APPENDIX

FILED
United States Court of Appeals
Tenth Circuit

March 4, 2025

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTHONY BRIAN WALKER,

Defendant - Appellant.

No. 23-7038

Appeal from the United States District Court
for the Eastern District of Oklahoma
(D.C. No. 6:22-CR-00012-RAW-1)

Daniel L. Kaplan, (Molly A. Karlin, Assistant Federal Public Defender, and Jon M. Sands, Federal Public Defender, on the briefs), Phoenix, Arizona, for Defendant-Appellant.

Lisa C. Williams, Special Assistant United States Attorney, (and Christopher J. Wilson, United States Attorney, with her on the brief), Muskogee, Oklahoma, for Plaintiff-Appellee.

Before **MATHESON**, **KELLY**, and **MORITZ**, Circuit Judges.

KELLY, Circuit Judge.

Defendant-Appellant, Anthony Brian Walker, appeals from his conviction of first-degree murder in Indian Country, 18 U.S.C. §§ 1111(a), 1151, & 1153, for which he was sentenced to life imprisonment. I R. 528–29. He argues that the district court erred in

failing to instruct the jury on his theory of imperfect self-defense and the government's burden to disprove that theory as an element of first-degree murder. Aplt. Br. at 2–3. Our jurisdiction arises under 28 U.S.C. § 1291, and we affirm.

Background

On November 29, 2021, Mr. Walker, a member of the Chickasaw Nation, was riding his bicycle near Willard Middle School in Ada, Oklahoma. I R. 111, 433. Three teenagers — including the victim, Jason Hubbard — were driving along that same road in a red SUV and passed Mr. Walker while on their way to buy sodas from a convenience store. Id. at 110–11. The driver missed the turn to the convenience store, so she turned the vehicle around. Id. at 138. When the SUV passed Mr. Walker's bicycle again, Mr. Walker spit at the car. Id. at 139–40.

Mr. Walker approached the car while at a nearby stop sign and accused the teenagers of following him. Id. at 208–11. As Mr. Walker approached, Mr. Hubbard pulled a firearm from the SUV's center console and placed it on his lap. Id. at 149–50. Mr. Walker saw the gun and said that he was not afraid of it. Id. at 151. Mr. Walker then punched Mr. Hubbard through the open passenger side window. Id. In response, Mr. Hubbard opened the car door and knocked Mr. Walker down to the ground with one punch. Id. at 153–54. Mr. Hubbard left the firearm in the car and closed the door behind him. Id. at 151–52. The driver exited the SUV and intervened before the fight could proceed. Id. at 155. The teenagers got back into the SUV and circled around the block to

the crosswalk where the fight happened before continuing to drive towards the convenience store.[1] Id. at 118–19.

Teachers at a nearby school saw the fight. Id. at 176, 189. One teacher asked Mr. Walker if he wanted to get help or to call the police, but Mr. Walker said no and left the scene. Id. at 190–91. Mr. Walker then stopped in front of a nearby house and searched through his backpack while looking in the direction of the SUV. Id. at 290. Mr. Walker retrieved a knife from his backpack and approached the SUV while it was in the convenience store's drive-through line. Id. at 299–300. The teenagers saw Mr. Walker approaching and the driver called 911. Id. at 122. Mr. Hubbard rolled down his window and Mr. Walker stabbed Mr. Hubbard. Id. The driver took Mr. Hubbard to the hospital, where he died of a stab wound. Id. at 124, 320.

Mr. Walker turned himself in the next morning. Id. at 349. Though he did not testify at trial, Mr. Walker voluntarily interviewed with FBI agents. Id. at 351. He admitted to spitting at the vehicle, approaching it at the stop sign, and throwing the first punch. Id. at 354, 361. He also admitted to stabbing Mr. Hubbard while the SUV was in line at the drive-through because he knew that Mr. Hubbard had a gun and he believed it was an "advantageous" time to act. Id. at 358.

[1] A witness from a nearby school believed that the SUV was circling the block looking for Mr. Walker again. I R. 450. The driver of the SUV testified that they returned to the scene because Mr. Hubbard's paintball gun was missing and may have fallen out during the fight. Id. at 118. The teenagers collected the paintball gun from the scene of the fight and continued driving toward the convenience store. Id. at 118, 260.

