IN THE SUPREME COURT OF IOWA

STATE OF IOWA Plaintiff-Appellee, v. LAWRENCE CANADY III, Defendant-Appellant	Supreme Court No. 22-0397

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR WOODBUY COUNTY
HONORABLE PATRICK H. TOTT, JUDGE

APPELLANT'S BRIEF AND ARGUMENT AND REQUEST FOR ORAL ARGUMENT

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CERTIFICATE OF SERVICE

On the 24th day of February, 2023, the undersigned certifies that a true copy of the forgoing instrument was served upon the Defendant-Appellant by placing on copy thereof in the United States mail, proper postage attached, addressed to Lawrence Canady III, No. 6910654, Clarinda Correctional Facility, 2000 N. 16th Street, Clarinda, Iowa 51632.

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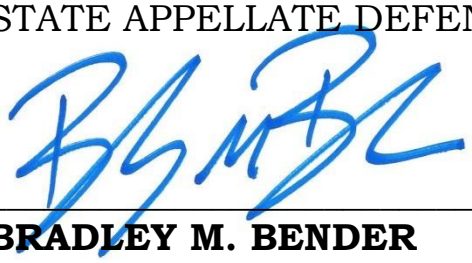

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Authorities

Preservation of Error.

State v. Pardock, 215 N.W.2d 344 (Iowa 1974)

State v. Daly, 623 N.W.2d 799 (Iowa 2001)

DeVoss v. State, 648 N.W.2d 56 (Iowa 2002)

Standard of Review.

State v. Paredes, 775 N.W.2d 554 (Iowa 2009)

State v. Helmers, 753 N.W.2d 565 (Iowa 2008)

A. The District Court Erred in Admitting the Cellphone Rap Video.

Iowa R. Evid. 5.402

State v. Taylor, 689 N.W.2d 116 (Iowa 2004)

Iowa R. Evid. 5.401

Iowa R. Evid. 5.403

State v. Huston, 825 N.W.2d 531 (Iowa 2013)

State v. Martin, 704 N.W.2d 665 (Iowa 2005)

State v. Rodriquez, 636 N.W.2d 234 (Iowa 2001)

Erin Lutes et al., *When Music Takes the Stand: A Content Analysis of How Courts Use and Misuse Rap Lyrics in Criminal Cases*, 46 AM. J. CRIM. L. 77 (2019)

Nicholas Stoia, Kyle Adams & Kevin Drakulich, *Rap Lyrics as Evidence: What Can Music Theory Tell Us?*, 8 RACE & JUST. 300 (2018)

Sean-Patrick Wilson, *Rap Sheets: The Constitutional and Societal Complications Arising from the Use of Rap Lyrics As Evidence at Criminal Trials*, 12 UCLA ENT. L. REV. 345 (2005)

Stuart P. Fischoff, *Gangsta' Rap and a Murder in Bakersfield*, 29 J. APPLIED SOC. PSYCHOL. 795 (1999)

Montague v. State, 243 A.3d 546, 559 (Md. 2020)

Graber v. City of Ankeny, 616 N.W.2d 633 (Iowa 2000)

State v. Leslie, No. 12-1335, 2014 WL 70259 (Iowa Ct. App. 2014)

Andrea Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life, & Criminal Evid.*, 31 Colum. J.L. & Arts 1, 29-30 (2007)

United States v. Price, 418 F.3d 771 (5th Cir. 2005)

B. District Court Erred in Admitting the Jail Call from Austin Rockwood.

State v. Weatherly, 519 N.W.2d 824 (Iowa Ct. App. 1994)

Iowa R. Evid. 5.901(b)(4)

State v. Collier, 372 N.W.2d 303 (Iowa Ct. App. 1985)

Iowa R. Evid. 5.801(c)

Iowa R. Evid. 5.801(d)(2)(A)

State v. Moody, No. 13-0576, 2014 WL 5861763 (Iowa Ct. App. 2014)

State v. Hildreth, 582 N.W.2d 167(Iowa 1998)

State v. Newell, 710 N.W.2d 6 (Iowa 2006)

State v. Johnson, 272 N.W.2d 480 (Iowa 1978)

State v. Sowder, 394 N.W.2d 368 (Iowa 1986)

C. The District Court Erred in Admitting the Snapchat Message.

State v. Ross, 573 N.W.2d 906 (Iowa 1998)

State v. Kidd, 239 N.W.2d 860 (Iowa 1976)

D. The District Court Erred in Admitting Jessica Goodman's Opinion Testimony on Slang Language.

Whitley v. C.R. Pharmacy Serv., Inc., 816 N.W.2d 378 (Iowa 2012)

State v. McCarty, 179 N.W.2d 548 (Iowa 1970)

State v. Derry, 250 N.J. 611, 275 A.3d 444 (2022)

United States v. Smith, 640 F.3d 358 (D.C. Cir. 2011)

United States v. Griffith, 118 F.3d 318 (5th Cir. 1997)

United States v. Delpit, 94 F.3d 1134 (8th Cir. 1996)

II. The jury returned a verdict of guilty on the lesser included offense of Voluntary Manslaughter, Willful Injury Causing Bodily Injury and Serious Assault. Canady contends the evidence presented by the State was insufficient to support the jury's verdict on the Voluntary Manslaughter charge since the State's case is based on suspicion, theory, and conjecture. Was there sufficient evidence to support the jury's verdict of guilty on this charge?

Authorities

Preservation of Error.

State v. Truesdell, 679 N.W.2d 611(Iowa 2004)

State v. Crawford, 972 N.W.2d 189 (Iowa 2022)

Standard of Review.

State v. Howse, 875 N.W.2d 684 (Iowa 2016)

State v. Sanford, 814 N.W.2d 611 (Iowa 2012)

The Evidence was Insufficient to Support the Jury's Verdict on the Voluntary Manslaughter Charge.

Iowa Code § 703.1

State v. Tangie, 616 N.W.2d 564 (Iowa 2000)

State v. Hearn, 797 N.W.2d 577 (Iowa 2011)

State v. Ernst, 954 N.W.2d 50 (Iowa 2021)

State v. Tipton, 897 N.W.2d 653 (Iowa 2017)

State v. Waigand, 953 N.W.2d 689 (Iowa 2021)

State v. Roache, 920 N.W.2d 93 (Iowa 2018)

State v. Rush-Brantley, No. 12-1915, 2015 WL 161791 (Iowa Ct. App. Jan. 14, 2015)

State v. Jones, 967 N.W.2d 336 (Iowa 2021)

Iowa R. App. P. 6.904(3)(p).

State v. Truesdell, 679 N.W.2d 611 (Iowa 2004)

In Re Winship, 397 U.S. 358 (1970)

Coffin v. United States, 156 U.S. 432 (1895)

State v. Crawford, 972 N.W.2d 189 (Iowa 2022)

State v. Schlitter, 881 N.W.2d 380 (Iowa 2016)

State v. Serrato, No. 08-0799, 2009 WL 2185819 (Iowa Ct. App. July 22, 2009)

III. When a sentence falls within the statutory limits, the sentence will not be disturbed on appeal unless the defendant shows an abuse of discretion or a defect in the sentencing procedure such as the trial court's consideration of impermissible factors. Canady claims the district court abused its discretion by imposing consecutive sentences. Did the district court err?

Authorities

Preservation of Error.

State v. Thomas, 520 N.W.2d 311 (Iowa 1994)

State v. Lathrop, 781 N.W.2d 288 (Iowa 2010)

Standard of Review.

Iowa R. App. P. 6.907

State v. Formaro, 638 N.W.2d 720 (Iowa 2002)

State v. Lovell, 857 N.W.2d 241 (Iowa 2014)

State v. Thomas, 547 N.W.2d 223 (Iowa 1996)

State v. Hill, 878 N.W.2d 269 (Iowa 2016)

State v. Johnson, 950 N.W.2d 21 (Iowa 2020)

A. The District Court Erred By Failing to Merge the Voluntary Manslaughter and Willful Injury Convictions.

Iowa Code § 701.9.

State v. Gallup, 500 N.W.2d 437 (Iowa 1993)

Iowa R. Crim. P. 2.6(2).

State v. Walker, 610 N.W.2d 524 (Iowa 2000)

State v. Dittmer, 653 N.W.2d 774 (Iowa Ct. App. 2002)

State v. Velez, 829 N.W.2d 572 (Iowa 2013)

B. The District Court Abused Its Discretion by Considering the Minutes of Testimony During Canady's Sentencing.

State v. Gonzalez, 582 N.W.2d 515 (Iowa 1998)

State v. Black, 324 N.W.2d 313 (Iowa 1982)

State v. Lovell, 857 N.W.2d 241 (Iowa 2014)

State v. Messer, 306 N.W.2d 731 (Iowa 1981)

State v. Grandberry, 619 N.W.2d 399 (Iowa 2000)

C. The District Court Abused its Discretion by Ordering Consecutive Sentences.

Iowa Code § 901.5(9)(c)

State v. Delaney, 526 N.W.2d 170 (Iowa Ct. App. 1994)

State v. Jacobs, 607 N.W.2d 679 (Iowa 2000)

State v. Hill, 878 N.W.2d 269 (Iowa 2016)

State v. Thompson, 856 N.W.2d 915 (Iowa 2014)

State v. Hennings, 791 N.W.2d 828 (Iowa 2010)

State v. Thacker, 862 N.W.2d 402 (Iowa 2015)

State v. Hopkins, 860 N.W.2d 550 (Iowa 2015)

ROUTING STATEMENT

This case should be retained by the Supreme Court for the following reasons: (1) the case presents substantial issues of first impression; (2) the case presents fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the Iowa Supreme Court; and (3) the case presents substantial questions of enunciating or changing legal principles. *See* Iowa R. App. R. 6.1101(2). Specifically, more guidance is needed by the Supreme Court on the issues of whether expert witness testimony is needed to interpret slang language and whether voluntary manslaughter merges with willful injury when there is only a single act of assault.

STATEMENT OF THE CASE

Nature of Case. Defendant-Appellant Lawrence Canady III appeals from the judgment, conviction, and sentence for Voluntary Manslaughter, Willful Injury Causing Bodily Injury, and Serious Assault in violation of Iowa Code sections 707.4, 708.2(2) and 708.2(4) (2021) following a jury trial and verdict of guilty in the Woodbury County District Court. On appeal, Canady argues that the district court abused its discretion

admitting the cellphone rap video, the jail call from Austin Rockwood, Dwight Evans's Snapchat message, and Jessica Goodman's opinion testimony on slang language; the evidence was insufficient to support the jury's verdict on the Voluntary Manslaughter charge; and the district court committed sentencing errors when sentencing Canady in this matter.

