 1066). First, the “unavailability of reasonable alternatives language” is not in the language added by the district court, but in the second sentence of the instruction, which Lynn himself had included in his proposed instructions. Apl't Br. at 22 (“Mr. Lynn objected to the addition of the third sentence. Specifically, he argued that the instruction should end after the second sentence and that the third sentence should be removed in its entirety”). Second, in context, this statement advanced Lynn's burden-shifting argument rather than raising a separate tailoring argument. The district court responding to this argument by stating, “All right. I don't think it's burden-shifting.” (R. Vol. I at 1066). Thus, the district court recognized and rejected Lynn's objection as challenging the sentence added by the court as a matter of law, not as challenging its appropriateness given the facts of this case. Nor did Lynn's counsel try to correct the district court or clarify that he was making a new argument. Lynn's argument below did not give the district court any opportunity to assess the claim he now makes on appeal. Lynn's failure to argue plain error in his opening brief waives the argument. *United States v.*

*Roach*, 896 F.3d 1185, 1192 (10th Cir. 2018). Based on this failure, this Court should exercise its discretion and decline to review Lynn’s unpreserved challenge to the self-defense instruction.

In fact, under Lynn’s new theory, he invited any error by the district court. The invited-error doctrine prevents a party who induces an erroneous ruling from being able to have it set aside on appeal. *United States v. Burson*, 952 F.2d 1196, 1203 (10th Cir. 1991). In his proposed jury instructions, Lynn added language to the pattern jury instruction seeking the court to instruct that Lynn had no duty to retreat or recognize the unavailability of reasonable alternatives. (R. Vol. I at 264). He also argued in both instruction conferences for the inclusion of the duty-to-retreat language. (R. Vol. I at 911; 1061–66). But Lynn now claims that the additional sentence discussing that duty is erroneous because “[t]he issue of a ‘duty to retreat’ never arose in Lynn’s case.” Apl’t Br. at 28. The district court only instructed on the duty to retreat because Lynn specifically asked the district court to do that. If the last sentence was inappropriate because the duty to retreat was not raised in the case, so were the two prior sentences requested by Lynn. If it truly was error for the district court to instruct on the “duty to retreat,” that error was induced by

Lynn, and his argument should be deemed waived. *United States v. Carrasco-Salazar*, 494 F.3d 1270, 1272 (10th Cir. 2007).

***C. The district court did not commit plain error by adding a sentence from Hicks to the self-defense jury instruction because it was a correct statement of the law and did not confuse the jury.***

Even if Lynn did not invite any error, the district court did not err, let alone plainly err, in adding the third sentence from *Hicks*, because its self-defense instruction accurately stated the controlling law and provided the jury an accurate understanding of the applicable issues and standards. To establish plain error on appeal, Lynn must show that the “district court committed (1) error (2) that is clear or obvious under current law, and which both (3) affected [his] substantial rights and (4) undermined the fairness, integrity, or public reputation of judicial proceedings.” *Id.* at 1192 (citations omitted).

***1. The district court’s self-defense instruction was a correct statement of the law and there is no evidence that it misled or confused the jury.***

The three sentences that the district court added to the pattern jury instruction come directly from *Hicks* and *United States v. Toledo*, 739 F.3d 562, 569 (10th Cir. 2014). Importantly, *Hicks* offers these three sentences in its discussion of the relevant law, not during its analysis of the merits of the claim. *Hicks*, 116 F.4th at 1118.

The defendant in *Hicks* was charged with second-degree murder. *Id.* at 1113. At trial, he pursued a self-defense claim. *Id.* To counter this claim, the government “introduced and emphasized evidence that Defendant refused to retreat or pursue alternatives.” *Id.* at 1118. During its cross-examination of the defendant, the government asked dozens of questions to establish that he considered and rejected non-deadly options. *Id.* at 1118–20. However, despite the government’s theory of the case, the district court refused to give an instruction that clarified that the defendant did not have a duty to retreat or consider other alternatives. *Id.* at 1120–21. This Court held that the district court’s refusal to offer that instruction was error because it “left the jury in the dark as to the applicable law.” *Id.* at 1121.

Far from showing error, as Lynn claims, *Hicks* confirms that the district court did not err. Unlike *Hicks*, this district court did not “leave the jury in the dark.” At Lynn’s request, the court instructed the jury that Lynn had no duty to retreat or consider other options. (R. Vol. I at 1139). It also instructed the jury that they could consider Lynn’s ability or opportunity to retreat when determining whether Lynn’s actions were reasonable, consistent with the statements of law in *Hicks* and *Toledo*. As the instruction was a correct statement of the law, the district court did not err.