Prior to trial, both parties filed proposed jury instructions. I Supp. R. 22–58, 77–103. Mr. Walker also submitted a trial brief requesting that the court instruct the jury on self-defense, second-degree murder, and heat of passion. Id. at 16–17, 18–19. His trial brief in support of those instructions asserted that "Mr. Walker reasonably believed he was in imminent danger of death . . . and stabbed Mr. Hubbard as a means of self-defense." Id. at 17. His trial brief also asserted that he was entitled to an instruction on heat of passion because "he was in fear of his life" when he stabbed Mr. Hubbard. Id. at 19. Accordingly, Mr. Walker proposed a modified version of the Tenth Circuit's pattern jury instruction 2.52 for first-degree murder with two additional elements requiring the government to prove that: (1) "the killing was not done in the heat of passion on sudden provocation," and (2) "the killing was not done in self-defense." Id. at 53. Mr. Walker's trial brief and proposed instructions did not include any request for an instruction on imperfect self-defense. Id. at 14–58.

At trial, Mr. Walker's trial counsel repeatedly argued that the killing was committed in heat of passion and self-defense. Mr. Walker's opening statement emphasized that the facts of the case spanned only about 26 minutes and that "[t]his case is about the heat of passion." I R. 105–07. Accordingly, the district court's final instructions included an instruction on self-defense, Mr. Walker's proposed modified pattern instruction for first-degree murder containing heat of passion and self-defense as elements, and instructions on the lesser-included offenses of second-degree murder,

voluntary manslaughter, and involuntary manslaughter.[2] Id. at 41–46. As relevant to this appeal, Mr. Walker's trial counsel objected to the instruction on first-degree murder stating:

> In the 9th Circuit, the government has to prove all the lessers beyond a reasonable doubt. So we would ask that involuntary be included as an element that the government has to prove beyond a reasonable doubt for first, second and voluntary.

Id. at 492.[3] The district court overruled this objection. Id. In closing arguments, Mr. Walker's trial counsel again argued for self-defense and heat of passion, stating:

> [F]rom [Mr. Walker's] perspective, he was acting on insult, fight or flight. In his mind it was self-defense. To others it may not be self-defense. But to him, in his mind, this was how he was defending himself . . . . [F]rom other's perspectives, this may not have been the perfect self-defense under the law. But this self-defense informs, and it leads to the question of intent and heat of passion.

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[2] The record in this case does not reflect the genesis of the instruction on involuntary manslaughter. Neither party included an instruction on involuntary manslaughter in their proposed instructions. See I Supp. R. 22–58, 77–102. At oral argument, Mr. Walker's appellate counsel indicated the parties met off the record with the district judge's law clerk to go over their suggestions, proposals, and objections to the jury instructions. See I R. 252; Oral Arg. at 01:10–01:40. Thereafter, the instruction appeared. We have "repeatedly counseled" against having law clerks settle jury instructions. United States v. Bornfield, 184 F.3d 1144, 1145–46 (10th Cir. 1999). Preliminary conferences with law clerks are usually off the record and thus will lead to preservation issues, absent counsel making a record on the issue. See Dixon v. City of Lawton, 898 F.2d 1443, 1447 (10th Cir. 1990). Moreover, "it is the judge's sole responsibility to resolve issues concerning the instructions and [] reliance upon law clerks for this function is improper." Id. Though certainly not outcome determinative, we again remind that even preliminary instruction conferences should be conducted by the judge.

[3] It seems clear that counsel misspoke and meant to ask that involuntary manslaughter be included as an element that the government has to disprove (not prove) for a murder or voluntary manslaughter conviction. This is the argument that Mr. Walker advances on appeal. Aplt. Br. at 35. Regardless, the trial judge understood Mr. Walker's objection. I R. 492.

Id. at 511–12. The jury found Mr. Walker guilty of first-degree murder after less than two hours of deliberation. I Supp. R. 117.

Discussion

On appeal, Mr. Walker argues that the district court erred in failing to instruct the jury on his theory of imperfect self-defense and the government's burden to disprove imperfect self-defense as an element of first-degree murder. Aplt. Br. at 2–3; Aplt. Reply Br. at 4–5. The government argues, in turn, that Mr. Walker's claim is subject to plain-error review because he never requested an imperfect self-defense instruction.[4] Aplee. Br. at 13. We agree with the government that Mr. Walker has not preserved this claim, and we find no plain error requiring reversal.

A. Mr. Walker has not preserved his challenge to the district court's jury instructions.

To preserve an objection to jury instructions, a party "must inform the court of its specific objection and the grounds for the objection before the jury retires to deliberate."