Course of Proceedings. Defendant-Appellant Lawrence Canady III was charged by Trial Information on July 1, 2021 with the following offenses: (1) Murder in the First Degree, a class A felony, in violation of Iowa Code sections 707.2(1)(a), 703.1, and 703.2 (2021); (2) Willful Injury Causing Serious Injury, a class C felony, in violation of Iowa Code sections 703.1, 703.2 and 708.4(1) (2021); and (3) Serious Assault, a serious misdemeanor, in violation of Iowa Code section 708.2(2) (2021). (Trial Information) (App. pp. 6-8). Canady pled not guilt to the charges and demanded his right to a speedy trial. (Written Arraignment; Arraignment Order) (App. pp. 9-12). On July 20, 2021, Canady filed a limited waiver of speedy trial regarding the Willful Injury and Serious Assault charges. (Limited Waiver) (App. p. 13).

On July 23, 2021, Canady filed a motion to dismiss the Murder in the First Degree and Willful Injury charges. (Motion to Dismiss) (App. pp. 14-36). Canady alleged that charges filed herein originates from the exact same incident for which he was arrested on May 1, 2021 and the Trial Information was filed more than forty-five days after he was arrested which is a violation of Iowa Rule of Criminal Procedure 2.33(2)(a). (Motion to Dismiss) (App. pp. 14-36). Canady requested that the court enter an order dismissing the Murder in the First Degree and Willful Injury charges. (Motion to Dismiss) (App. pp. 14-36). The State resisted the motion. (State's Resistance re: Motion to Dismiss) (App. pp. 37-45). A hearing was held on the motion on August 2, 2021. (8/2/21 Hrg. Tr. p. 1; Order re: Motion to Dismiss) (App. pp. 66-73). Following arguments from the parties, the district court took the motion under consideration and stated it would issue an order at a later date. (8/2/21 Tr. p. 2, Line 1 – p. 11, Line 25; Order re: Motion to Dismiss) (App. pp. 66-73).

On August 9, 2021, Canady filed a waiver of his right to a speedy trial pursuant to Iowa Rule of Criminal Procedure 2.33.

(Waiver of Speedy) (App. pp. 46-47). On August 25, 2021, Canady filed a motion to suppress that requested that the district court exclude statements made by Canady to the police following him being detained in a traffic stop shortly after the alleged shooting which violated his constitutional rights. (Motion to Suppress) (App. pp. 48-49). Specifically, Canady alleged that he was in custody, he was not advised of his *Miranda* rights, he invoked his right to counsel and the statements were the product of custodial interrogation. (Motion to Suppress) (App. pp. 48-49). The State resisted the motion. (Resistance re: Motion to Suppress) (App. pp. 50-64).

On October 15, 2021, Canady filed a Notice of Defenses which stated that he was relying on the defense of justification – self-defense and defense of others – at trial. (Notice of Defenses) (App. p. 65).

On October 20, 2021, the district court issued a ruling on Canady's Motion to Dismiss. (Order re: Motion to Dismiss) (App. pp. 66-73). The district court denied the motion and found that State was not avoiding speedy trial issues when it dismissed the prior complaints of Using a Juvenile to Commit an Indictable

Offense and Assault While Participating in a Felony in Woodbury County Criminal No.FECR114222 on May 11, 2021 in the furtherance of justice. (Order re: Motion to Dismiss) (App. pp. 66-73).

A hearing on Canady's Motion to Suppress was held on October 22, 2021. (10/22/21 Tr. p. 2, Lines 1-25). Following presentation of evidence, Canady requested that the record remain open to allow Canady to submit additional body cam video which the district court granted. (10/22/21 Tr. p. 52, Line 12 – p. 57, Line 22). On November 11, 2022, Canady filed a Motion to Supplement the Record which requested the record on the motion to suppress to include not only the additional body cam video but also relevant transcript of Jessica Goodman's deposition. (Motion to Supplement Record) (App. pp. 74-78). The State filed an addendum resistance to the Motion to Suppress. (Addendum Resistance) (App. pp. 79-81).

On November 18, 2021, Canady filed a Motion in Limine which requested the following evidence be excluded from the jury trial: (1) any testimony from any State's witness regarding hearsay statements from other witnesses including hearsay

statements from Caleb Tift; (2) any video, recording, or tangible evidence that include statements from the witnesses unless the witness giving the statements are present and subject to examination by Canady, which include a cell phone rap video of Canady, the jail call from Austin Rockwood, and photos of Dwight Evans, Jessica Goodman and social media posts; (3) any prior bad acts of Canady; (4) any evidence regarding Canady's character including evidence of a prior traffic stop conducted a days prior to the incident, rap video of Canady, any evidence of gang affiliation for Canady, and law enforcement knew Canady prior to May 1, 2021; (5) any evidence regarding Canady's prior convictions including he was on probation at the time of the incident and had a prior felony conviction; (6) any testimony regarding the opinion by any State's witness regarding Canady's guilt on the charges; (7) any argument that law enforcement witnesses are more credible than lay witnesses or Canady; and (8) any evidence regarding statements that Canady made to law enforcement following his *Miranda* advisement. (Motion in Limine) (App. pp. 82-97).

On the same day, the State filed a Notice for Admission of Caleb Tift's Statements which requested that the court allow the admission of hearsay statements from Caleb Tift at the jury trial. (Notice of Admission) (App. pp. 98-101). Canady resisted the motion. (Resistance re: Notice of Admission) (App. pp. 130-133). On November 20, 2021, the State also filed a Motion in Limine which sought to exclude the following evidence from the jury trial: (1) the charges that were originally filed by the police or in the first trial information; (2) Jessica Goodman's prior convictions and incarceration; (3) Amanda Anderson's prior convictions; (4) Martez Harrison's allegedly violent character; (5) Martez Harrison's consumption of marijuana April 30, 2021 and May 1, 2021; (6) any penalties that Canady will face if he is convicted of the charges; (7) any argument to attempt to place the jury In the position of Canady; (8) any argument in the voir dire regarding the facts of the car or Canady's opinion on what the law will be in the case; (9) any argument by Canady regarding witnesses that were not called by the State or evidence not presented by the State; (10) any expert witness unless, prior to trial, produced to the State reports and

additional evidence that is basis to their opinion; and (11) any reference by Canady to any of his out of court statements. (State's Motion in Limine) (App. pp. 102-112).

On November 22, 2021, the State filed a Motion for in Camera Inspection which requested the district court to review the sworn statement of Dwight Evans to determine if it contains *Brady* material before such statement is disclosed to Canady. (Motion for in Camera Inspection) (App. p. 113). Canady resisted the motion. (Resistance re: Motion for In Camera Inspection) (App. pp. 134-137). On the same day, the State filed a Motion to Admit Co-Conspirator's statements which stated that State intended to admit at trial the following evidence from co-conspirators Austin Rockwood, Dwight Evans and Jordan Hills: (1) two videos from Dwight Evan's cell phone; (2) a jail call from Austin Rockwood on April 30, 2021; (3) statements by Jordan Hills and Canady made during the incident in this case; (4) a "death rap" in the notes section of Dwight Evans's cell phone; and (5) a social media post from Alissa Clark, a relative of Canady, allegedly offering the weapon involved in the incident for sale twelve hours after the incident. (Motion to Admit) (App.

pp. 114-120). Canady resisted the motion. (Resistance re: Motion to Admit) (App. pp. 130-133).

A hearing on several pretrial motions were held on November 23, 2021. (11/23/21Tr. p. 1). The district court allowed the parties to supplement the record for the previously filed Motion to Suppress. (11/23/21 Tr. p. 2, Line 1 – p. 11, Line 11). Following additional evidence from the parties, the court took the motion under advisement and the motion was resubmitted to the court. (11/23/21 Tr. p. 2, Line 1 – p. 11, Line 11). The district court then heard arguments on the parties' motions in limine, motion for in camera inspection, and motion to admit co-conspirator's statements, and the court took each motion under advisement and will issue a ruling on each motion. (11/23/21 Tr. p. 11, Line 11 – p. 87, Line 25).

On November 29, 2021, the district court issued a ruling on the State's Motion for in Camera Inspect which ordered that the sworn statement of Dwight Evans be provided to Canady. (11/29/2021 Ruling) (App. pp. 134-137). On December 1, 2021, Canady filed an additional Motion in Limine which sought to exclude the following evidence at the jury trial: (1) social

media posts by Alyssa Clark; (2) social media posts from Dwight Evans regarding having a gun nine hours before the incident; and (3) social media post from Dwight Evans regarding trying to sell a gun eight hours before the incident. (Second Motion in Limine) (App. pp. 138-140). The State resisted the motion. (Resistance re: Second Motion in Limine) (App. pp. 159-160).

On December 2, 2021, the district court issued a ruling on Canady's Motion to Suppress which granted Canady's motion and ordered that any of Canady's statements that were made after 1:09 a.m. until he received his *Miranda* warnings at the police station should be and hereby suppressed. (12/2/2021 Ruling) (App. pp. 161-170). The court concluded that any statements by Canady at the police station were volunteer statements and not result of any interrogation of Canady. (12/2/2021 Ruling) (App. pp. 161-170).

On the same day, the district court entered an order for the motions in limine and state's motion regarding co-conspirator's statements. (12/2/2021 Order) (App. pp. 141-158). On the State's motion in limine, the court granted the motion except the court reserved ruling on evidence of Martez

Harrison's violent character. (12/2/2021 Order) (App. pp. 141-158). On Canady's Motion in Limine, the court made the following ruling: (1) the court will exclude all the hearsay statements from Caleb Tift except for the identification of the white car that left the scene on the 911 call; (2) the cell phone rap video is admissible and the probative value is not outweighed by prejudice; (3) the jail call from Austin Rockwood is admissible if the statement can establish that Canady is the other voice on the telephone call; (4) the photo of Jessica Goodman at the hospital is admissible but the photographs of Dwight Evans are not admissible; (5) the court reserved ruling on prior bad acts of Canady until an offer of proof can be made; (6) evidence of a traffic stop on April 28, 2021 is admissible; (7) evidence of gang affiliation is not allowed except what is contained on the video; (8) evidence of Canady's prior involvement with law enforcement and prior convictions shall be excluded; (9) any testimony on Canady's guilty shall be granted; and (10) any evidence regarding vouching for the credibility of witnesses shall be granted. (12/2/21 Order) (App. pp. 141-158).

