No. 25-5027

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee,

vs.

CAMERON LYNN, Defendant - Appellant.

Appeal from the United States District Court
for the Northern District of Oklahoma
The Honorable Gregory K. Frizzell, District Judge,
Presiding
D.C. No. 24-CR-076-GKF

APPELLANT'S REPLY BRIEF

*****ORAL ARGUMENT REQUESTED*****

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ARGUMENT

I. The government failed to establish that Exhibit 59 qualified for admission under the hearsay exception for records of regularly conducted activity under Federal Rule of Evidence 803(6). The district court abused its discretion in admitting the exhibit.

In its answering brief, the government offers a defense of the district court's admission of Exhibit 59 that *might* have been reasonable if Mr. Lynn had been admitted as a member of the Choctaw Nation sometime after 2016, the year its witness, Erica Tomlinson, began working there. Under the facts of *this* case, however, where the relevant hearsay facts set forth in Exhibit 59 dated from 1991 and 2001 (25 and 15 years, respectively, before Ms. Tomlinson's employment by the Choctaw Nation), her testimony did not satisfy the requirements of Federal Rule of Evidence ("FRE") 803(6) for Exhibit 59's admission as a "record[] of regularly conducted activity." The district court abused its discretion in admitting Exhibit 59.

In his opening brief, Mr. Lynn argued that the district court improperly admitted Exhibit 59, a "screenshot" of Mr. Lynn's purported record of enrollment with the Choctaw Nation, as a record of regularly conducted activity covered by the hearsay exception of FRE 803(6). OB at 12-20. Mr. Lynn's primary argument was that the government failed to prove that the information contained in Exhibit 59 "was made at or near the time" of the events it purportedly recorded and was made by

"someone with knowledge" of the information recorded. *See* FRE 803(6)(A); *see also* OB at 16-18.

The government fails to refute this argument in its answering brief. Instead, it attempts to portray Ms. Tomlinson as a credible witness on the source of the information contained in the screenshot purporting to be the record of Mr. Lynn's Choctaw Nation registration, even though the most recent date noted in that document is 2001 -- a decade and a half before Tomlinson began working for the tribe. For example, the government emphasizes that Ms. Tomlinson testified about (1) the purpose and function of the tribe's enrollment database; (2) the process she and her supervisees follow when receiving and inputting information into the database; (3) how she and her colleagues assist in processing CDIB applications; and (4) how, when the CDIB is sent back from the BIA, they approve the application for membership in the Choctaw Nation. AB at 6. She did. But this testimony concerned the Choctaw Nation's processes and procedures in 2024, when Ms. Tomlinson testified. Or, at most, her testimony about these methods covered the entire period of her employment from 2016 to 2024. The testimony, however, had nothing to do with the Choctaw Nation's computer entry of the dates (presumably at least 15 years before her employment) set forth in Exhibit 59.

Despite the government's attempt to bolster Ms. Tomlinson's knowledge of the Choctaw Nation recordkeeping practices, the fact remains that Ms. Tomlinson herself admitted she had no knowledge whatsoever of how, when, and by whom the notations of Mr. Lynn's purported "Date CDIB Issued: 2/14/1991," "Member Approval Date: 9/20/2001," or "BQ (Blood Quantum): 63/128" were made. (*See* R1: 814-166) Because defense counsel's cross-examination of Ms. Tomlinson clearly established her lack of knowledge on the very issues relevant to the FRE 803(6) analysis *in this case*, Mr. Lynn sets out that testimony in full below:

> MR. SANDS: You don't know when it was entered in the database?
>
> MS. TOMLINSON: Not the specific date, no. I don't have that in front of me.
>
> THE COURT: Do you know generally when it was entered in the database?
>
> A: It would have had to have been after –
>
> MR. SANDS: Excuse me. Excuse me. The witness is reading from a piece of paper. I am just trying to get the record that –
>
> THE COURT: Well, I'm just trying to get my question answered. Do you know specifically when this data was entered in the computer database?
>
> A: I do not know.
>
> THE COURT: Go ahead.

MR. SANDS: You don't know whether it was done – you don't know if it came back as paper from the BIA?

A: It would have had to have.

Q: And you don't know when the paper came back and when it was entered?

A: I don't have those dates with me, no.

Q: Or who entered it?

A: No.

Q: Of the process for entering it?

A: No.

Q: Or the computer program for entering?

A: Not with me, no.

Q: Or the security at the time?

A: It would have been the same.

Q: Well, I'm talking about the computer security.