[4] The government argues not only that Mr. Walker forfeited his argument on appeal by failing to object before the district court, but also that he has waived his argument entirely under the invited error doctrine. Aplee. Br. at 14. "Under the invited-error doctrine, this Court will not engage in appellate review when a defendant has waived his right to challenge a jury instruction by affirmatively approving it at trial." United States v. Jereb, 882 F.3d 1325, 1335 (10th Cir. 2018) (quotations omitted). However, the government's contention is undermined by the fact that Mr. Walker is not challenging an instruction that he proffered himself. Rather, he is challenging the district court's failure to give any instruction on imperfect self-defense. Aplt. Reply Br. at 6. "In any event, we need not decide whether there was a waiver because we affirm on plain-error review." United States v. Sago, 74 F.4th 1152, 1157 n.2 (10th Cir. 2023).

Fed. R. Crim. P. 30(d). If a party presents a new argument on appeal in support of its objection to a jury instruction, that new argument is unpreserved. United States v. Capps, 112 F.4th 887, 891 (10th Cir. 2024). Relatedly, Tenth Circuit Rule 28.1(A) requires that, "[f]or each issue raised on appeal, all briefs must cite the precise references where the issue was raised and ruled on."

Here, Mr. Walker points to the following objection made by his trial counsel at the jury instructions conference:

> In the 9th Circuit, the government has to prove all the lessers beyond a reasonable doubt. So we would ask that involuntary be included as an element that the government has to prove beyond a reasonable doubt for first, second and voluntary.

I R. 492; Aplt. Br. at 29. Mr. Walker acknowledges that this objection makes no mention of imperfect self-defense, but nevertheless claims that it preserves his argument on appeal because the involuntary manslaughter instruction was somehow an imperfect self-defense instruction. Aplt. Reply Br. at 3; Oral Arg. at 02:43–02:57.

This claim improperly conflates involuntary manslaughter and imperfect self-defense. Involuntary manslaughter is a killing that is the result of actions that constitute gross negligence. United States v. Wood, 207 F.3d 1222, 1228 (10th Cir. 2000). Involuntary manslaughter is a lesser-included offense of first-degree murder. Sago, 74 F.4th at 1159. Comparatively, imperfect self-defense is a mitigating defense that requires the defendant to prove that he "subjectively believed that the use of deadly force was necessary to prevent death or great bodily harm to himself or others, [even if] his belief was not objectively reasonable[.]" United States v. Britt, 79 F.4th 1280, 1287 (10th Cir.

2023). Though neither party raises it, we have also recognized that imperfect self-defense can be a defense when a defendant "attempt[s] to use nondeadly force, but d[oes] so in a criminally negligent manner and death result[s]." United States v. Benally, 146 F.3d 1232, 1237 (10th Cir. 1998). A defendant who succeeds in asserting imperfect self-defense is guilty of involuntary manslaughter. Britt, 79 F.4th at 1287. But this does not mean that an instruction on involuntary manslaughter is the same as an instruction regarding imperfect self-defense. See Sago, 74 F.4th at 1159–60.

Mr. Walker seeks to avoid this significant legal difference by arguing that the wording of the involuntary manslaughter instruction was based on a theory of imperfect self-defense. Aplt. Reply Br. at 3; Oral Arg. at 02:43–02:57. The involuntary manslaughter instruction in this case was a variation on Tenth Circuit Pattern Instruction 2.54.1. This pattern instruction provides the district court with alternatives for instructing on the first element regarding how the defendant caused the death of the victim. See Tenth Cir. Crim. Pattern Jury Inst. No. 2.54.1. One such alternative would read as follows:

> *First*: the defendant caused the death of the victim named in the indictment while the defendant was committing a lawful act in an unlawful manner, or without due caution and circumspection, which act might produce death[.]

Id. Compare that pattern instruction language with the district court's involuntary manslaughter instruction in this case, which read:

> *First*: on or about November 29, 2021, the defendant caused the death of Jason Edward Hubbard, Jr. while protecting himself lawfully but using excessive force without due caution and circumspection, which act might produce death[.]