On the State's Motion to Admit Co-Conspirator's statement, the court ruled that any statements by Canady to Amanda Anderson is admissible as well as statements by Jordan Hill during the incident. (12/2/21 Order) (App. pp. 141-158). The court also ruled that the death rap on Dwight Evans's cell phone was not admissible as well as several social media posts. (12/2/21 Order) (App. pp. 141-158). The court did rule though a social media post of Jordan Hills and Dwight Evans that was posted on Snapchat made be admissible if it is shown to have been posted on April 30, 2021 or May 1, 2021. (12/2/21 Order) (App. pp. 141-158).

Jury trial commenced on December 7, 2021. (12/7/21 Tr. p. 1). During the trial, the district court granted in part Canady's motion for judgment of acquittal on the Willful Injury Causing Serious Injury charge and ordered that the lesser included offense of Willful Injury Causing Bodily Injury will be submitted to the jury. (12/15/21 Tr. p. 58, Line 23 p. 62, Line 19). The jury returned a verdict of guilty on the lesser included offense of Voluntary Manslaughter, Willful Injury Causing Bodily Injury and Serious Assault. (Verdict Tr. p. 3, Line 1 – p.

8, Line 19; Verdict Forms; Order After Verdict) (App. pp. 175-180).

On January 18, 2022, Canady filed a post-trial motion which argued that the evidence was insufficient to convict Canady of Voluntary Manslaughter and the Willful Injury charge merges with the Voluntary Manslaughter charge. (Post-Trial Motion) (App. pp. 181-185). The State resisted the motion. (Resistance re: Post-Trial Motions) (App. pp. 186-190).

A sentencing hearing commenced on February 25, 2022. (Sent. Tr. p. 1; Judgment) (App. pp. pp. 193-205). Prior to sentencing, the court considered Canady's post-trial motion. (Sent. Tr. p. 4, Line 15 – p. 12, Line 9; Ruling on Post-Trial Motion) (App. pp. 191-192). Following arguments from the parties, the court denied the motion. (Sent. Tr. p. 4, Line 15 – p. 12, Line 9; Ruling on Post-Trial Motion) (App. pp. 191-192). The court then proceeded to sentencing in a combined hearing with a pending probation revocation in a separate prior criminal case.[1] (Sent. Tr. p.12, Line 10 – p. 31, Line 4; Judgment) (App.

[1] Probation revocation was filed in Woodbury Criminal Case No. FECR105921 which is not part of this appeal.

pp. 193-205). On the charge of Voluntary Manslaughter, the court ordered that Canady serve an indeterminate sentence of ten years and pay a fine of $1,370 as well as statutory surcharges. (Sent. Tr. p. 31, Line 5 – p. 36, Line 20; Judgment) (App. pp. 193-205). On the charge of Willful Injury Causing Bodily Injury, the court ordered Canady to serve an indeterminate sentence of five years and pay a fine of $1,025 as well as statutory surcharges. (Sent. Tr. p. 31, Line 5 – p. 36, Line 20; Judgment) (App. pp. 193-205). On the Serious Assault charge, the court ordered Canady to serve one year and pay a fine of $430 as well as statutory charges. (Sent. Tr. p. 31, Line 5 – p. 36, Line 20; Judgment) (App. pp. 193-205). The court ordered that the fine on the Willful Injury charge be suspended and that Canady pay $150,000 to the estate of Martez Harrison pursuant to Iowa Code section 910.3B. (Sent. Tr. p. 31, Line 5 – p. 36, Line 20; Judgment) (App. pp. 193-205). In addition, the court ordered the sentences to be consecutive to each other and to the sentence imposed on the probation revocation. (Sent. Tr. p. 31, Line 5 – p. 36, Line 20; Judgment) (App. pp. 193-205). Furthermore, the district court ordered that Canady pay no

more than $1,000 in Category B restitution. (Sent. Tr. p. 31, Line 5 – p. 36, Line 20; Judgment) (App. pp. 193-205).

Canady filed a Notice of Appeal on February 25, 2022. (Notice of Appeal) (App. p. 206).

Background Facts. Amanda Anderson testified that on April 30, 2021 she was working in bartender and manager at Uncle Dave's Bar in Sioux City, Iowa. (12/9/21 Tr. p. 2, Line 14 – p. 12, Line 24). She testified that around 9:00 p.m. that evening Martez Harrison arrived at the bar to drink with friends who were already there. (12/9/21 Tr. p. 2, Line 14 – p. 12, Line 24). She stated that four underage individuals were trying to get into the bar but the bouncer prevented them. (12/9/21 Tr. p. 2, Line 14 – p. 12, Line 24). She stated that one of the individuals who she identified as Canady stated that he wanted to beat up Harrison because Harrison assaulted his sister by hitting her over the head with a bottle. (12/9/21 Tr. p. 2, Line 14 – p. 12, Line 24). Anderson testified that when Canady saw Harrison, Canady yelled to him that he was waiting for him outside. (12/9/21 Tr. p. 2, Line 14 – p. 12, Line 24).

After a few minutes, Anderson stated that Canady left and walked across the street to a white car. (12/9/21 Tr. p. 12, Line 25 – p. 23, Line 16). She stated that she told Harrison that somebody wanted to fight him. (12/9/21 Tr. p. 12, Line 25 – p. 23, Line 16). Anderson stated that she then had to take care of another customer when she suddenly heard two gunshots from outside the bar. (12/9/21 Tr. p. 12, Line 25 – p. 23, Line 16). Anderson admitted that she thought she told the police that Canady stated he had guns but admitted that she her pipes and thought it meant guns. (12/9/21 Tr. p. 23, Line 17 – p. 34, Line 3).

Jessica Goodman was the fiancé of Harrison and she testified that at 12:30 a.m. on May 1, 2021, she received a telephone call from Harrison who requested that she come and pick him up from Uncle Dave's Bar. (12/14/21 Tr. p. 10, Line 10 – p. 26, Line 10; State's Exhibit #108a). She stated she went to the bar and parked near the front entrance. (12/14/21 Tr. p. 10, Line 10 – p. 26, Line 10; State's Exhibit #108a). She stated that Canady, Jordan Hills and Nya Rang along with Dwight Evans confronted her. (12/14/21 Tr. p. 10, Line 10 –

p. 26, Line 10; State's Exhibit #108a). Goodman stated that at some point Harrison came out of the bar and Canady tried to slap him but miss and hit her instead. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12; State's Exhibit #108a). She then testified that Rang mace her during this altercation. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12). She stated that Canady then told Evans to get the gun. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12; State's Exhibit #108a). She stated that Canady and Harrison began fighting in the middle of the street and Canady was on top of Harrison. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12; State's Exhibit #108a).

Goodman testified that she then saw Evans standing over Canady and Harrison. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12; State's Exhibit #108a). She said that she then heard a gunshot while Canady was still punching Harrison. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12; State's Exhibit #108a). She stated that as she began to run to Harrison she heard another gunshot. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12; State's Exhibit #108a). Goodman stated that Canady then left the scene with Rang and Hills. (12/14/21 Tr. p. 40, Line 4 – p. 57,

Line 12; State's Exhibit #108a). She stated she eventually went to the hospital to be treated for the injuries she sustained from getting hit. (12/14/21 Tr. p. 57, Line 13 – p. 71, Line 8).

Goodman admitted that Harrison and Canady have fought on prior occasions and never concerned that Canady was going to fatally wound Harrison. (12/14/21 Tr. p. 98, Line 10 – p. 113, Line 14). She admitted that she never heard Canady tell Evans to shoot Harrison. (12/14/21 Tr. p. 98, Line 10 – p. 113, Line 14). In addition, she admitted that Canady had his back to Evans while he was fighting with Harrison on the ground. (12/14/21 Tr. p. 98, Line 10 – p. 113, Line 14). Goodman testified that she thought Canady was shot when she heard the gunshot. (12/14/21 Tr. p. 98, Line 10 – p. 113, Line 14). Furthermore, she admitted that she never told the police following this incident that Canady told Evans to get the gun. (12/14/21 Tr. p. 98, Line 10 – p. 113, Line 14). Goodman also stated that she did not think Canady knew Evans was going to shoot Harrison. (12/14/21 Tr. p. 98, Line 10 – p. 113, Line 14).

Harrison was rushed to a local hospital in Sioux City where he was pronounced dead a few hours later following

emergency surgery to repair the damage from the gunshots. (12/10/21 Tr. p. 2, Line 1 – p. 35, Line 19). An autopsy was performed and it was shown that Harrison suffered two gunshot wounds – one to his abdomen and one to his lower left flank. (12/10/21 Tr. p. 51, Line – p. 67, Line 9). The medical examiner determined that each of the wounds were potentially fatal since Harrison nearly lost of his blood as a result of the gunshot wounds. (12/10/21 Tr. p. 51, Line – p. 67, Line 9).

Any additional pertinent facts will be discussed below.

STATEMENT OF JURISDICTION

The Iowa appellate courts must be conferred jurisdiction to hear an appeal either constitutionally or statutorily. *State v. Propps*, 897 N.W.2d 91, 96 (Iowa 2017). Iowa Rule of Appellate Procedure 6.103(1) provides that "[a]ll final orders and judgments of the district court involving the merits or materially affecting the final decision may be appealed to the supreme court, except as provided in this rule, rule 6.105, and Iowa Code sections 814.5 and 814.6." Iowa R. App. P. 6.103(1). Iowa Code section 814.6 contains the standards for subject-matter jurisdiction for the review of a criminal defendant's appeal.

Iowa Code § 814.6(1)(a). Pertinent to this case, a criminal defendant has the "right of appeal" from a final judgment of sentence. *Id.*

An appeal from a final judgment of sentence is initiated by "filing a notice of appeal with the clerk of the district court where the order or judgment was entered." Iowa R. App. P. 6.102(2). The "notice of appeal must be filed within 30 days after the filing of the final order or judgment." *Id.* R. 6.101(1)(b). This rule is mandatory and jurisdictional. *State v. Crawford*, 972 N.W.2d 189, 193 (Iowa 2022).

This is a direct appeal from a final decision of the Woodbury County District Court, entering judgment of convictions and imposing criminal sentences. This Court has appellate jurisdiction as the appeal is taken from a final judgment of the Woodbury County District Court disposing all issues and parties, which was entered on February 25, 2022. Defendant-Appellant Lawrence Canady III timely filed a notice of appeal on February 25, 2022.

ARGUMENT

I. The district court has discretion in admitting evidence into the record during a jury trial. Canady contends that the district court erred in admitting the cellphone rap video, jail call from Austin Rockwood, Dwight Evans's Snapchat message, and Jessica Goodman's opinion testimony on slang language. Did the district court erred by admitting the challenged evidence into the record?