A: Probably not, no.

Q: Because software and security constantly changes?

A: Correct.

> Q: And in general, you wouldn't know the process for getting the paper back from the BIA and entering it into the computer?
>
> A: Not in 2001, no.
>
> Q: So you are unable to say when it was entered at or near the time of 1991-2001?
>
> A: Correct.

(R1: 814-16)

Thus, when the government argues in its answering brief (AB at 17) that Ms. Tomlinson's testimony "shows" that "database entries are made at or near the time of the events recorded" and "that these records are made by people with personal knowledge of the documents," to the extent that the government's characterization of her testimony is correct, that testimony applies *only* to the period of Ms. Tomlinson's employment from 2016 to 2024. It has no relevance to the evidentiary issue before this Court. As the Seventh Circuit has observed, although FRE 803(6) "does not require that the qualified witness be the person who prepared the record, or that the witness have personal knowledge of the entries in the records, the business records exception *does require that the witness have knowledge of the procedure under which the records were created*." *Collins v. Kibort*, 143 F.3d 331, 337-38 (7th Cir. 1998) (emphasis added; citations omitted). Here, Ms. Tomlinson truthfully admitted that she had no knowledge of the procedure under which Choctaw Nation electronic

records were kept in 1999, or 2001, or at any time prior to 2016. The district court therefore abused its discretion in admitting Exhibit 59 premised solely on Ms. Tomlinson's testimony. As this Court has observed, FRE 803(6) "contains multiple foundational hurdles which must be cleared before the [evidence] may be admitted." *United States v. Samaniego*, 187 F.3d 1222, 1224 (10th Cir. 1999) (holding district court abused its discretion in admitting evidence that failed to clear foundational hurdles of FRE 803(6)). The government failed to clear those hurdles in this case, and this Court should reverse the district court's FRE 803(6) ruling.

II. Exhibit 59 contained double hearsay for which the government offered no evidentiary exception.

Mr. Lynn alternatively argued in his opening brief that the district court erred in admitting Exhibit 59 because it contained double hearsay for which the government had provided no evidentiary exception. OB at 18-19. The government raises two arguments in response. AB at 18-21. First, defining the hearsay at issue as "Lynn's degree of Indian blood," the government argues that that "information did not come from an outside source, but from the applicant and the Choctaw Nation itself." AB at 19. Second, the government maintains that, "[e]ven if the blood quantum contained in the tribal database entry was external information for the BIA," that information was nevertheless admissible because the

BIA was under a "business duty to provide accurate information" to the Choctaw Nation. AB at 20, 21

Before responding to these arguments, Mr. Lynn notes that the government appears to have misconstrued the scope of his argument. Mr. Lynn argued in this opening brief that the double hearsay at issue was "Exhibit 59's reference to the BIA's issuance of a CDIB in February 1991." OB at 18. In its answering brief, the government erroneously alters Mr. Lynn's argument to concern only "the tribal database entry showing Lynn's degree of Indian blood." AB at 18. The government offers no argument in its brief in defense of Exhibit 59's hearsay reference to the *facts* that the BIA issued a CDIB for him and that it did so on February 14, 1991.

The government's omission is not insignificant. "'To find that a person is an Indian the [jury] must first make factual findings that the person has some Indian blood and, second, that the person is recognized as an Indian by a tribe or by the federal government.'" *United States v. Walker*, 85 F.4th 973, 983 (10th Cir. 2023) (quoting *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012)). The specific *amount* or "quantum" of that blood is irrelevant for purposes of the issuance of a CDIB. Rather, the significance lies in the fact that the BIA found a sufficient blood

quantum to support *issuing* a CDIB. The government does not address this portion of Mr. Lynn's argument in its answering brief.[1]

Concerning the arguments the government *does* raise in its answering brief, Mr. Lynn first addresses the argument that information concerning his quantum of Indian blood "did not come from an outside source, but from the applicant and the Choctaw Nation itself." AB at 19. The government's sole support for this claim is testimony from Erica Tomlinson concerning how the Choctaw Nation obtained such information during her tenure from 2016 to 2024. *See* AB at 19 (citing Tomlinson testimony). The government proffered no evidence at trial concern where or how such information was obtained in 1990 or 1991. (Mr. Lynn was born in June 1990 and his CDIB was purportedly issued in 1991). And even if the information had come from "the applicant," that would not have been the non-verbal infant that was Mr. Lynn at that time, meaning the information had to have come from some third party, again making it double hearsay. The government offers no explanation for how this third-party's hearsay statement concerning Mr. Lynn's quantum of Indian blood would be admissible.