I R. 51. This instruction, which largely tracks the pattern instruction for involuntary manslaughter, may imprecisely raise a version of imperfect self-defense based on criminal negligence. But it makes no mention of the requirement that the defendant "subjectively believed that the use of deadly force was necessary to prevent death or great bodily harm to himself or others, [even if] his belief was not objectively reasonable[.]" Britt, 79 F.4th at 1287; see also Tenth Cir. Crim. Pattern Jury Inst. No. 1.28.1 (requiring an actual but unreasonable belief of imminent danger of death or great bodily harm and that the force used in response was necessary to prevent death or great bodily harm).[5] And when Mr. Walker requested that the involuntary instruction be incorporated in the first-degree murder charge, he did not argue that his request was necessary to put imperfect self-defense before the jury, nor did he ask that the government be required to disprove that he "acted out of a subjective fear" to convict him of murder. Aplt. Reply Br. at 29. Also undermining Mr. Walker's claim is the fact that, despite his assertion that this involuntary manslaughter instruction was an imperfect self-defense instruction, he also wrote that "the involuntary manslaughter instruction references imperfect self-defense only obliquely." Id. at 15 (emphasis added). Mr. Walker's objection to the exclusion of involuntary manslaughter from the first-degree murder instruction did not raise the same imperfect self-defense argument which he raises on appeal, and thus does not preserve his claim. See Capps, 112 F.4th at 891.

[5] We note that Tenth Circuit Criminal Pattern Jury Instruction 1.28.1 was only recently added to the pattern instructions in February 2025. This new pattern instruction has no bearing on our decision, and we provide it only for the sake of example.

We recently decided another case involving a claim of imperfect self-defense, United States v. Brown, No. 23-7041, 2025 WL 596288 (10th Cir. Feb. 25, 2025). There, we held that the district court committed plain error by omitting the defendant's requested instruction on involuntary manslaughter which "incorporated the theory of imperfect defense of another." Id. at *5. The record in that case indicates that the defendant also requested an instruction informing the jury of the theory of its involuntary manslaughter defense: "Involuntary manslaughter is a killing, including in defense of another, if the defendant is criminally negligent." I R. (23-7041) 233. Thereafter, the proposed instruction provided as an element that: "the victim was killed while the defendant was committing a lawful act, including defense of another, in an unlawful manner, or without due caution and circumspection, which act might produce death[.]" Id. at 239. Although we held that to be sufficient to warrant the involuntary manslaughter instruction which was omitted, we certainly did not pass on the form of an imperfect self-defense instruction and its particulars. See Brown, 2025 WL 596288, at *5 (noting that "[t]he parties' dispute is narrowly focused on whether the evidence warranted the imperfect defense of another portion of Defendant's requested involuntary manslaughter instruction").

Mr. Walker also argues that he preserved this issue because imperfect self-defense was his "primary theory of defense" at trial. Aplt. Br. at 23, 26–27; Aplt. Reply Br. at 3. This claim is belied by the record. Mr. Walker points to the following statement by his trial counsel during closing argument:

> [F]rom [Mr. Walker's] perspective, he was acting on insult, fight or flight. In his mind it was self-defense. To others it may not be self-defense. But to him, in his mind, this was how he was defending himself . . . . [F]rom other's perspectives, this may not have been the perfect self-defense under the law.

I R. 511–12 (emphasis added).

However, when read in context, this statement discusses the theories of defense that Mr. Walker actually raised at trial — heat of passion and self-defense. Indeed, after stating that "this may not have been the perfect self-defense," trial counsel continued that "this self-defense informs, and it leads to the question of intent and heat of passion." Id. (emphasis added). Regardless, this passing mention of a less than perfect self-defense at closing arguments cannot suffice to preserve Mr. Walker's argument for appeal. See Fed. R. Crim. P. 30(d). Thus, Mr. Walker has not preserved his argument that the district court erred by failing to instruct the jury on imperfect self-defense and the government's burden to disprove it beyond a reasonable doubt as an element of first-degree murder.

B. The district court did not commit plain error in failing to sua sponte instruct the jury on imperfect self-defense.

Because Mr. Walker did not preserve his challenge to the district court's jury instructions, our review is for plain error. Sago, 74 F.4th at 1157. "To prevail on plain-error review, [Mr. Walker] must demonstrate (1) error, (2) that is plain, which (3) affects substantial rights, and which (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings." Id. at 1157–58 (quotations omitted).

Mr. Walker's claim of error relies primarily on United States v. Britt, where this court held that "where [] defense counsel specifically requests an instruction on a legally viable defense that is supported by the evidence presented at trial, a district court is

obligated to formulate and then tender to the jury such an instruction." 79 F.4th at 1294. In Britt, the district court rejected the defendant's proposed instruction on its theory of imperfect self-defense because the proposed instruction got the relevant law "exactly backwards." Id. at 1290. This court held that, even though the refusal to tender that legally incorrect instruction was not error, the district court still erred by refusing to include any imperfect self-defense instruction. Id. at 1291–93. In short, Mr. Walker claims that he requested an instruction informing the jury of imperfect self-defense, and that the district court erred in refusing his request, thereby relieving the government of its burden to disprove imperfect self-defense. Aplt. Br. at 28–36.