Lynn concedes that, contrary to his argument below, the added language is not a misstatement of the law. Apl't Br. at 11. He also abandons his argument that this added instruction amounted to burden shifting. *Id.* at 22–23. Instead, he claims the instruction was not tailored to reach the peculiar facts and legal issues raised in this case. *Id.* at 28–29. He claims that this added sentence had the effect of “focusing the jury’s attention solely on the issue of ability or opportunity to retreat [], to the exclusion of other factors that the jury reasonably could have considered....” *Id.* However, Lynn offers no explanation, beside that conclusory sentence, of *how* the single sentence added by the district court had that alleged effect in the context of the broader jury instructions. Nor does Lynn offer any explanation as to why a jury would have been misled by an accurate statement of the law.

Lynn has conceded the instruction was legally correct and has failed to demonstrate that this instruction had any improper effect on the jury, therefore the district court did not err.

2. *Any error in the self-defense instruction was not plain.*

Even if the district court erred by offering the self-defense instruction, that error was not plain. “An error is plain if it is clear and obvious at the time of the appeal.” *United States v. Salas*, 889 F.3d 681, 686–87 (10th Cir. 2018)

(citations omitted). “[A]n error is clear and obvious when it is contrary to well-settled law.” *Id.* at 687. “In general, for an error to be contrary to well-settled law, either the Supreme Court or this court must have addressed the issue.” *Id.*

Lynn has failed to cite to any case that states it is error to instruct a jury that they can “consider the defendant’s ability or opportunity to retreat as a factor in assessing whether his use of deadly force was reasonably necessary to defend himself under the circumstances.” (R. Vol. I at 1139). Rather, *Hicks* specifically states that a jury may consider the defendant’s ability to retreat in assessing the reasonableness of his actions. *Hicks*, 116 F.4th at 1118. This Court recently re-affirmed that principle in *United States v. Holt*, —F.4th—, No. 24-7044, 2025 WL 3637960 at \*7–\*9 (10th Cir. Dec. 16, 2025). In *Holt*, the defendant claimed that the prosecutor misstated the law of self-defense because the prosecutor argued that the defendant had opportunities to retreat and alternatives to deadly force, thus implying that Holt had a duty to retreat. *Id.* at \*8. This Court found that the prosecutor did not err, because in context he was urging the jury to “consider the possibility of retreat when assessing the reasonableness of Holt’s use of defense force,” which was “in alignment with caselaw.” *Id.* at \*8.

As Lynn had provided no caselaw supporting his claim that the district court could not offer the instruction, and this Court has at least twice re-affirmed that it is appropriate for a jury to consider a defendant's ability or opportunity to retreat in assessing the reasonableness of his actions, any error in instructing the jury was not plain.

3. *The instruction did not affect Lynn's substantial rights nor did it undermine the fairness of the judicial proceeding.*

Lynn shows no reasonable probability that, if the district court did not tell the jury they can consider a defendant's ability or opportunity to retreat in assessing the reasonableness of his actions, the result of the proceeding would have been different. *See United States v. Hasan*, 526 F.3d 653, 665 (10th Cir. 2008). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

The jury was specifically instructed, at Lynn's request, that he had no duty to retreat. As Lynn now admits, neither he nor the government ever made any arguments or offered any testimony regarding Lynn's duty to retreat, or to consider reasonable alternatives. *Apl't Br.* at 28–29. It is difficult to see how one sentence in a jury instruction that is not connected to the arguments of the parties and is never repeated by any party could undermine confidence in the

outcome. Lynn chose not to explain how it prejudiced him in his opening brief, and under the applicable plain error standard, it is his duty to do so.

*4. Even if Lynn preserved this challenge and the district court erred in adding the third sentence of Hicks, any error was harmless.*

As laid out more fully in Section III(C) below, if the district court erred, the error was harmless because the jury convicted Lynn of premeditated murder, necessarily rejecting any self-defense argument.

**III. The district court did not abuse its discretion when it included a separate instruction on imperfect self-defense, instead of adding it as an element to first-degree murder.**

***A. Record Reference***

During the instruction conference, Lynn objected to the district court's proposed jury instruction on first-degree murder, asking that the Court add an element that the defendant did not act in imperfect self-defense. (R. Vol. I at 916). The district court overruled the objection. (*Id.* at 917).