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[1] Mr. Lynn submits that the government's failure to respond to his specific challenge to "Exhibit 59's reference to the BIA's issuance of a CDIB in February 1991" (AB at 18) constitutes waiver of any argument that admission of *this evidence* was not reversible error. *See, e.g.*, *United States v. Elmore*, 101 F.4th 1210, 1222 (10th Cir. 2024) (finding government waiver of issue by "inadequately briefing it" in answering brief).

The government's alternative argument is that, even if the information concerning Mr. Lynn's quantum of Indian blood came from the BIA, the evidence would be admissible because the BIA "was under a business duty to provide accurate information" to the Choctaw Nation. AB at 20. According to the government, "the tribe and the BIA work hand in hand to verify an applicant's blood quantum. The BIA relies on the documents collected and reviewed by the tribe, and the tribe in turn relies on the BIA's approval when finalizing its enrollment." AB at 21.

Once again, the record provides no actual evidence concerning the BIA's "business duty" to the Choctaw Nation in 1991 or 2001. At most, the government's statement is an extrapolation from Ms. Tomlinson's testimony concerning the relationship between the tribe and the BIA during her time at the tribe, more than 15 years after the CDIB was purportedly issued in this case. Moreover, the government cites no authority holding that the BIA has a "business duty" to the independent Indian tribes in the United States, and Mr. Lynn has found no such authority.[2]

[2] In fact, the history of CDIBs in the United States appears to undermine any argument that such documents, absent the self-authenticating nature of the seals attached to them, make them especially reliable. *See, e.g.*, Paul Spruhan, *CDIB: The Role of the Certificate of Degree of Indian Blood in Defining Native American Legal Identity*, 6 Amer. Indian L. J. 169, 172 (2018) (noting that CDIB "is issued with no direct statutory authority and governed by no formally published regulations" and

III. The government has waived any argument that the improper admission of Exhibit 59 constituted harmless error.

In his opening brief, Mr. Lynn argued that, because he objected on both non-constitutional grounds (FRE 803(6)) and constitutional grounds (his Sixth Amendment right to cross-examine the witnesses against him concerning the double hearsay in Exhibit 59), this Court should apply a non-constitutional error harmless error standard to his FRE 803(6) claim and a constitutional harmless error to his Sixth Amendment claim. OB at 19-20.

Relying on this Court's recent opinion in *United States v. Hatley*, 153 F.4th 1112, 1127 (10th Cir. 2025), the government responds that only a non-constitutional harmless error analysis is necessary when reviewing "an erroneous admission of a tribal document containing hearsay." AB at 22. The government misinterprets *Hatley*. In that case, the Court said, "'*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.'" *Id.* at 1127 (quoting *Walker*, 85 F.4th at 981) (emphasis added). Here, Mr. Lynn objected on both non-constitutional and constitutional grounds. This Court's ruling in *Hatley*

without "clear rules to govern how [to] grant or deny a CDIB or calculate the blood quantum listed on the document").

does not alter this Court's authority on the harmless error standard for constitutional errors.

In any event, this Court need not worry about the precise harmless error standard it must apply because, under this Court's case law, the government has waived any harmless error challenge to Mr. Lynn's claim. In *United States v. Wood*, 109 F.4th 1253, 1265-66 (10th Cir. 2024), this Court held that the government waived any harmlessness challenge to the district court's evidentiary error because its answering brief failed to engage in the proper harmless error standard under *Kotteakos v. United States*, 328 U.S. 750, 765 (1946). Specifically, in *Wood*, the government's harmlessness analysis was "merely whether there was enough to support the result, apart from the phase affected by the error." *Id.* at 1265. The Court found that the government's answering brief was insufficient because it failed to address the actual *Kotteakos* harmless standard:

> The question . . . is not whether, setting aside the improperly admitted evidence, the remaining evidence was sufficient to convince a reasonable jury to convict. Rather, the *Kotteakos* standard requires a reviewing court to examine the entire record, focusing particularly on the erroneously admitted statements. Having done so, this court must determine whether the improperly admitted evidence substantially influenced the outcome of the trial, or whether we are left in grave doubt as to whether it had such an effect.

Id. at 1265-66 (citations and quotations omitted).