However, Britt is distinguishable because Mr. Walker never requested that the jury be instructed on imperfect self-defense, let alone that the government was required to disprove it beyond a reasonable doubt. In Britt, the imperfect self-defense instruction was in play throughout the trial — Mr. Britt requested an imperfect self-defense instruction, the government filed a motion in limine, and defense counsel argued in its favor at the charge conference going so far as to request the court's assistance in correcting his tendered instruction. 79 F.4th at 1287–89. The record in this case stands in stark contrast with Britt. Mr. Walker's proposed instructions included instructions for heat of passion and self-defense but made no mention of imperfect self-defense. I Supp. R. 22–58.

In the absence of any request from Mr. Walker, the district court was not required to instruct the jury on imperfect self-defense sua sponte. Sago, 74 F.4th at 1162. We have recognized that "[o]ne persuasive reason for the requirement that [affirmative

defense] instructions be requested is that whether to request such an instruction is often a strategic or tactical decision." Id. Our sibling circuits have also recognized this principle. United States v. Tyson, 653 F.3d 192, 212 (3d Cir. 2011) ("A defendant's strategy is his own. It is not for the district court to sua sponte determine which defenses are appropriate under the circumstances."); United States v. Gutierrez, 745 F.3d 463, 472 (11th Cir. 2014).

The decision to pursue heat of passion and self-defense (as well as an involuntary manslaughter instruction that appeared later) as the theories of defense, was one for Mr. Walker's trial counsel, not the district court. Mr. Walker may have pursued self-defense rather than imperfect self-defense because, where a finding of self-defense would lead to acquittal, a finding of imperfect self-defense would lead to a conviction for involuntary manslaughter. Britt, 79 F.4th at 1287; United States v. Toledo, 739 F.3d 562, 568–69 (10th Cir. 2014). Thus, the district court "wisely did not inject itself" into defense counsel's trial strategy. United States v. Ybarra Cruz, 982 F.3d 1284, 1295 (10th Cir. 2020).

Finally, we reject Mr. Walker's argument that the district court erred by not granting his request that involuntary manslaughter be included as an element of first-degree murder that the government needed to disprove beyond a reasonable doubt. To be sure, this court has held that a defendant "is entitled to instructions informing the jury of the theory of defense and of the Government's duty to prove beyond a reasonable doubt the absence of [that theory] in order to obtain a murder conviction." United States v. Lofton, 776 F.2d 918, 920 (10th Cir. 1985). But this argument is unavailing for two

reasons. First, this argument proceeds from the same faulty assumption as Mr. Walker's arguments above: that involuntary manslaughter and imperfect self-defense are interchangeable.[6] Once again, involuntary manslaughter is a lesser-included offense of first-degree murder, while imperfect self-defense is a mitigating circumstance. Sago, 74 F.4th at 1159.

Second, this court has refused to extend Lofton to situations "where the defense is not squarely raised and the instructions properly define the differing mental states." Davis v. Maynard, 869 F.2d 1401, 1406–07 (10th Cir. 1989), vacated sub nom. Saffle v. Davis, 494 U.S. 1050 (1990); see also Ellis v. Hargett, 302 F.3d 1182, 1188 (10th Cir. 2002) (reviewing Davis and this court's refusal to extend Lofton). Here, Lofton does not control because, as discussed above, Mr. Walker never "squarely raised" imperfect self-defense before the district court. Davis, 869 F.2d at 1406–07. Moreover, the instructions here accurately defined the mental states at issue and required the government to prove beyond a reasonable doubt that Mr. Walker acted with malice aforethought. I R. 43.

[6] We note that Mr. Walker submitted a Rule 28(j) letter demonstrating that several district courts in this circuit have instructed juries not to convict defendants of murder unless they found that the government disproved imperfect self-defense beyond a reasonable doubt. See Aplt. Supp. Auth. 2, 47, 58, 69, 79. But these instructions are distinguishable from this case. Unlike the involuntary manslaughter instruction in this case, these cited instructions included the essential requirement of imperfect self-defense — that the defendant subjectively believed that the use of deadly force was necessary to prevent death or great bodily harm to himself or others, even though his belief was not objectively reasonable. See id. at 53–54, 60, 75. Moreover, these examples do nothing to overcome the fact that Mr. Walker failed to adequately raise imperfect self-defense below, and the district court here had no obligation to instruct on that affirmative defense sua sponte.