***B. Standard of Review***

Properly preserved claims of instructional error are reviewed for an abuse of discretion. *United States v. Benvie*, 18 F.4th 665, 669 (10th Cir. 2021). This Court reviews the jury instructions as a whole de novo to determine whether the instructions “adequately stated the governing law and provided the jury

with an accurate understanding of the issues and standards applicable.” *United States v. Pacheco*, 154 F.3d 1236, 1238 (10th Cir. 1998).

***C. The district court did not abuse its discretion in rejecting Lynn’s addition to the first-degree murder instruction.***

The jury was properly instructed that, if they found that Lynn acted in imperfect self-defense, he was guilty of involuntary manslaughter. This Court reviews jury instructions as a whole to determine whether the jury was misled. *United States v. Paycer*, 154 F.4th 1261, 1280 (10th Cir. 2025). “[T]here is no functional difference between (1) giving [a separate instruction on a justification or excuse defense] and (2) including in the murder instruction a direction that failure to disprove the excuse or justification negates the malice element.” *United States v. Sago*, 74 F.4th 1152, 1160 (10th Cir. 2023).

The district court thoroughly instructed the jury on the murder offenses and self-defense. The district court first instructed the jury on self-defense, explaining that to “find the defendant guilty of the crimes charged in the indictment, you must be convinced that the government has proved beyond a reasonable doubt” either that “the defendant did not act in self-defense” or that “it was not reasonable for the defendant to think that the force he used was necessary to defend himself against an immediate threat.” (R. Vol. I at 1139).

Later, the court instructed the jury on the elements of first-degree murder and alternatively, the elements of three lesser-included offenses. (*Id.* at 1142–43). The first-degree murder instruction included, as an element, that the jury must find that “the killing was not done in self-defense” in order to convict Lynn of first-degree murder. (*Id.* at 1142).

Next, the district court instructed the jury on second-degree murder. (*Id.* at 1144–45). The instruction explained that the difference between first- and second-degree murder is that second-degree murder does not require premeditation. (*Id.* at 1144). The second-degree murder instruction also included, as an element, that the jury must find that “the killing was not done in self-defense” in order to convict Lynn of second-degree murder. (*Id.*).

Third, the district court instructed the jury on voluntary manslaughter. (*Id.* at 1146–47). The voluntary manslaughter instruction informed the jury that the difference between voluntary manslaughter and first-degree murder is that voluntary manslaughter is committed without “malice aforethought.” (*Id.* at 1146). As with the other instructions, this instruction also informed the jury that they must find that “the killing was not done in self-defense” in order to convict Lynn of voluntary manslaughter. (*Id.* at 1147).

Finally, the district court instructed the jury on involuntary manslaughter. (R. Vol. I at 1148–49). That instruction informed the jury that, in order to find Lynn guilty of involuntary manslaughter, they would have to find that he killed Monroig while “committing a lawful act in an unlawful manner.” (R. Vol. I at 1148). The instruction explained, “A person may commit a lawful act in an unlawful manner, or without due caution and circumspection, if he acts in ‘imperfect’ self-defense.” (*Id.* at 1149).

Immediately thereafter, the district court explained imperfect self-defense. (R. Vol. I at 1150). The instruction stated that the defendant acted in imperfect self-defense if “he subjectively believed, at the time he acted, that his actions were necessary for the defense of himself against the immediate use of unlawful force to prevent death or great bodily harm, but his belief was objectively unreasonable.” (*Id.*). The instruction also clarified that the only difference between imperfect self-defense and self-defense is whether the defendant acted reasonably. (*Id.*). The instruction closed by informing the jury that “[a] defendant who acts in imperfect self-defense commits involuntary manslaughter.” (*Id.*).

Although the district court did not have the benefit of this Court’s new pattern jury instruction on imperfect self-defense, issued a few months after

Lynn’s trial, its definition largely tracks the new instruction. *Compare id. with* 10th Cir. Pattern Jury Instruction 1.28.1 (2025).