Preservation of Error. Failure to assert a prompt and specific objection to the offer of evidence at the time offer is made is waiver upon appeal of any ground of complaint against its admission. *State v. Pardock*, 215 N.W.2d 344, 348 (Iowa 1974). One attempting to exclude evidence by either objection or motion, has a duty to indicate specific grounds to the court so as to alert it to questions raised, and enable opposing counsel to take proper corrective measures to remedy defect, if possible. *Id.*

In addition, error claimed in a court's ruling on a motion in limine is waived unless a timely objection is made when the evidence is offered at trial. *State v. Daly*, 623 N.W.2d 799, 800 (Iowa 2001). However, "where a motion in limine is resolved in such a way it is beyond question whether or not the challenged evidence will be admitted during trial, there is no reason to voice

objection at such time during trial. In such a situation, the decision on the motion has the effect of a ruling." *Id.* For evidentiary rulings, there is also an exception to the rules of error preservation. *DeVoss v. State*, 648 N.W.2d 56, 62-63 (Iowa 2002) (noting that evidentiary rulings are an exception to the error preservation requirements and the district court ruling will be upheld if sustainable on any ground).

In this case, under the circumstances, Canady's motion in limine, the court's subsequent rulings on the motion, Canady's objections at trial, and the court's subsequent ruling on those objections preserved error on these issues. (Motion in Limine; Second's Motion in Limine; 12/2/2021 Order; 12/10/21 Tr. p. 160, Line 5 – p. 167, Line 2; 12/14/21 Tr. p. 24, Lines 16 – p. 25, Line p. 1; p. 71, Line 9 – p. 86, Line 25; p. 93, Lin 24 – p. 94, Line 14; 12/14/21 Trial Tr. p. 206, Line 10 – p. 207, Line 17)(App. pp. 82-97, 138-140).

Standard of Review. This Court reviews evidentiary rulings for an abuse of discretion. *State v. Paredes*, 775 N.W.2d 554, 560 (Iowa 2009). "A court abuses its discretion when it exercised its discretion on 'grounds or for reasons clearly

untenable or to an extent clearly unreasonable.'" *State v. Helmers,* 753 N.W.2d 565, 567 (Iowa 2008) (citations omitted). However, the standard of review for hearsay claims is for errors at law. *Paredes*, 775 N.W.2d at 560.

A. The District Court Erred in Admitting the Cellphone Rap Video. During the State's examination of Detective Josh Tyler, the State attempted to introduce a video that was extracted from Dwight Evan's cellphone which showed Canady and Dwight Evan's rapping a song on or about April 26, 2021. (12/14/21 Tr. p. 206, Line 10 – p. 207, Line 17). Canady objected to the admission of the video but the court overruled the objection and the video was admitted into evidence and played for the jury. (12/14/21 Tr. p. 206, Line 10 – p. 207, Line 17; State's Exhibit #90). Canady alleged the court abused its discretion by admitting the cellphone video.

In general, evidence that is relevant is admissible. Iowa R. Evid. 5.402; *State v. Taylor*, 689 N.W.2d 116, 123 (Iowa 2004). Evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination

of the action more probable or less probable than it would be without the evidence." Iowa R. Evid. 5.401.

Relevant evidence, however, "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Iowa R. Evid. 5.403; *State v. Huston*, 825 N.W.2d 531, 537 (Iowa 2013). A court must first consider the probative value of the proffered evidence. *Huston*, 825 N.W.2d at 537. In determining probative value, the court considers "the strength and force of the evidence to make a consequential fact more or less probable." *State v. Martin*, 704 N.W.2d 665, 671 (Iowa 2005). The court then balances the probative value against the danger of the evidence having a prejudicial or wrongful effect upon the jury. *Huston*, 825 N.W.2d at 537. Evidence is unfairly prejudicial when it "appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish, or triggers other mainsprings of human action that may cause a jury to base its decision on something other than the established propositions in the case." *State v. Rodriquez*, 636 N.W.2d 234, 240 (Iowa 2001).

The cellphone rap video in State's Exhibit #90 is not relevant to this case and the probative value of the video was substantially outweighed by the danger of unfair prejudice. A review of the rap lyrics do not describe the intentions of Canady as to any incident relevant to this case. The State attempted to have Tyler testify "Tez" that was referred to in the lyrics of the song depicted in the video was referring to Martez Harrison's nickname of "Tezzo". (12/14/21 Tr. p. 206, Line 10 – p. 207, Line 17; State's Exhibit #90). The State further attempted to draw a connection between the lyrics being sung by Evans and Canady in the cellphone video and the events of April 30, 2021 and May 1, 2021 in closing argument:

> Now, you also saw in Exhibit Number 90, that was the cell phone video. Lawrence Canady was sitting side by side with Dwight Evans in the back of a vehicle, and out of all the rap Lawrence Canady chose that rap song that talked about killing Tezzo. And you watched that video. They were together, both Evans and Canady, and they were rapping about killing Tezzo.

(12/16/21 Tr. p. 7, Line 20 – p. 8, Line 2).

However, the lyrics that were being sung was Nutso Slide which was titled "63rd to 65th". (12/15/21 Tr. p. 4, Line 21 – p.

17, Line 18; Defendant's Exhibit G). Nutso Slide is a rap group from Chicago. (12/15/21 Tr. p. 4, Line 21 – p. 17, Line 18). The YouTube video of the song had over 650,000 views. (12/15/21 Tr. p. 4, Line 21 – p. 17, Line 18; Defendant's Exhibit G). Tyler admitted that an individual by the name of Teso was being referred to in the rap song. (12/14/21 Tr. p. 211, Lines 2-12; Defendant's Exhibit T). As such, the lyrics being sang by Canady and Evans were merely lyrics by Nutso Slide. Canady nor Evans wrote the lyrics nor referred to Harrison's nickname. Therefore, the evidence was not relevant.

In addition, the probative value of the cellphone rap video in State's Exhibit #90 was substantially outweighed by unfair prejudice. Rap like that at issue in this case is characterized by "lyric formulas," a key one of which involves fictionalized bragging about the performer's "badness" vis-à-vis criminal behavior. Erin Lutes et al., *When Music Takes the Stand: A Content Analysis of How Courts Use and Misuse Rap Lyrics in Criminal Cases*, 46 AM. J. CRIM. L. 77, 84 (2019). The genre often emphasizes violence in inner cities albeit not necessarily in an accurate manner. Nicholas Stoia, Kyle Adams & Kevin

Drakulich, *Rap Lyrics as Evidence: What Can Music Theory Tell Us?*, 8 RACE & JUST. 300, 330–34 (2018). In other words, rap is not autobiographical and that is a dilemma since the listeners often believe that it is. Sean-Patrick Wilson, *Rap Sheets: The Constitutional and Societal Complications Arising from the Use of Rap Lyrics As Evidence at Criminal Trials*, 12 UCLA ENT. L. REV. 345, 355 (2005). As such, people react negatively to rap and these negative perceptions impact jury verdicts. Stuart P. Fischoff, *Gangsta' Rap and a Murder in Bakersfield*, 29 J. APPLIED SOC. PSYCHOL. 795 (1999).

The issue of unfair prejudice arising from admission of rap lyrics into evidence has been considered in many other jurisdictions and one court recently noted, there is "a converging analysis among various state appellate courts: the probative value of a defendant's rap lyrics spikes — and consequently, the danger of unfair prejudice decreases — when a strong nexus exists between specific details of the artistic composition and the circumstances for the offense for which the evidence is being adduced." *Montague v. State*, 243 A.3d 546,

559, 559–66 (Md. 2020) (internal quotation omitted) (collecting cases).

As previously mentioned, Canady nor Evans wrote the lyrics that were being sung in State's Exhibit #90. This evidence shed no light on what occurred on April 30, 2021 and May 1, 2021. Canady's ability to lip sync or sing rap lyrics about activity unrelated to the offenses at issue was highly prejudicial evidence that bore little or no probative value as to any motive or intent behind the offenses with which he was charged. "Unfair prejudice arises when the evidence prompts the jury to make a decision on an improper basis." *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000). As such, this Court should conclude that State's Exhibit #90 is unfairly prejudicial, and prompts the jury to make a decision on an improper basis and it appeals to the jury's instinct to punish. *See State v. Leslie,* No. 12-1335, 2014 WL 70259, at *6 (Iowa Ct. App. 2014); *see also* Andrea Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life, & Criminal Evid.*, 31 Colum. J.L. & Arts 1, 29-30 (2007) ("To the extent that individuals associate rap music with crime and criminal behaviors, they negatively perceive defendants

who are involved with rap music," and also noting that rap lyrics frequently contain stereotypical images and themes that have negative associations).

Therefore, this Court should conclude the district court abuse its discretion by admitting the cellphone rap video in State's Exhibit #90. *See United States v. Price*, 418 F.3d 771, 783 (5th Cir. 2005) (noting the possible prejudicial value of rap song lyrics). Consequently, Canady's convictions should be vacated and this matter should be remanded for a new trial where State Exhibit's #90 shall be excluded.

B. District Court Erred in Admitting the Jail Call from Austin Rockwood. At the jury trial, the State attempted to introduce a jail call from Austin Rockwood which was made from Woodbury County Jail at 11:58 a.m. on April 30, 2021. (12/10/21 Tr. p. 160, Line 5 – p. 167, Line 2). Canady objected to the admission of the evidence but the district court overruled the objection and admitted the jail call into evidence. (12/10/21 Tr. p. 160, Line 5 – p. 167, Line 2; State's Exhibit #34). Canady argues that the district court erred in admitting the jail call from Austin Rockwood.

In pretrial motions, Canady sought to exclude State's Exhibit #34 from evidence since there is not a witness listed who can establish the proper foundation that the person who Austin Rockwood called was Canady and such evidence is hearsay. (Motion in Limine p. 4) (App. p. 85). In the court's ruling on Canady's Motion in Limine, the court concluded that the jail call from Austin Rockwood is admissible as admissions by a party opponent pursuant to Rules of Evidence 5.801(d)(2)(A) if the evidence can establish that Canady is the other voice on the telephone call. (12/2/21 Order) (App. pp. 141-158).

Our test for admitting recorded conversations is whether the evidence establishes the recordings are accurate and trustworthy. *See State v. Weatherly*, 519 N.W.2d 824, 825 (Iowa Ct. App. 1994). For evidence to be admissible, it must satisfy foundational requirements. In Iowa, evidence may be authenticated based on distinctive characteristics, such as its "appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances." Iowa R. Evid. 5.901(b)(4). "Only a prima

facie showing of identity and connection to the crime is required. Clear, certain and positive proof is generally not required." *State v. Collier*, 372 N.W.2d 303, 308 (Iowa Ct. App. 1985).