In *Wood*, the government argued: "'Even if it was error to allow the [Authenticity Certificate] to lay the foundation for Wood's tribal status record, any error was harmless because M.M. also testified, based on their long relationship, that Wood is an Indian.'" 109 F.4th at 1266 (quoting government's answering brief). The Court found the argument insufficient because it "collaps[ed] the concepts of evidentiary sufficiency and non-constitutional harmlessness without any effort to explore the significance of the erroneously omitted Indian Blood Certificate on the jurisdictional requirement of Indian blood quantum and membership in a federally recognized tribe." *Id.* at 1266. The Court concluded that "the government's harmlessness argument fails as a matter of law and operates as a waiver of the required *Kotteakos* analysis." *Id.*

The government's answering brief in this case suffers from the same error and thus, under *Wood*, constitutes waiver of the government's harmlessness argument. Here, the government argues: "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 a 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." AB at 23. Just as in *Wood*, this argument erroneously collapses the concepts of evidentiary *sufficiency* and harmlessless "without any effort to explore the significance" of the district court's evidentiary error. *Wood*, 109 F.4th at

1266. As in *Wood*, "the government's harmlessness argument fails as a matter of law and operates as a waiver of the required *Kotteakos* standard." *Id.*

IV. Mr. Lynn adequately preserved his objection to the district court's inclusion of the final sentence of the jury instruction on self-defense.

Mr. Lynn argued in his opening brief that the district court abused its discretion in drafting the jury instruction on self-defense when it *sua sponte* included language from this Court's decision in *United States v. Hicks*, 116 F.4th 1109 (10th Cir. 2024), that could have misled the jury. OB at 21-29) In its answering brief, the government responds that, in the district court, Mr. Lynn did not properly preserve the precise argument he is raising on appeal, and that his claim is therefore waived. AB at 25-29. Specifically, the government maintains that Mr. Lynn only argued to the district court that the challenged final sentence of the jury instruction on self-defense (*see* OB at Appendix A-6) constituted "burden shifting," but that he now raises the distinct, and unpreserved, argument that the district court did not properly tailor the self-defense instruction to the particular facts of his case. AB at 26-27. The government further argues that, because the issue raised in the opening brief is waived, this Court can only grant relief if it finds that the instructional error constituted plain error. AB at 29-34.

Mr. Lynn disagrees with the government's interpretation of Tenth Circuit law concerning preservation of challenges to jury instructions. In *United States v. Holt*, 16 F.4th 1253, No. 24-7044, 2025 WL 3637960 (10th Cir. Dec. 16, 2025), a case relied upon by the government in its answering brief, this Court recently rejected precisely the kind of "magic-words approach to preservation" that the government urges in this case. *Id.* at 1266 n.7. The government maintains that Mr. Lynn did not preserve the challenge he raises on appeal because, in the government's words, he is now raising a "failure to tailor to the facts of the case" argument, as opposed to the "burden shifting" argument he raised before the district court. AB at 26-27. The government's "magic word" dissection of Mr. Lynn's objection to the self-defense instruction in the district court ignores the fact that the district court was well aware that the defense was objecting to the effect the court's addition of the last sentence of the instruction could have on the jury and its assertion that the added language could mislead the jury in Mr. Lynn's case. (*See* R1: 911; R1: 1061-1068) In fact, the court and the parties were aware that the success or failure of Mr. Lynn's objection turned on the district court's interpretation of this Court's opinion in *Hicks*. (*See, e.g.*, R1:1061) The district court rejected Mr. Lynn's interpretation of *Hicks* and that is what he challenges in this appeal. The district court was well aware of the scope and nature of Mr. Lynn's argument. It simply rejected Mr. Lynn's interpretation of *Hicks*. Mr. Lynn did not waive the objection he now

raises before this Court, which is that the district court's erroneous interpretation of *Hicks* resulted in a self-defense jurisdiction that was not tailored to the facts of his case and that may have misled the jury.

Mr. Lynn acknowledges that, as part of the argument against the district court's alteration to the self-defense instruction, his defense counsel asserted that the court's error impermissibly shifted the burden to the defense on the question of self-defense. (R1:1062, 1066) This argument was not incorrect. The district court instructed a jury that had heard no evidence whatsoever concerning Mr. Lynn's "ability or opportunity to retreat" that it could consider this factor in gauging the reasonableness of his use of force in self-defense. *See* AB at A-6. The court, however, did not instruct the jury that it was the *government's* obligation to present evidence on this point, not Mr. Lynn's. Absent instruction on this important aspect of the "ability or opportunity to retreat" issue, it is possible that the jury could have believed that it was *Mr. Lynn's* obligation to provide evidence on this point.