A defense need not be specifically listed in the substantive instruction, as long as it is explained separately elsewhere in the instructions. *Sago*, 74 F.4th at 1160. Both self-defense and imperfect self-defense were explained separately from the substantive instructions. Consistent with this Court’s precedent, the district court defined imperfect self-defense in relation to self-defense, explaining that the only difference between imperfect self-defense and self-defense is whether the defendant acted reasonably. *See United States v. Toledo*, 739 F.3d 562, 569 (10th Cir. 2014) (“We perceive the distinguishing factor between perfect and imperfect self-defense to be the reasonableness of the defendant’s belief that deadly force was necessary to prevent death or great bodily harm—if reasonable, then he is entitled to a self-defense acquittal; if criminally negligent, then he is guilty of involuntary manslaughter.”). The jury was also explicitly instructed that a defendant who acted in self-defense was not guilty, and a defendant who acted in imperfect self-defense committed involuntary manslaughter, as opposed to first-degree murder, second-degree murder, or voluntary manslaughter. Additionally, each of those instructions required the jury to exclude self-defense beyond a reasonable doubt before they

could convict. Taken as a whole, a common sense reading of the instructions would be that, to convict on first-degree murder, second-degree murder, or voluntary manslaughter, the jury must be convinced, beyond a reasonable doubt that the defendant did not act in self-defense at all, whether perfect or imperfect. The record provides no support for the notion that the jury somehow could have believed that the government faced a lower burden to disprove imperfect self-defense than it did for perfect self-defense, where the instructions did not say it and no attorney argued it in closing.

*Maryboy* does not require a different result. In *Maryboy*, the district court failed to include either a standalone instruction on imperfect self-defense nor any statement regarding imperfect self-defense in its murder instructions. 138 F.4th 1274, 1291 (10th Cir. 2025). The district court only addressed imperfect self-defense only in its involuntary manslaughter instruction. *Id.* at 1291–92. This Court found that the district court erred and noted that, even though the district court discussed imperfect self-defense in its involuntary manslaughter instruction, the nature of the instructions told the jury that they could not even consider involuntary manslaughter unless they had already found the defendant did not commit first- or second-degree murder, or voluntary

manslaughter. *Id.* at 1293. Thus, the jury likely had not considered imperfect self-defense when they considered the more serious charges. *Id.*

Crucially, here, unlike in *Maryboy*, the district court did give a standalone imperfect self-defense instruction. (R. Vol. I at 1150). Moreover, each of the instructions that preceded involuntary manslaughter required the government to disprove self-defense, and the court separately instructed the jury on both perfect and imperfect self-defense. In the first- and second-degree murder and voluntary manslaughter offense instruction, it included an element that “the killing was not done in self-defense.” In the involuntary manslaughter instruction, it explained that “imperfect self-defense” satisfied the element that the defendant “was committing a lawful act in an unlawful manner or without due caution and circumspection.” And, immediately thereafter, it went on to explain imperfect self-defense, and the “difference between self-defense and imperfect self-defense.” Therefore, the instructions in this case taken as a whole explained that self-defense was defense to murder and voluntary manslaughter, that imperfect self-defense involved a person whose belief in the need for self-defense was unreasonable, and that imperfect self-defense supported a conviction for involuntary manslaughter. Accordingly, the inclusion of separate instructions explaining both perfect and imperfect self-

defense, combined with elements requiring the government to prove that “the killing was not done in self-defense,” necessarily required the jury to consider both self-defense options along with all the various homicide offenses. Thus, the jury instructions, taken as a whole, “adequately stated the governing law and provided the jury with an accurate understanding of the issues and standards applicable.”

***D. Any error in the first-degree murder instruction was harmless because the jury found Lynn guilty of First-Degree murder, which is incompatible with imperfect self-defense, and the evidence overwhelmingly supported that verdict.***

Even if the district court erred in failing to include separate elements negating perfect and imperfect self-defense, any error was harmless in this case. “A constitutional error is harmless and may be disregarded if it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *United States v. Holly*, 488 F.3d 1298, 1307 (10th Cir. 2007). The government bears the burden to prove harmlessness. *United States v. McFadden*, 116 F.4th 1069, 1094 (10th Cir. 2024).

In *Sago*, this Court found that, when a district court failed to offer an instruction on imperfect self-defense or involuntary manslaughter, the defendant was not prejudiced because he was convicted of first-degree murder.

74 F.4th 1162–63. The Court noted that there was no evidence that the victim was going to use deadly force against Sago and that after Sago’s first shot, he then deliberated and fired again. *Id.* Explaining why the jury’s conviction on premeditated murder demonstrated that the failure to instruct on imperfect defense was harmless, the court wondered: “[h]ow likely is it on the facts of this case that the jury would conclude that Mr. Sago premeditated first-degree murder but then in fact decided to kill Mr. Morgan only out of fear?” *Id.* at 1163.