At the jury trial, the State called Jorma Schwedler who was a sergeant at the Woodbury County Jail. (12/10/21 Tr. p. 160, Line 5 – p. 167, Line 2). Schwedler only testified that Austin Rockwood placed the call on April 30, 2021 at 11:48 a.m. from the Woodbury County Jail to a 712 area telephone number. (12/10/21 Tr. p. 160, Line 5 – p. 167, Line 2). Schwedler did not testify who were the voices that appeared on the recording nor did he testify that the 712 telephone number belonged to Canady. (12/10/21 Tr. p. 160, Line 5 – p. 167, Line 2). Clearly, the State did not meet its prima facie showing under Rule 5.901 when the jail call was admitted.

Assuming arguendo that the State laid the proper foundation for the admission of State Exhibit #34, the evidence was hearsay and the statements by Austin Rockwood was not an admission by a party opponent. The rule against hearsay covers an out-of-court statement offered into evidence to prove

the truth of the matter asserted. Iowa R. Evid. 5.801(c). Hearsay does not include an opposing party's statement that "[w]as made by the party in an individual or representative capacity." Iowa R. Evid. 5.801(d)(2)(A).

If the assuming arguendo that the State established at the time State's Exhibit #34 was admitted that the other voice on the telephone call was Canady, there is no dispute that any such statement allegedly made by him would be admissible as admissions by a party opponent under Rule 5.801(d)(2)(A). The same is not true for the statements made by Austin Rockwood. *See State v. Moody,* No. 13-0576, 2014 WL 5861763, at *5 (Iowa Ct. App. 2014) ("The same rule does not apply to the text messages sent by [the defendant's friend]"). The statements by Austin Rockwood on State's Exhibit #34 are out of court statements for the truth of the matter asserted, and therefore they are hearsay. Therefore, this Court should conclude that the State's Exhibit #34 was hearsay, and the court should have excluded it from the jury trial.

Our supreme court has held that the erroneous admission of hearsay is presumed to be prejudicial unless the contrary is

established affirmatively. *State v. Hildreth,* 582 N.W.2d 167, 170 (Iowa 1998). However, "the erroneously admitted hearsay will not be considered prejudicial if substantially the same evidence is properly in the record." *State v. Newell*, 710 N.W.2d 6, 19 (Iowa 2006). The admission of hearsay statements can be harmless if other sources duplicate the testimony. *State v. Johnson*, 272 N.W.2d 480, 482–83 (Iowa 1978).

Canady was clearly prejudiced by the admission of this evidence. This not a case where there are other sources duplicated the evidence. This evidence was not cumulative and no additional evidence was submitted regarding this telephone call by Austin Rockwood. The most troubling aspect regarding the admission of this testimony is that the State emphasized these statements during its closing. Specifically, the State relied on this phone call to argue to the jury during closing argument that Canady was upset about what he learned from Austin Rockwood and that he used that information from the call to seek out Martez Harrison and get revenge. (12/16/21 Tr. p. 7, Lines 7-19). It appears that the State was trying to circumvent the hearsay rules to introduce inadmissible

evidence which is in not allowed by the Rules of Evidence or case law. A review of the record shows that the admission of the hearsay testimony was not harmless.

This Court should conclude that the district court erred in the admission of the jail call in State's Exhibit #34. Consequently, Canady's convictions should be vacated and this matter should be remanded for a new trial. *See State v. Sowder*, 394 N.W.2d 368, 373 (Iowa 1986).

C. The District Court Erred in Admitting the Snapchat Message. Canady argues that State's Exhibit #52 which is a Snapchat message showing Dwight Evans and Jordan Hills together that included a caption which stated: "We bussin but don't think shit sweat [gun emoji]". (State's Exhibit #52). The district court concluded that the exhibit was admissible as a statement of co-conspirator. (12/14/21 Tr. p. 71, Line 9 – p. 86, Line 25). Jessica Goodman testified that she located the Snapchat message following the shooting on May 1, 2021 and while Harrison was in surgery. (12/14/21 Tr. p. 87, Line 1 – p. 98, Line 9). The State asked Goodman what does the phrase that was included on the message – "We bussin but

don't think shit sweat" – meant. (12/14/21 Tr. p. 93, Lin 24 – p. 94, Line 14). Goodman stated that she pretty sure it meant that Evans was trying to say sweet which means "that they go the guns and they're not sweating shit." (12/14/21 Tr. p. 93, Lin 24 – p. 94, Line 14).

The Iowa Supreme Court has stated that "[s]tatements by a coconspirator of a party during the course and in furtherance of the conspiracy are likewise not hearsay." *State v. Ross*, 573 N.W.2d 906, 914–15 (Iowa 1998). Such statements are admissible against the party as an admission by a party-opponent. *Id.*

"When there is substantial evidence of a conspiracy, whether the offense charged is conspiracy or not, everything said by any conspirator in furtherance of the common purpose is deemed to have been said in behalf of all parties to the conspiracy." *State v. Kidd*, 239 N.W.2d 860, 864 (Iowa 1976). For the rule to apply, two conditions must be met. *Id.* "First, the statement must have been made during the pendency of the conspiracy. Second, it must have been in promotion of the object or design of the conspiracy." *Id.*

State's Exhibit #52 is not a message between Evans and Canady to discuss what they were going to do to Harrison. There is no reference to Canady nor Harrison in the message. The message has no relevancy or connection to Canady or to the incident that took place that evening. As discussed in subdivision D below, the State did not have any expert witness to testify on what the slang message meant. Any probative value of State's Exhibit #52 was substantially outweighed by the danger of unfair prejudice and the message should have been excluded from the trial.

Canady was clearly prejudiced by the admission of this evidence. This not a case where there are other sources duplicated the evidence. It appears that the State was trying to circumvent the hearsay rules to introduce inadmissible evidence which is in not allowed by the Rules of Evidence or case law. A review of the record shows that the admission of the hearsay testimony was not harmless.

This Court should conclude that the district court erred in the admission of the Snapchat message in State's Exhibit #52.

Consequently, Canady's convictions should be vacated and this matter should be remanded for a new trial.

D. The District Court Erred in Admitting Jessica Goodman's Opinion Testimony on Slang Language. During the State's examination of Jessica Goodman, the State attempted to have Goodman interpret slang language that was used in State's Exhibits #34 – jail call from Austin Rockwood – and State's Exhibits #52 – Snapchat message of Dwight Evans and Jordan Hills. (12/14/21 Tr. p. 24, Lines 16 – p. 25, Line p. 1; p. 93, Lin 24 – p. 94, Line 14; State Exhibits #34, #52) (Ex. App. p. 10). Canady objected to the questioning but the court overruled the objection and allowed Goodman to offer her opinion on what certain language meant. (12/14/21 Tr. p. 24, Lines 16 – p. 25, Line p. 1; p. 93, Lin 24 – p. 94, Line 14).

On the jail call from Austin Rockwood, the State asked Goodman what "tax time" or "tax season" meant, and she stated that it meant "taking him [Martez Harrison] for everything he got; as in his pockets, everything, fighting him, whatever it takes at this this point." (12/14/21 Tr. p. 24, Lines 16 – p. 25, Line p. 1). On the Snapchat message with Evans and Hills, the State

asked Goodman what does the phrase that was included on the message – "We bussin but don't think shit sweat [gun emoji]" – meant. (12/14/21 Tr. p. 93, Lin 24 – p. 94, Line 14). Goodman stated that she pretty sure it meant that Evans was trying to say sweet which means "that they go the guns and they're not sweating shit." (12/14/21 Tr. p. 93, Lin 24 – p. 94, Line 14).

Canady argues that the district court erred in allowing Goodman to offer her opinion on the interpretation of these words and phrases for it was speculation. While "the rules of evidence do not specifically recognize an objection that a question calls for speculation," Iowa Rule of Evidence 5.611(a) "authorizes the district court to exercise reasonable control over the evidence," thereby authorizing the court "to address objections based on speculation and conjecture." *Whitley v. C.R. Pharmacy Serv., Inc.*, 816 N.W.2d 378, 390 (Iowa 2012). "Additionally, such an objection can relate to testimony about the meaning of facts and the opinions expressed by witnesses." *See id.* To properly admit a lay witness's testimony, a sufficient factual foundation must be established showing the witness's opinion is based on firsthand knowledge and "personal

knowledge of facts to which the observed facts are being compared." *Id.; see also State v. McCarty,* 179 N.W.2d 548, 551 (Iowa 1970) (holding the district court has discretion to allow a lay witness to express an opinion on a matter for which there is proper factual foundation).

In this case, there was no proper foundation to Goodman's testimony which would allow her to offer her opinion on the meaning of slang language. The State did not establish that Goodman had sufficient knowledge on slang. In fact, when Goodman was testifying on the message contained on the Snapchat message she testified that Evans had to mean sweet, not sweat that was written on the message. (12/14/21 Tr. p. 93, Lin 24 – p. 94, Line 14). Goodman's testimony was the hallmarks of expert evidence. It purports to define and explain slang terms that are beyond the ken of an average juror. Decisions from the federal courts and other states recognize the importance of expert testimony in circumstances such as these. *See, e.g., State v. Derry*, 250 N.J. 611, 635, 275 A.3d 444, 458 (2022); *United States v. Smith*, 640 F.3d 358, 365 (D.C. Cir. 2011); *United States v. Griffith*, 118 F.3d 318, 322 (5th Cir.

1997); *United States v. Delpit*, 94 F.3d 1134, 1145 (8th Cir. 1996). Therefore, it was error to allow Goodman to offer her interpretation on what was being conveyed by the slang terms in State's Exhibits #34 and #52. She had no personal knowledge as to what Austin Rockwood, Canady, Dwight Evans or Jordan Hills meant by the challenged statements. She was at best speculating.

Canady was prejudiced by the admission of this evidence. The State emphasized Goodman's erroneously interpretations during its closing argument by arguing that Evans and Hills was carrying guns and not sweating it. (12/16/21 Tr. p. 9, Lines 9-15). A review of the record shows that the admission of the hearsay testimony was not harmless. Therefore, this Court should conclude that the district court erred by allowing Goodman's interpretation of the slang references in State's Exhibits #34 and #52. Consequently, Canady's convictions should be vacated and this matter should be remanded for a new trial.

II. The jury returned a verdict of guilty on the lesser included offense of Voluntary Manslaughter, Willful Injury Causing Bodily Injury and Serious Assault. Canady contends the evidence presented by the State was insufficient to support the jury's verdict on the Voluntary Manslaughter charge since the State's case is based on suspicion, theory, and conjecture. Was there sufficient evidence to support the jury's verdict of guilty on this charge?