In short, we reiterate our holding from Britt that "where [] defense counsel specifically requests an instruction on a legally viable defense that is supported by the evidence presented at trial, a district court is obligated to formulate and then tender to the jury such an instruction." 79 F.4th at 1294. However, when no such request is made, the district court need not sua sponte instruct the jury on that defense. See Sago, 74 F.4th at 1162. Here, Mr. Walker never requested that the jury be instructed on imperfect self-defense, and the district court properly did not raise the issue sua sponte. Because we find no error, let alone plain error, we need not address Mr. Walker's arguments regarding his substantial rights and the fairness, integrity, or public reputation of judicial proceedings.

AFFIRMED.

FILED
United States Court of Appeals
Tenth Circuit

March 4, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTHONY BRIAN WALKER,

Defendant - Appellant.

No. 23-7038
(D.C. No. 6:22-CR-00012-RAW-1)
(E.D. Okla.)

JUDGMENT

Before **MATHESON**, **KELLY**, and **MORITZ**, Circuit Judges.

This case originated in the Eastern District of Oklahoma and was argued by counsel.

The judgment of that court is affirmed.

If defendant, Anthony Brian Walker, was released pending appeal, the court orders that, within 30 days of this court's mandate being filed in District Court, the defendant shall surrender to the United States Marshal for the Eastern District of Oklahoma. The District Court may, however, in its discretion, permit the defendant to surrender directly to a designated Bureau of Prisons institution for service of sentence.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

FILED
United States Court of Appeals
Tenth Circuit

May 21, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTHONY BRIAN WALKER,

Defendant - Appellant.

No. 23-7038
(D.C. No. 6:22-CR-00012-RAW-1)
(E.D. Okla.)

ORDER

Before **MATHESON**, **KELLY**, and **MORITZ**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Eastern District of Oklahoma

UNITED STATES OF AMERICA
v.
ANTHONY BRIAN WALKER

JUDGMENT IN A CRIMINAL CASE

Case Number: CR-22-00012-001-RAW

USM Number: 83410-509

Debbie Jang & Jon M. Sands, AFPD
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☒ was found guilty on count(s) 1 of the Indictment
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:1111(a), 1151 & 1153	Murder in Indian Country-First Degree	November 29, 2021	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

June 8, 2023
Date of Imposition of Judgment

Ronald A. White
United States District Judge
Eastern District of Oklahoma

June 9, 2023
Date

DEFENDANT: Anthony Brian Walker
CASE NUMBER: CR-22-00012-001-RAW

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Life on Count 1 of the Indictment.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the Bureau of Prisons evaluate the defendant and determine if the defendant is a suitable candidate for the Intensive Drug Treatment Program. Should the defendant be allowed to participate in the program, it is further recommended that the defendant be afforded the benefits prescribed and set out in 18 U.S.C. § 3621(e) and according to Bureau of Prisons' policy.

That the Bureau of Prisons evaluate the defendant and provide the defendant a mental health assessment and any mental health treatment as appropriate.

That the defendant be placed in a federal facility in Oklahoma.

The Court shall be informed in writing as soon as possible if the Bureau of Prisons is unable to follow the Court's recommendations, along with the reasons for not following such recommendations made by the Court.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Anthony Brian Walker
CASE NUMBER: CR-22-00012-001-RAW

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :
5 years on Count 1 of the Indictment.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight (8) drug tests per month.
   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Anthony Brian Walker
CASE NUMBER: CR-22-00012-001-RAW

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer, after obtaining Court approval, may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Anthony Brian Walker
CASE NUMBER: CR-22-00012-001-RAW

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in a program approved by the United States Probation Office for the treatment of narcotic addiction, drug dependency, or alcohol dependency, which will include testing to determine if he has reverted to the use of drugs or alcohol and may include outpatient treatment.

2. The defendant shall successfully participate in a program of mental health treatment and follow the rules and regulations of the program. The Probation Officer, in consultation with the treatment provider, will determine the treatment modality, location, and treatment schedule. The defendant shall waive any right of confidentiality in any records for mental health treatment to allow the probation officer to review the course of treatment and progress with the treatment provider. The defendant must pay the costs of the program or assist (co-payment) in payment of the costs of the program if financially able.