Unlike *Sago*, here, the district court instructed the jury on both imperfect self-defense and involuntary manslaughter. Even with the benefit of three lesser-included offense instructions, the jury nonetheless found that Lynn committed premeditated murder. As in *Sago*, the jury’s premeditation finding is simply inconsistent with the notion that even had this jury been informed that they had to reject imperfect self-defense beyond a reasonable doubt, they might have convicted Lynn of involuntary manslaughter.

Additionally, the evidence of premeditation in this case was strong. The evidence and testimony showed that Lynn, before leaving his camp, told the others that he “really, really don’t like the person that he’s going to become.” (R. Vol. I at 586). He approached the other camp in the middle of the night,

armed with a handgun. (*Id.* at 587, 724). He demanded his “stuff back” and threatened them with a gun. (*Id.* at 717–23). After the threat, Burke and Walthers shined a flashlight on Lynn to see who it was, but Lynn did not fire until after they turned off their flashlight. (*Id.* at 726). Then Lynn cocked his gun and fired two shots into Burke’s tent, hitting her in the hip, and then he turned and fired four shots into Monroig’s tent, killing him. (*Id.* at 726, 729, 732, 778). Like Sago, who fired first at his victim, and then made a conscious decision to pull forward and shoot him the back, Lynn first fired at Burke and then made a conscious decision to change his aim towards Monroig’s tent and fire four times.

The jury heard testimony that Lynn fled from the scene, changed his appearance, and tried to implicate his brother, Jason, in the shooting. (*Id.* at 550, 592, 611, 640–41, 717–23, 730). The jury also heard that Lynn disposed of the gun by giving it to Cara Campbell, who sold it to a drug dealer. (R. Vol. I at 871).

The jury heard no evidence that Burke, Walthers, or Monroig sought to use deadly force, or any force, against Lynn. Police did not find a gun, shell casings, or any other firearm paraphernalia inside their tents. Lynn waited until after Walthers turned off the light to cock, then fire his gun at Burke and

Walthers. He then deliberately turned his firearm on Monroig's tent, even though Monroig had not opened his tent and did not use a flashlight and fired into the tent.

An aggressor cannot act in imperfect self-defense. *Sago*, 74 F.4th at 1159 (citing 2 LaFare, *Substantive Criminal Law* § 15.3(a), at 701) (“[I]f a defendant *who did not initiate the difficulty* honestly but unreasonably believes either that he is in danger of the injury or that killing is the only way to prevent it, . . . the matter [in some jurisdictions] fall[s] into the category of manslaughter, consisting of those homicides which lie in between murder and no crime.”) (emphasis added). Here, the evidence demonstrated that Lynn was the aggressor at each step. He approached the camp in the middle of the night. He brought a loaded firearm. He threatened Burke and Walthers with the gun. And he shot Burke, then turned his gun on Monroig and killed him. The jury found that Lynn murdered Monroig as a result of planning and deliberation and that Lynn was fully conscious of his intent to kill. Self-defense, by its nature, is responsive. It is incompatible with planning and deliberation. Considering the significant evidence of premeditation, and the incompatibility of imperfect self-defense and first-degree murder, even if the district court erred, that error was harmless beyond a reasonable doubt.

### **Conclusion**

For the reasons set forth above, this Court should affirm Lynn's convictions.

### **Statement Regarding Oral Argument**

The United States does not request oral argument.

Respectfully submitted,

CLINTON JOHNSON  
UNITED STATES ATTORNEY

*/s/ Steven J. Briden* \_\_\_\_\_

Steven J. Briden, NH Bar ID# 267696  
Assistant United States Attorney  
110 West Seventh Street, Suite 300  
Tulsa, Oklahoma 74119  
(918) 382-2700  
[steven.briden@usdoj.gov](mailto:steven.briden@usdoj.gov)

### **Certificate of Compliance with Type-Volume Limit**

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*/s/ Steven J. Briden*

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Steven J. Briden

Assistant United States Attorney

### **Certificate of Service**

I certify that on January 5, 2026, I electronically transmitted the foregoing to the Clerk of the Court using the ECF System for filing which will send notification of such filing to the following ECF registrant:

Michael Burke ([michael\\_burke@fd.org](mailto:michael_burke@fd.org))

Attorney for Defendant/Appellant

*/s/ Steven J. Briden*

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Steven J. Briden

Assistant United States Attorney