Preservation of Error. Defendant-Appellant Lawrence Canady contends there is insufficient evidence to support his conviction on the Voluntary Manslaughter charge. Historically, Iowa has required that to "preserve error on a claim of insufficient evidence for appellate review in a criminal case, the defendant must make a motion for judgment of acquittal at trial that identifies the specific grounds raised on appeal." *State v. Truesdell*, 679 N.W.2d 611, 615 (Iowa 2004). However, recently, the Iowa Supreme Court has changed course. *See State v. Crawford*, 972 N.W.2d 189, 200-02 (Iowa 2022). In *Crawford*, the Iowa Supreme Court concluded, "a defendant whose conviction is not supported by sufficient evidence is entitled to relief when he raises the challenge on direct appeal without regard to whether the defendant filed a motion for judgment of acquittal." *Id.* "A defendant's trial and the imposition of

sentence following a guilty verdict are sufficient to preserve error with respect to any challenge to the sufficiency of the evidence raised on direct appeal." *Id.* Therefore, Canady has preserved error on his challenge to the sufficiency of the evidence.

Standard of Review. The Court reviews challenges to the sufficiency of the evidence for errors at law. *State v. Howse,* 875 N.W.2d 684, 688 (Iowa 2016). The Iowa Supreme Court has summarized the review for sufficiency of evidence as the following:

> In reviewing challenges to the sufficiency of evidence supporting a guilty verdict, courts consider all of the record evidence viewed in the light most favorable to the State, including all reasonable inferences that may be fairly drawn from the evidence. We will uphold a verdict if substantial record evidence supports it. We will consider all the evidence presented, not just the inculpatory evidence. Evidence is considered substantial if, when viewed in the light most favorable to the State, it can convince a rational jury that the defendant is guilty beyond a reasonable doubt. Inherent in our standard of review of jury verdicts in criminal cases is the recognition that the jury [is] free to reject certain evidence, and credit other evidence.

State v. Sanford, 814 N.W.2d 611, 615 (Iowa 2012) (alteration in original) (internal citations and quotations omitted).

The Evidence was Insufficient to Support the Jury's Verdict on the Voluntary Manslaughter Charge. In this case, The jury returned a verdict of guilty on the lesser included offense of Voluntary Manslaughter, Willful Injury Causing Bodily Injury and Serious Assault. (Verdict Tr. p. 3, Line 1 – p. 8, Line 19; Verdict Forms; Order After Verdict) (App. pp. 175-180). Canady is arguing there is insufficient evidence to support the Voluntary Manslaughter charge. The burden is on the State to prove every fact necessary to constitute the offense with which a defendant has been charged. *State v. Gibbs*, 239 N.W.2d 866, 867 (Iowa 1976) (citing *In Re Winship*, 397 U.S. 358 (1970)).

The jury was instructed the State had to prove the following elements to find Canady guilty on the Voluntary Manslaughter charge:

1. On or about the 1st of May 2021, the defendant aided and abetted Dwight Evans in shooting Martez Harrison with a gun.

2. Martez Harrison died as a result of being shot by Dwight Evans with a gun.

3. The shooting was done solely by reason of sudden, violent and irresistible passion resulting from serious provocation.

4. Neither Lawrence Canady nor Dwight Evans were acting with justification.

(Jury Instruction No. 35) (App. p. 172). The jury was also instructed on the meaning of "aid and abet." (Jury Instruction No. 21) App. p. 171).

According to the aiding and abetting theory: "All persons concerned in the commission of a public offense, whether they directly commit the act constituting the offense or aid and abet its commission, shall be charged, tried and punished as principals." Iowa Code § 703.1. Aiding and abetting requires only a single crime, but the State must prove the defendant "knew of the crime at the time of or before its commission." *State v. Tangie*, 616 N.W.2d 564, 574 (Iowa 2000). In *Tangie*, this Court provided the following principles regarding aiding and abetting:

> To sustain a conviction on the theory of aiding and abetting, the record must contain substantial evidence the accused assented to or lent countenance and approval to the criminal act either by active participation or by some manner encouraging it prior to or at the time of its

> commission. The State must prove the accused knew of the crime at the time of or before its commission. However, such proof need not be established by direct proof, it may be either direct or circumstantial.

Id. (citation omitted). "Knowledge is essential; however, neither knowledge nor presence at the scene of the crime is sufficient to prove aiding and abetting." *State v. Hearn*, 797 N.W.2d 577, 580 (Iowa 2011). "The guilt of a person who aids and abets the commission of a crime must be determined upon the facts which show the part the person had in it …." Iowa Code § 703.1.

In this case, Amanda Anderson testified that on April 30, 2021 she was working in bartender and manager at Uncle Dave's Bar in Sioux City, Iowa. (12/9/21 Tr. p. 2, Line 14 – p. 12, Line 24). She testified that around 9:00 p.m. that evening Martez Harrison arrived at the bar to drink with friends who were already there. (12/9/21 Tr. p. 2, Line 14 – p. 12, Line 24). She stated that four underage individuals were trying to get into the bar but the bouncer prevented them. (12/9/21 Tr. p. 2, Line 14 – p. 12, Line 24). She stated that one of the individuals who she identified as Canady stated that he wanted to beat up Harrison because Harrison assaulted his sister by hitting her

over the head with a bottle. (12/9/21 Tr. p. 2, Line 14 – p. 12, Line 24). Anderson testified that when Canady saw Harrison, Canady yelled to him that he was waiting for him outside. (12/9/21 Tr. p. 2, Line 14 – p. 12, Line 24).

After a few minutes, Anderson stated that Canady left and walked across the street to a white car. (12/9/21 Tr. p. 12, Line 25 – p. 23, Line 16). She stated that she told Harrison that somebody wanted to fight him. (12/9/21 Tr. p. 12, Line 25 – p. 23, Line 16). Anderson stated that she then had to take care of another customer when she suddenly heard two gunshots from outside the bar. (12/9/21 Tr. p. 12, Line 25 – p. 23, Line 16). Anderson admitted that she thought she told the police that Canady stated he had guns but admitted that she her pipes and thought it meant guns. (12/9/21 Tr. p. 23, Line 17 – p. 34, Line 3).

Jessica Goodman was the fiancé of Harrison and she testified that at 12:30 a.m. on May 1, 2021, she received a telephone call from Harrison who requested that she come and pick him up from Uncle Dave's Bar. (12/14/21 Tr. p. 10, Line 10 – p. 26, Line 10; State's Exhibit #108a). She stated she went

to the bar and parked near the front entrance. (12/14/21 Tr. p. 10, Line 10 – p. 26, Line 10; State's Exhibit #108a). She stated that Canady, Jordan Hills and Nya Rang along with Dwight Evans confronted her. (12/14/21 Tr. p. 10, Line 10 – p. 26, Line 10; State's Exhibit #108a). Goodman stated that at some point Harrison came out of the bar and Canady tried to slap him but miss and hit her instead. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12; State's Exhibit #108a). She then testified that Rang mace her during this altercation. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12). She stated that Canady then told Evans to get the gun. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12; State's Exhibit #108a). She stated that Canady and Harrison began fighting in the middle of the street and Canady was on top of Harrison. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12; State's Exhibit #108a).

Goodman testified that she then saw Evans standing over Canady and Harrison. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12; State's Exhibit #108a). She said that she then heard a gunshot while Canady was still punching Harrison. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12; State's Exhibit #108a). She

stated that as she began to run to Harrison she heard another gunshot. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12; State's Exhibit #108a). Goodman stated that Canady then left the scene with Rang and Hills. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12; State's Exhibit #108a). She stated she eventually went to the hospital to be treated for the injuries she sustained from getting hit. (12/14/21 Tr. p. 57, Line 13 – p. 71, Line 8).

Goodman admitted that Harrison and Canady have fought on prior occasions and never concerned that Canady was going to fatally wound Harrison. (12/14/21 Tr. p. 98, Line 10 – p. 113, Line 14). She admitted that she never heard Canady tell Evans to shoot Harrison. (12/14/21 Tr. p. 98, Line 10 – p. 113, Line 14). In addition, she admitted that Canady had his back to Evans while he was fighting with Harrison on the ground. (12/14/21 Tr. p. 98, Line 10 – p. 113, Line 14). Goodman testified that she thought Canady was shot when she heard the gunshot. (12/14/21 Tr. p. 98, Line 10 – p. 113, Line 14). Furthermore, she admitted that she never told the police following this incident that Canady told Evans to get the gun. (12/14/21 Tr. p. 98, Line 10 – p. 113, Line 14). Goodman also

stated that she did not think Canady knew Evans was going to shoot Harrison. (12/14/21 Tr. p. 98, Line 10 – p. 113, Line 14).

Harrison was rushed to a local hospital in Sioux City where he was pronounced dead a few hours later following emergency surgery to repair the damage from the gunshots. (12/10/21 Tr. p. 2, Line 1 – p. 35, Line 19). An autopsy was performed and it was shown that Harrison suffered two gunshot wounds – one to his abdomen and one to his lower left flank. (12/10/21 Tr. p. 51, Line – p. 67, Line 9). The medical examiner determined that each of the wounds were potentially fatal since Harrison nearly lost of his blood as a result of the gunshot wounds. (12/10/21 Tr. p. 51, Line – p. 67, Line 9).

Isiah Rue testified that he is friends with Canady and Harrison. (12/15/21 Tr. p. 31, Line 21 – p. 40, Line 5). He stated that Canady and Harrison would have disagreements and would fight one another on prior occasions. (12/15/21 Tr. p. 31, Line 21 – p. 40, Line 5). He stated that both Canady and Harrison would make threats to each other but they would eventually resolve their disagreements. (12/15/21 Tr. p. 31, Line 21 – p. 40, Line 5). Rue testified that Evans was not friends

with the and would probably not know about the nature of the relationship between Harrison and Canady. (12/15/21 Tr. p. 40, Line 6 – p. 43, Line 18).

Lawrence Canady, Sr. testified that he knows Harrison's family since they grew up together in Chicago. (12/15/21 Tr. p. 25, Line 20 – p. 31, Line 20). He testified that on April 30, 2021, he dropped his son off at a friend's house and saw Canady walk past Harrison who was also there. (12/15/21 Tr. p. 25, Line 20 – p. 31, Line 20). He stated that he observed Canady and Harrison hug each other and went their separate ways. (12/15/21 Tr. p. 25, Line 20 – p. 31, Line 20). He stated that Harrison and Canady had disagreements in the past but they always made up and they were friends. (12/15/21 Tr. p. 25, Line 20 – p. 31, Line 20).