DEFENDANT: Anthony Brian Walker
CASE NUMBER: CR-22-00012-001-RAW

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 100.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

TOTALS $_____ $_____

☐ Restitution amount ordered pursuant to plea agreement $_____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☐ restitution.

☐ the interest requirement for ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Anthony Brian Walker
CASE NUMBER: CR-22-00012-001-RAW

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

Said special assessment of $100 shall be paid through the United States Court Clerk for the Eastern District of Oklahoma, P.O. Box 607, Muskogee, OK 74402, and is due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

SELF-DEFENSE

The defendant, Anthony Brian Walker, has offered evidence that he was acting in self-defense.

A person is entitled to defend himself against the immediate use of unlawful force. But the right to use force in such a defense is limited to using only as much force as reasonably appears to be necessary under the circumstances.

A person may use force which is intended or likely to cause death or great bodily harm only if he reasonably believes that force is necessary to prevent death or great bodily harm to himself.

To find the defendant guilty of the crime charged in the Indictment, you must be convinced that the government has proved beyond a reasonable doubt:

Either, the defendant did not act in self-defense,

Or, it was not reasonable for the defendant to think that the force he used was necessary to defend himself against an immediate threat.

ESSENTIAL ELEMENTS
FIRST DEGREE MURDER IN INDIAN COUNTRY
18 U.S.C. §§ 1111(a), 1151, and 1153

The defendant is charged in Count One of the Indictment with First Murder in Indian Country in violation of Title 18, United States Code, Sections 1111(a), 1151, and 1153.

This law makes it a crime to unlawfully kill a human being with malice aforethought. Every murder committed by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing, is murder in the first degree.

To find the defendant guilty of this crime, you must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

First: on or about November 29, 2021, the defendant caused the death of Jason Edward Hubbard, Jr.;

Second: the defendant killed the victim with malice aforethought;

Third: the killing was premeditated;

Fourth: the killing took place within Indian Country in the Eastern District of Oklahoma, which is within the territorial jurisdiction of the United States;

Fifth: the defendant was an Indian at the time of the offense;

Sixth: the killing was not done in the heat of passion on sudden provocation; and

Seventh: the killing was not done in self-defense.

To kill "with malice aforethought" means either to kill another person deliberately and intentionally, or to act with callous and wanton disregard for human life. To find malice aforethought, you need not be convinced that the defendant hated the person killed or felt ill will toward the victim at the time.

In determining whether the killing was with malice aforethought, you may consider the use of a weapon or instrument, and the manner in which death was caused.

Premeditation can be proven by circumstantial evidence. A killing is "premeditated" when it is the result of planning or deliberation. The amount of time needed for premeditation of a killing depends on the person and the circumstances. The Government is not required to show that the defendant deliberated for any particular period of time. It must be long enough for the killer, after forming the intent to kill, to be fully conscious of that intent.

The term "heat of passion" means a passion, fear, or rage in which the defendant loses his normal self-control, as a result of circumstances

that provoke such a passion in an ordinary person, but which did not justify the use of deadly force.

You should consider all the facts and circumstances preceding, surrounding, and following the killing, which tend to shed light upon the condition of the defendant's mind, before and at the time of the killing.

LESSER INCLUDED OFFENSES

If you unanimously find the defendant not guilty of the offense charged – murder in the first degree – or if after reasonable efforts, you are unable to agree on a verdict as to that offense, then you must determine whether the defendant is guilty or not guilty of murder in the second degree, voluntary manslaughter, or involuntary manslaughter.

The difference between murder in the first degree and murder in the second degree is that to convict the defendant of murder in the second degree, the government does not have to prove premeditation. This is an element of the greater offense, but not of the lesser included offense.

To convict the defendant of voluntary manslaughter, the government does not have to prove that the defendant intended to kill the victim, but instead acted upon a sudden quarrel or heat of passion.

To convict the defendant of involuntary manslaughter, the government must prove that the defendant was criminally negligent in using self-defense.

MURDER IN THE SECOND DEGREE
18 U.S.C. § 1111

As stated above, second degree murder is a lesser included offense. This law makes it a crime to unlawfully kill a person with malice aforethought.

To find the defendant guilty of this crime, you must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

First: on or about November 29, 2021, the defendant caused the death of Jason Edward Hubbard, Jr.;

Second: the defendant killed the victim with malice aforethought;

Third: the killing took place within Indian Country in the Eastern District of Oklahoma, which is within the territorial jurisdiction of the United States;

Fourth: the defendant was an Indian at the time of the offense;

Fifth: the killing was not done in the heat of passion on sudden provocation; and

Sixth: the killing was not done in self-defense.