Finally, contrary to the government's assertion in its answering brief, Mr. Lynn did not "invite" the error he now challenges. *See* AB at 28-29. The government reasons that, because Mr. Lynn requested that the jury be instructed that he did not have a "duty to retreat or to recognize the unavailability of reasonable alternatives," he somehow "induced" the district court into also adding the language he now

challenges. AB at 28-29. Mr. Lynn's strenuous objections before the district court to the addition of the final sentence of the self-defense jury instruction belie the argument that he "induced" the district court to make an error. Mr. Lynn asked the district court to inform the jury on a correct point of law; the district court's decision to go *beyond* the correct statement of law and to include language that did not apply to his case was not "invited."

Mr. Lynn adequately preserved his objection to the self-defense instruction. Because the government has failed to demonstrate that the district court's interpretation of *Hicks* was not erroneous, or that the error did not "contribute to the verdict obtained," *see United States v. Kahn*, 58 F.4th 1308, 1318 (10th Cir. 2023), this Court should grant Mr. Lynn relief.

V. The district court abused its discretion in denying Mr. Lynn's request that it instruct the jury on the government's burden of disproving his defense of imperfect self-defense beyond a reasonable doubt.

Mr. Lynn argued in his opening brief that the district court erred in denying his request that it instruct the jury on the government's burden of disproving his defense of imperfect self-defense beyond a reasonable doubt. OB at 29. In support of this argument, he relied on this Court's opinion in *United States v. Maryboy*, 138 F.4th 1274 (10th Cir. 2025), which holds that a district court's failure to instruct the jury that the government bears the burden of disproving imperfect self-

defense beyond a reasonable doubt constitutes a denial of a defendant's Due Process rights. OB at 31-32 (*citing Maryboy*, 138 F.4th at 1292-95). He sought reversal of his murder conviction because of this error. OB at 12, 29-32.

In its answering brief, the government responds to an argument Mr. Lynn never made, and in the process, fails entirely to address the district court's failure to instruct the jury that the government bore the burden of proving beyond a reasonable doubt that Mr. Lynn did not act in imperfect self-defense.[3] Instead, the government creates a strawman argument concerning whether the district court properly gave a separate instruction on imperfect self-defense, rather than referencing it in the substantive instructions for each of the various degrees of murder. AB at 35-41. This was not Mr. Lynn's argument in his opening brief. At no point in its answering brief does the government acknowledge, much less address, the fact that Mr. Lynn's jury was never instructed that the government was required to disprove imperfect self-defense beyond a reasonable doubt – whether that instruction came within the various substantive murder instructions or in a freestanding instruction on imperfect self-defense. Because the government provides no justification

[3] The answering brief, however, does mention that "the district court did not have the benefit of this Court's new jury instruction on imperfect self-defense." AB at 37. That instruction, 10th Cir. Pattern Jury Instruction 1.28.1, states that the government has the burden of disproving imperfect self-defense beyond a reasonable doubt.

for the district court's failure to instruct the jury (in any form whatsoever) that the government bore the burden of disproving imperfect self-defense beyond a reasonable doubt, it has waived any challenge to Mr. Lynn's argument on that issue. *See Elmore*, 101 F.4th at 1222 (finding government waiver of issue by "inadequately briefing it" in answering brief).

Because the government argues more broadly later in its brief that "*any* error in the first-degree murder instruction was harmless," AB at 41 (emphasis added), Mr. Lynn will address the government's argument that harmlessness is demonstrated by the fact that the jury convicted Mr. Lynn of first-degree murder, "which is incompatible with imperfect self-defense." AB at 41. To support this argument, the government relies on this Court's opinion in *United States v. Sago*, 74 F.4th 1152 (10th Cir. 2023). The facts of *Sago* bear only a tangential similarity to Mr. Lynn's case. There, the defendant argued for the first time on appeal that the district court erred in failing, *sua sponte*, to instruct the jury on the defense of imperfect self-defense. *Sago*, 74 F.4th at 1153-54. The defendant in *Sago* did not argue, however, that the district court should have also instructed on the lesser offense of involuntary manslaughter, a fact the Court found troubling. *Id.* at 1160 ("We have not been presented with, nor are we aware of, any occasion on which an appellate court has endorsed an instruction like the one proposed by Mr. Sago—in which the jury is informed that a mitigating affirmative defense is ground for

acquittal of the charged offense but is not informed that the defendant could still be guilty of the lesser-included offense resulting from the mitigation.").