The aforementioned evidence cast suspicion on Canady's activities on April 30, 2021 and May 1, 2021 but it did not establish the elements the he aided and abetted Evans in the shooting of Harrison. The only question that is before this Court is whether substantial evidence supports the jury's findings of guilt. *See State v. Ernst*, 954 N.W.2d 50, 54 (Iowa 2021).

The substantial-evidence standard "means a person may not be convicted based upon mere suspicion or conjecture." *Id.* (citation omitted). This Court is obligated to "consider all the evidence in the record, not just the evidence supporting guilt." *State v. Tipton*, 897 N.W.2d 653, 692 (Iowa 2017). The test is not a rubber stamp. *See State v. Waigand*, 953 N.W.2d 689, 695 (Iowa 2021) (on substantial-evidence review, stating "[s]entencing courts should not rubber-stamp victim restitution claims" (quoting *State v. Roache*, 920 N.W.2d 93, 108 (Iowa 2018))).

The Court of Appeals has described the substantial-evidence standard as follows:

> The mere fact that a jury did find [the defendant] guilty ... does not answer the legal question as to whether the evidence was sufficient to have ever been presented to the jury. If we allow ourselves to be influenced—or our analysis to be dictated—by a jury's guilty verdict, then no denial of a motion for judgment of acquittal could ever be successful, and no sufficiency-of-the-evidence ... challenge could ever be successful. While our case law reveals that such motions are not often successful, we must evaluate each motion for judgment of acquittal on its own merits as though the case had not been submitted to a jury.

See State v. Rush-Brantley, No. 12-1915, 2015 WL 161791, at *6 (Iowa Ct. App. Jan. 14, 2015).

Whether the State's evidence is direct, circumstantial, or some combination of the two, the State is not required to negate any and all rational hypotheses of the defendant's innocence. *See State v. Jones*, 967 N.W.2d 336, 342 (Iowa 2021). What the State is required to do is convince the jury beyond a reasonable doubt of the defendant's guilt. *Id.* Direct and circumstantial evidence are equally probative in that regard. *Id.;* Iowa R. App. P. 6.904(3)(p).

In addition, a strict prohibition against stacking inferences to be drawn from circumstantial evidence is inconsistent" with substantial-evidence review. *Ernst*, 954 N.W.2d at 59. "The relevant inquiry is not whether a fact finding is based on an inference drawn from another inference. Rather, the relevant inquiry is whether a fact finding is a legitimate inference 'that may fairly and reasonably be deduced from the record evidence.'" *Id.* (quoting *Tipton*, 897 N.W.2d at 692). The "stacking" of inferences is problematic only when the jury's

finding crosses from logical inference to impermissible speculation. *Jones*, 967 N.W.2d at 342.

The record clearly demonstrates that the State's case is based solely on speculation and conjecture. After carefully reviewing the evidence, this Court should conclude the record is devoid of sufficient evidence that Canady aided and abetted Evans in shooting of Harrison with a gun. There is no evidence that before or at the time of the killing Canady aided or abetted in any manner Evans in the shooting and killing of Harrison. For the reasonable jury to conclude that Canady gave encouragement to Evans to shoot Harrison while them two were fighting in the middle of the street would be nothing but speculation. The record lacks sufficient evidence to establish that Canady knew a weapon was involved and was anticipating Evans to use the weapon during this incident.

The record from the jury trial raises reasonable doubt about Canady's guilt on this charge. One can speculate about the circumstances surrounding April 30, 2021 and May 1, 2021 and what Canady was intending when he went to Uncle Dave's Bar but inferences that do no more than create speculation,

suspicion, or conjecture do not create a fair inference of guilt. *See State v. Truesdell*, 679 N.W.2d 611, 618 (Iowa 2004).

A challenge to the sufficiency of the evidence is not a question of what the State could have proved at trial; it is a question of what the State actually proved at trial. When the State's evidence is incomplete, the trier of fact may not fill in the gaps in the evidence to support a conviction with speculation and conjecture. It is the court's job to enforce the presumption of innocence:

> The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence—that bedrock "axiomatic and elementary" principle whose "enforcement lies at the foundation of the administration of our criminal law."

In re Winship, 397 U.S. at 363 (quoting *Coffin v. United States*, 156 U.S. 432, 453 (1895)); *see also Crawford*, 972 N.W.2d at 196 (It is fundamental that every man is presumed to be innocent when placed on trial until proved to be guilty. To make out his guilt by proof, the proof must affirm the existence of every element essential to constitute the crime.).

After considering all the evidence submitted at the jury trial in the light most favorable to the State and all reasonable evidences supported by the record, this Court should conclude that the evidence was insufficient to support a finding beyond a reasonable doubt that Canady committed the Voluntary Manslaughter charge. The State's case is based on suspicion, theory, and conjecture. *See State v. Schlitter*, 881 N.W.2d 380, 391 (Iowa 2016) (reversing a jury finding of guilt after stating the "finding could only be based on speculation" and "[s]peculation and conjecture cannot be used to support a verdict") *abrogated on other grounds by State* v. *Crawford*, 972 N.W.2d 189 (Iowa 2022). Furthermore, the State's theory at trial was only that a theory and no rational jury could conclude that this theory was proved beyond a reasonable doubt. *See State v. Serrato*, No. 08-0799, 2009 WL 2185819, at *4 (Iowa Ct. App. July 22, 2009) ("[T]he State's theory ... was only that—a theory. No rational jury could conclude that this theory was proved beyond a reasonable doubt."). Without more evidence, there is insufficient proof that Canady is guilty beyond a

reasonable doubt. As such, the Court should reverse Canady's conviction and remand for an order to dismiss the charge.

on during this incident.

III. When a sentence falls within the statutory limits, the sentence will not be disturbed on appeal unless the defendant shows an abuse of discretion or a defect in the sentencing procedure such as the trial court's consideration of impermissible factors. Canady claims the district court abused its discretion by imposing consecutive sentences. Did the district court err?

Preservation of Error. Canady argues on appeal that the district court abused its discretion by failing to merge the Willful Injury conviction with the Voluntary Manslaughter conviction, by considering the minutes of testimony, and by imposing consecutive sentences. In general, matters not raised in the trial court will not be considered for the first time on appeal. *State v. Thomas*, 520 N.W.2d 311, 313 (Iowa 1994). The rule, however, is not ordinarily applicable to void, illegal, or procedurally defective sentences. *Id.* "[E]rrors in sentencing may be challenged on direct appeal even in the absence of an objection in the district court. Illegal sentences may be challenged at any time, notwithstanding that the illegality was not raised in the trial court or on appeal." *State v. Lathrop,* 781

N.W.2d 288, 293 (Iowa 2010). Canady raises challenges which asserts sentencing errors. Under the circumstances presented here, Canady has preserved error on these sentencing issues.

Standard of Review. This Court reviews sentencing decisions for correction of errors at law. Iowa R. App. P. 6.907; *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). When a sentence falls within the statutory limits, the sentence will not be disturbed on appeal unless the defendant shows an abuse of discretion or a defect in the sentencing procedure such as the trial court's consideration of impermissible factors. *State v. Lovell*, 857 N.W.2d 241, 242–43 (Iowa 2014); *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). In addition, this Court reviews the district court's imposition of consecutive sentences for an abuse of discretion. *State v. Hill*, 878 N.W.2d 269, 272 (Iowa 2016). Furthermore, this Court reviews "an alleged failure to merge convictions as required by statute for correction of errors at law." *State v. Johnson*, 950 N.W.2d 21, 23 (Iowa 2020).

A. The District Court Erred By Failing to Merge the Voluntary Manslaughter and Willful Injury Convictions. Canady argues that the district court erred when it failed to

merge the Voluntary Manslaughter and Willful Injury convictions. The Iowa merger doctrine is expressed in Iowa Code section 701.9 and Iowa Rule of Criminal Procedure 2.6(2). Iowa Code section 701.9 provides:

> No person shall be convicted of a public offense which is necessarily included in another public offense of which the person is convicted. If the jury returns a verdict of guilty of more than one offense and such verdict conflicts with this section, the court shall enter judgment of guilty of the greater of the offenses only.

Iowa Code § 701.9. Section 701.9 "codifies the double jeopardy protection against cumulative punishment." *State v. Gallup*, 500 N.W.2d 437, 445 (Iowa 1993). Iowa Rule of Criminal Procedure 2.6(2) provides: "Upon prosecution for a public offense, the defendant may be convicted of either the public offense charged or an included offense, but not both." Iowa R. Crim. P. 2.6(2).

If a single assault results in convictions for voluntary manslaughter and willful injury, the convictions merge under section 701.9. *See State v. Walker*, 610 N.W.2d 524, 527 (Iowa 2000). If the convictions for voluntary manslaughter and willful injury arise from two separate crimes, however, the convictions

do not merge. *Id.* ("Because the record establishes more than one assault, the court was authorized to impose more than one sentence."); *see also State v. Dittmer*, 653 N.W.2d 774, 777 (Iowa Ct. App. 2002) (noting that when two offenses relate to two separate crimes, they do not merge). The Iowa Supreme Court has elaborated upon a "unit of prosecution" and the need for either a break-in-the-action or two separate completed acts to support separate criminal convictions and avoid a violation of the Double Jeopardy Clause. *See State v. Velez*, 829 N.W.2d 572, 581–84 (Iowa 2013). As such, this Court may consider whether a defendant has engaged in separate acts, there has been a break in the action, or there has been discrete completed acts. *Id.* When a charge arises "from a different act with different people at a different time" than another charge, "they are two separate and distinct offenses," which are not subject to merger. *Dittmer,* 653 N.W.2d at 777.

In this case, as mentioned in Division II above, record shows that Dwight Evans shot Martez Harrison at the same Canady was punching Harrison while Canady was laying on top of Harrison. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12; State's

Exhibit #108a). The whole incident where Harrison was being punched by Canady and Evans shooting Harrison was a matter of a few seconds. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12; State's Exhibit #108a). Once the fight between Canady and Harrison started and progressed to the street, it was one continuous act and there was no separate acts, there was no break in the action, or there was no discrete acts. The evidence outline in Division II above clearly shows that Canady did not aid and abett Evans in two separate assaults.

This Court should conclude that the Willful Injury charge should merge with the Willful Injury charge. The district court's failure to merge the convictions on these two charges violated *Walker* and section 701.9 as well as Canady's double jeopardy protection from multiple punishments for the same offense. *See Velez*, 829 N.W.2d at 584. Therefore, this Court should vacate the sentences and remand to the district court for resentencing.