To kill "with malice aforethought" means either to kill another person deliberately and intentionally, or to act with callous and wanton disregard

for human life. To find malice aforethought, you need not be convinced that the defendant hated the person killed or felt ill will toward the victim at the time.

In determining whether the killing was with malice aforethought, you may consider the use of a weapon or instrument, and the manner in which death was caused.

It is not necessary for the government to prove that the defendant acted with premeditated intent to kill. Premeditation is typically associated with killing in cold blood and requires a period of time in which the accused deliberates or thinks the matter over before acting.

The term "heat of passion" means a passion, fear, or rage in which the defendant loses his normal self-control, as a result of circumstances that provoke such a passion in an ordinary person, but which did not justify the use of deadly force.

You should consider all the facts and circumstances preceding, surrounding, and following the killing, which tend to shed light upon the condition of the defendant's mind, before and at the time of the killing.

VOLUNTARY MANSLAUGHTER
18 U.S.C. § 1112

As stated above, voluntary manslaughter is a lesser included offense. This law makes it a crime to unlawfully kill a human being without malice, upon a sudden quarrel or heat of passion.

To find the defendant guilty of this crime, you must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

First: on or about November 29, 2021, the defendant caused the death of Jason Edward Hubbard, Jr.;

Second: the defendant acted unlawfully;

Third: while in sudden quarrel or heat of passion, and therefore without malice, the defendant: (1) acted with a general intent to kill Jason Edward Hubbard, Jr.; (2) intended to cause Jason Edward Hubbard, Jr. serious bodily injury; or (3) acted with a depraved heart, that is, recklessly with extreme disregard for human life;

Fourth: the killing took place within Indian Country in the Eastern District of Oklahoma, which is within the territorial jurisdiction of the United States;

Fifth: the defendant was an Indian at the time of the offense; and

Sixth: the killing was not done in self-defense.

The term "heat of passion" means a passion, fear or rage in which the defendant loses his normal self-control, as a result of circumstances that provoke such a passion in an ordinary person, but which did not justify the use of deadly force.

You should consider all the facts and circumstances preceding, surrounding, and following the killing, which tend to shed light upon the condition of the defendant's mind, before and at the time of the killing.

INVOLUNTARY MANSLAUGHTER
18 U.S.C. § 1112

As stated above, involuntary manslaughter is a lesser included offense. This law makes it a crime to unlawfully kill a human being without malice while committing a lawful act without due caution and circumspection, which act might produce death.

To find the defendant guilty of this crime, you must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

First: on or about November 29, 2021, the defendant caused the death of Jason Edward Hubbard, Jr. while protecting himself lawfully but using excessive force without due caution and circumspection, which act might produce death;

Second: the defendant knew that his conduct was a threat to the lives of others or it was foreseeable to him that his conduct was a threat to the lives of others;

Third: the killing took place within Indian Country in the Eastern District of Oklahoma, which is within the territorial jurisdiction of the United States;

Fourth: the defendant was an Indian at the time of the offense.

In order to prove this offense, the government need not prove that the defendant specifically intended to cause the death of the victim. But it must prove more than that the defendant was merely negligent or that he failed to use reasonable care. The government must prove gross negligence amounting to wanton and reckless disregard for human life.

You should consider all the facts and circumstances preceding, surrounding, and following the killing, which tend to shed light upon the condition of the defendant's mind, before and at the time of the killing.

THE COURT: Yes.

MR. SANDS: In the 9th Circuit, the government has to prove all the lessers beyond a reasonable doubt. So we would ask that involuntary be included as an element that the government has to prove beyond a reasonable doubt for first, second and voluntary.

(PAUSE)

THE COURT: Okay. I couldn't place that one, but now I understand what you are talking about. Nothing like consulting with your Clerk to make things clear.

All right. Anything else on that one?

MR. SANDS: No.

THE COURT: Okay. That will be overruled.

MR. SANDS: Thank you.

THE COURT: All right. How about the verdict form?

MR. SANDS: We are fine.

THE COURT: All right. Any other --

MR. SANDS: Verdict form understanding that we would ask for our prior objections to the jury instructions.

THE COURT: All right. That's fine. Thank you.

MR. SANDS: Thank you.

THE COURT: Okay. It's 10:52. Any reason we can't -- oh, is the jury all there? Okay, the jury is all there. Are you ready for me to bring them in?

MR. McEWEN: The government is. I don't know if