The Court in *Sago* concluded that the district court did not err in failing to give a *sua sponte* instruction on imperfect self-defense. 74 F.4th at 1160. In a portion of the opinion joined by only two of the judges on the panel, the Court proceeded to discuss whether it was necessary to conduct a plain-error analysis. *See id.* at 1161 n. 7 (noting the Judge Matheson did not join in this portion of the opinion.) The Court observed,

> To be sure, on some occasions when we have reviewed a trial judge's failure to sua sponte give an unrequested lesser-included-offense instruction, we have examined whether the failure was reversible on plain-error review, rather than simply relying on the proposition that it is not error to fail to give such an unrequested instruction. But as far as we can tell, this analysis never resulted in a reversal, so the decision to conduct plain-error review can be treated as dictum.

Sago, 74 F.4th at 1162. The Court then engaged in its own dictum analysis of whether the error alleged in *Sago* would have constituted plain error. *Id.* at 1162-63. It concluded that the error would not have constituted plain error for two reasons. First, the error was not "clear or obvious," and second, the defendant could not prove that there was "a reasonable probability that, but for the error claimed, the result of the proceeding would have been different." *Id.* at 1162. It is this last part of the Court's dictum discussion in *Sago* that the government relies on in Mr. Lynn's case. *See* AB at 42-44. Specifically, the government appears

to be arguing that, where Mr. Lynn twice requested that the district court instruct the jury on the government's burden to disprove imperfect self-defense beyond a reasonable doubt and was twice rejected, the district court's error would be harmless because the fact that the jury ultimately convicted Mr. Lynn of premeditated murder "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." AB at 42.

Mr. Lynn has two responses to this argument. First, in addition to being non-binding dictum, the discussion in *Sago* concerning whether the defendant could have met the plain error standard for relief is irrelevant in Mr. Lynn's case, where the burden falls on the *government* to prove that the district court's constitutional error was harmless beyond a reasonable doubt. *See United States v. Montelongo*, 420 F.3d 1169, 1176 (10th Cir. 2005).

Second, the facts in *Sago* are not remotely similar to the facts in Mr. Lynn's case. In *Sago*, the jury was presented with uncontradicted evidence that the defendant shot the victim in the chest, the victim attempted to run away, and the defendant "pulled forward in his car and then fired additional shots." 74 F.4th at 1155. Under these facts, the Court's dictum in *Sago* that it was unlikely that the defendant acted out of fear is reasonable. *See id.* at 1163.

In contrast, given the evidence in Mr. Lynn's case, it is certainly possible that the jury could have believed Mr. Lynn acted *either* with deliberation and malice (first-degree murder), *or* in a misguided belief that he was protecting himself (imperfect self-defense). Faced with these opposing scenarios, the jury could well have turned to the court's instructions on imperfect self-defense. Finding nowhere an instruction that the government was required to disprove imperfect self-defense beyond a reasonable doubt, it is likewise possible that the jury could have concluded that, because Mr. Lynn had not *proven* his version of the events, he could not succeed on a theory of imperfect self-defense. *See United States v. Corrigan*, 548 F.3d 879, 883 (10th Cir. 1977) ("In the absence of clear instructions, it is not unlikely that the jury would infer that the government has borne its burden and that it is up to the defendant to establish his justification. This is contrary to the standard of proof beyond a reasonable doubt on all elements of the offense[.]").

The government's reliance on dictum from *Sago*—a plain error case involving dissimilar facts—is misguided. The issue presented here is whether the district court erred in denying Mr. Lynn's requests that it instruct the jury that the government was required to disprove imperfect self-defense beyond a reasonable doubt. This Court's decision in *Maryboy* makes clear that the district court erred in denying Mr. Lynn's request. The next question is whether the government can demonstrate beyond a reasonable doubt that the error was harmless. It has failed to do so.

Accordingly, this Court should vacate Mr. Lynn's conviction for first-degree murder.

CONCLUSION

For the foregoing reasons, Mr. Lynn requests that this Court vacate his convictions and remand for a new trial.

REQUEST FOR ORAL ARGUMENT

Mr. Lynn requests oral argument because he believes it will substantially assist the Court in the resolution of his appeal.

Respectfully submitted: January 26, 2026.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

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Signature: *s/Michael L. Burke*

Date: January 26, 2026.

CERTIFICATE OF ECF FILING AND DELIVERY

I hereby certify that on January 26, 2026, I electronically transmitted the attached documents to the Clerk of Court using the CM/ECF System for filing. A Notice of Electronic Filing will be sent via the Court's CM/ECF filing system to counsel for Plaintiff/Appellee:

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