B. The District Court Abused Its Discretion by Considering the Minutes of Testimony During Canady's Sentencing. Canady alleges that the district court abused its discretion when it considered the minutes of testimony when it

imposed the sentences in this matter. Before announcing the sentences, the court stated the following:

> Before determining the appropriate sentence to impose in these matters, the Court has considered all of the information presented to it. It gives great consideration to the victim impact statements presented here today, as well as all the information contained in the court file, *the minutes of testimony*, the evidence that was presented during the jury trial in this particular case. The Court has considered all available sentencing options to it under applicable law.
>
> Considering all that information, the Court believes the following sentence is an appropriate sentence under the facts and circumstances as they exist in this case.

(Sent. Tr. p. 31, Line 16 – p. 32, Line 4) (emphasis added).

Our Supreme Court has discussed minutes of testimony in context of sentencing:

> [M]inutes of testimony attached to a trial information do not necessarily provide facts that may be relied upon and considered by a sentencing court. Minutes can be used to establish a factual basis for a charge to which a defendant pleads guilty. "The sentencing court should only consider those facts contained in the minutes that are admitted to or otherwise established as true." Where portions of the minutes are not necessary to establish a factual basis for a plea, they are deemed denied by the defendant and are otherwise unproved and a sentencing court cannot consider or rely on them.

State v. Gonzalez, 582 N.W.2d 515, 517 (Iowa 1998) (quoting *State v. Black*, 324 N.W.2d 313, 316 (Iowa 1982)).

In this case, the record clearly demonstrates that the district court considered the minutes of testimony when it imposed the sentences for Canady. There were several minutes of testimony filed by the State prior the jury trial. Furthermore, the district court did not indicate its reliance on the minutes of testimony to only facts that are admitted or otherwise established as true. In addition, Canady never admitted to the facts and circumstances contained in those minutes of testimony. As such, it was error for the district court to rely on and to consider the minutes of testimony when it imposed the sentences on Canady.

The law is clear about consideration of impermissible sentencing factors, they should not be considered during sentencing. *State v. Lovell*, 857 N.W.2d 241, 242 (Iowa 2014). The district court mentioned impermissible sentencing factors before sentencing Canady – the minutes of testimony. This Court cannot speculate about the weight the sentencing court gave to these unknown circumstances . *State v. Messer,* 306

N.W.2d 731, 733 (Iowa 1981). If a court in determining a sentence uses any improper consideration, resentencing of the defendant is required, even if it were merely a secondary consideration. *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000). Consequently, this Court should vacate Canady's sentences and remand the cases to the district court for resentencing before a different judge. *Id.*

C. The District Court Abused its Discretion by Ordering Consecutive Sentences. Canady alleges that the district court abused its discretion when it imposed consecutive sentences as part of his sentence. The district court is required to publicly announce whether the sentences shall be served consecutively or concurrently. Iowa Code § 901.5(9)(c). The court generally has discretion to impose concurrent or consecutive sentences for convictions on separate counts. *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa Ct. App. 1994). However, the duty of a sentencing court to provide an explanation for a sentence includes the reasons for imposing consecutive sentences. *Id.* As such, the court has a duty to provide specific reasoning regarding why consecutive sentences

are warranted in the particular case. *See State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000). Therefore, the Supreme Court has concluded that Rule 2.23(3)(*d*) applies to the district court's decision to impose consecutive sentence. *State v. Hill*, 878 N.W.2d 269, 274 (Iowa 2016).

In *Hill*, the Supreme Court has addressed what is required of the district court when it imposes consecutive sentences. *Id.* at 273. The Supreme Court acknowledged that Rule 2.23(3)(*d*) requires the district court to "state on the record its reason for selecting the particular sentence" and that Rule 2.23(3)(*d*) applies to the district court's decision to impose consecutive sentences. *Id.* The Supreme Court also reiterated the purposes served by requiring the sentencing court to explain its reasons for imposing a particular sentence:

> First, "[t]his requirement ensures defendants are well aware of the consequences of their criminal actions." *Id.* Second, and "[m]ost importantly," this requirement "affords our appellate courts the opportunity to review the discretion of the sentencing court." *Id.*

Id. (quoting *State v. Thompson*, 856 N.W.2d 915, 919 (Iowa 2014)).

The Supreme Court further acknowledged that in *State v. Hennings*, this Court concluded that the district court's stated reasons for sentences also applied to its decision to run them consecutively as part of an "overall sentencing plan." *Id.* (citing *State v. Hennings*, 791 N.W.2d 828, 838-39 (Iowa 2010) (quoting *Johnson,* 445 N.W.2d at 343-44). However, the Supreme Court in *Hill* overruled *Hennings* and *Johnson* when it concluded that the district court failed to give reasons for consecutive sentences:

> We encourage sentencing courts to give more detailed reasons for a sentence specific to the individual defendant and crimes and to expressly refer to any applicable statutory presumption or mandate. Sentencing courts should also explicitly state the reasons for imposing a consecutive sentence, although in doing so the court may rely on the same reasons for imposing a sentence of incarceration. To the extent our precedent such as *Hennings* and *Johnson* allowed us to infer the same reasons applied as part of an overall sentencing plan, we overrule them.

Id. at 275.

In this case, during the sentencing hearing, the State recommended that the court order prison sentences on each charge which are to be served consecutive to each other and

consecutive to the probation revocation matter in Woodbury Criminal Case No. FECR105921. (Sent. Tr. p. 25, Line 13 – p. 27, Line 10). Canady trial attorney recommended that the court order the prison sentences on each charge to be served concurrent to each other. (Sent. Tr. p. 27, Line 11 – p. 28, Line 13).

The district court then announced the sentences for each charge and the probation revocation. (Sent. Tr. p. 31, Line 5 – p. 36, Line 20; Judgment) (App. pp. 193-205). On the charge of Voluntary Manslaughter, the court ordered that Canady serve an indeterminate sentence of ten years and pay a fine of $1,370 as well as statutory surcharges. (Sent. Tr. p. 31, Line 5 – p. 36, Line 20; Judgment) (App. pp. 193-205). On the charge of Willful Injury Causing Bodily Injury, the court ordered Canady to serve an indeterminate sentence of five years and pay a fine of $1,025 as well as statutory surcharges. (Sent. Tr. p. 31, Line 5 – p. 36, Line 20; Judgment) (App. pp. 193-205). On the Serious Assault charge, the court ordered Canady to serve one year and pay a fine of $430 as well as statutory charges. (Sent. Tr. p. 31, Line 5 – p. 36, Line 20; Judgment) (App. pp. 193-205). The court

ordered that the fine on the Willful Injury charge be suspended and that Canady pay $150,000 to the estate of Martez Harrison pursuant to Iowa Code section 910.3B. (Sent. Tr. p. 31, Line 5 – p. 36, Line 20; Judgment) (App. pp. 193-205). In addition, the court ordered the sentences to be consecutive to each other and to the sentence imposed on the probation revocation. (Sent. Tr. p. 31, Line 5 – p. 36, Line 20; Judgment) (App. pp. 193-205).

Following the announcement of the sentences, the district court made the following statement:

> The Court finds that the sentences for Counts 1, 2 and 3 shall be ordered to be served consecutively to each other for one indeterminate term of incarceration not to exceed 16 years.
>
> * * *
>
> The Court further finds that that term of incarceration should be ordered to be served consecutively to the sentence just imposed in FECR112015, for a joint combined total term of incarceration not to exceed 21 years.
>
> The Court finds that the foregoing sentences imposed would provide for the maximum opportunity for the rehabilitation of the defendant and also significantly to protect the community from further offenses by the defendant and others. The Court has considered the defendant's age, the defendant's prior record, which is extensive in light of the fact that he's only 21 years of age, the nature of the offenses committed, the fact that force and a weapon was involved in the commission of these crimes, and *the*

> *Court, again, orders that the foregoing sentences be ordered to be served consecutively based upon the separate and serious nature of the offenses as well as the fact that the offenses in FECR112015 were committed while the defendant was on parole -- or excuse me, probation in File FECR105921.*

(Sent. Tr. p. 32, Lines 20-23; p. 33, Line 17 – p. 34, Line 17) (emphasis added). The written sentencing order did not include any additional reasons for the consecutive sentences. (Judgment p. 3) (App. p. 195).

Canady argues the district court failed to provide adequate reasons for the imposition of the consecutive sentences. If the district court exercised discretion, then, as a result, the court must make a statement on the record as to why it exercised its discretion in the way it did. *See State v. Thacker*, 862 N.W.2d 402, 410 (Iowa 2015). Even though the district court can rely on the same reasons for imposing incarceration to impose consecutive sentences, the court is still required to give detailed reasons for the consecutive sentences that is specific to Canady. *See Hill*, 878 N.W.2d at 275.

In this case, the district court failed to do so in this case. The court's brief statement tells us nothing about how the court

arrived at consecutive sentences in this particular case except for the separate and serious nature of the offenses. However, it is unclear if the court was referencing the separate nature of the charges in this case or the fact that Canady committed these charges while on probation in an unrelated case. This Court has previously stated that the sentencing court may not focus on the nature of the offense alone in determining the appropriate punishment. *State v. Hopkins*, 860 N.W.2d 550, 555 (Iowa 2015). Therefore, it was error for the court to rely exclusively on the nature and the circumstances of the offenses to order consecutive sentences.

A conviction carries with it more than a sentence but also carries serious and grave consequences for the defendant. As such, it is not too much to require that, before sentencing defendants to consecutive sentences, the district court judges takes the time to provide sufficient detailed reasons for the imposition of consecutive sentences that is specific to the individual defendant and not just rely on boilerplate language that is applicable to all criminal defendants. Furthermore, the district court should not be a rubber stamp for the State's

sentencing recommendations. Likewise, the abuse of discretion standard of review is also not a rubber stamp of all sentencing decisions made by a district court.

Therefore, this Court should conclude the district court failed to comply with the court's requirements in *Hill* and abused its discretion by sentencing Canady to serve consecutive sentences. As such, Canady respectfully requests this Court vacate his sentences and remand his case for resentencing before a different district court judge. *See Hill*, 878 N.W.2d at 274-75.

CONCLUSION

For all of the reasons discussed in the Divisions above, the Defendant-Appellant Lawrence Canady III respectfully requests the Court grant him the relief that he has requested in each Division.

REQUEST FOR ORAL ARGUMENT

Counsel for Defendant-Appellant Lawrence Canady III request to be heard in oral argument.

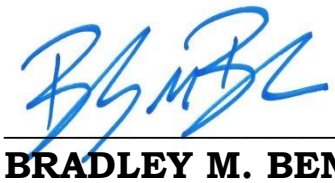
ATTORNEY'S COST CERTIFICATE

I, the undersigned, hereby certify that the true costs of producing the necessary copies of the foregoing Brief and Argument was $ 10.33 , and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

> [X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 13,839 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



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