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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 REPLY BRIEF AND ARGUMENT

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CERTIFICATE OF FILING

On the 24th day of February, 2023, the undersigned certifies that a true copy of the forgoing Appellant's Reply Brief was filed with the Clerk of the Iowa Supreme Court by using the Iowa Judicial Branch's Electronic Document Management System (EDMS).

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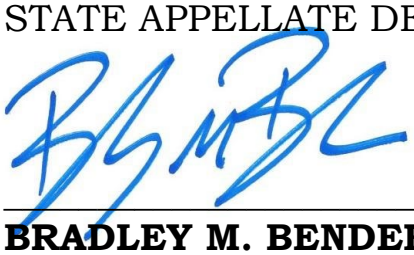

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CERTIFICATE OF SERVICE

On the 24th day of February, 2023, the undersigned certifies that a true copy of the forgoing Appellant's Reply Brief was served on all attorney(s) of record by filing such document with Clerk of the Iowa Supreme Court by using the Iowa Judicial Branch's Electronic Document Management System (EDMS) which send notice of the electronic filing to all attorney(s) of record.

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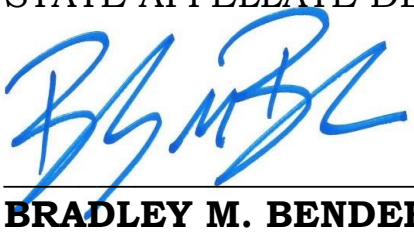

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CERTIFICATE OF SERVICE ON DEFENDANT-APPELLANT

On the 24th day of February, 2023, the undersigned certifies that a true copy of the Appellant's Reply Brief 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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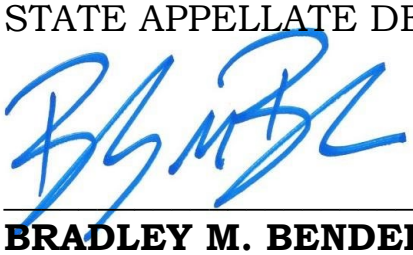

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Because Defendant-Appellant's Brief adequately addresses the issues presented for review, this issue is not discussed in Defendant-Appellant's Reply Brief.

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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?

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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 failing to merge the Willful Injury conviction with the Voluntary Manslaughter conviction, by considering the minutes of testimony, and by imposing consecutive sentences. Did the district court err?

Because Defendant-Appellant's Brief adequately addresses the issues presented for review, this issue is not discussed in Defendant-Appellant's Reply Brief.

STATEMENT OF THE CASE

The Defendant-Appellant, Lawrence Canady III, pursuant to Iowa Rules of Appellate Procedure 6.903(4), hereby submits the following argument in reply to the State's Brief and Argument filed on or about February 6, 2023. While Canady's Brief adequately addresses the issue presented for review, a reply is necessary to respond to certain contentions raised in the State's Brief.

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?

A. The District Court Erred in Admitting the Cellphone Rap Video. The State first claims that Canady failed to preserved any error that the court should have ruled differently because "Canady and Evans did not write the lyrics." (State's Brief p. 22). The State's argument with without merit and misstates what Canady actually argued in his brief.

Canady argued in his brief that 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. As such, Canady alleged the court abused its discretion by admitting the cellphone video. This was the same argument that Canady made in his pre-trial motion and his objection at trial. (Motion in Limine; 12/14/21 Tr. p. 206, Line 10 – p. 207, Line 17). Contrary to the State's arguments, Canady asserted the same prompt and specific objection to Exhibit #90 at trial and in his pre-trial motion that is he is making on appeal. *See State v. Pardock*, 215 N.W.2d 344, 348 (Iowa 1974); *State v. Daly*, 623 N.W.2d 799, 800 (Iowa 2001). Canady is not urging this Court to reverse the district court's ruling on a ground not previously raised in the district court proceedings.

Turning to the merits of the State's argument, the State is alleging that "it is undisputed that they *selected* a song and a specific verse for their lip-sync post that described violence against a person named 'Tezzo,' and they record this lip-sync on a date that was less than a week before they killed Harrison (aka

'Tezzo')." (State's Brief p. 23). As such, the State argues this evidence was specifically relevant to establish malice, premeditation, and specific intent. (State's Brief p. 23). The State's argument is without merit and misstates the record.

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 F). Nutso Slide is a rap group from Chicago and this song premiered on February, 2021. (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 F). The jury was also showed a video from July 11, 2021 that is segmented with the Nutso Slide song along with images of people's names mentioned in that video. (12/15/21 Tr. p. 4, Line 21 – p. 17, Line 18; Defendant's Exhibit G). One of the pictures have an image with the name "Teso." (12/15/21 Tr. p. 4, Line 21 – p. 17, Line 18; Defendant's Exhibit T). Furthermore, 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, contrary to the State's argument, it is undisputed based on the evidence submitted at trial that the lyrics being sang by Canady and Evans were merely lyrics by Nutso Slide. The record is thus undisputed that Canady nor Evans wrote the lyrics nor was Canady or Evans referring to Harrison's nickname of Tezzo. *See State v. Elliott*, 806 N.W.2d 660, 674 (Iowa 2011) (holding that an attorney may argue the reasonable inferences and conclusions he or she can draw from the evidence.). The State has failed to cite to any part of the record to prove that Canady and Evans purposefully selected the song because of Harrison or them lip-syncing the lyrics was some indication they had motive, intent or premeditation to kill Harrison. Such argument does not amount to a reasonable inference but rather is merely speculation or conjecture. Without more, the State failed to prove the evidence was relevant.

In addition, the State argues that the admission of the evidence was harmless. (State's Brief p. 24). Specifically, the

State argues that Canady was not prejudiced because he was not convicted of murder but rather was convicted of the lesser included offense of aiding and abetting voluntary manslaughter. (State's Brief p. 24). The State's argument is without merit.

"To assess whether there was prejudicial evidentiary error, it is first necessary to put this case into context." *State v. Fontenot,* 958 N.W.2d 549, 565 (Iowa 2021) (McDonald, J. dissenting). It is true that jury did not view the State's case as strong given its verdict on the lesser included offense of manslaughter. Clearly, the jury found some of the State's evidence not credible, which makes the evidentiary issues in this case of critical importance. However, contrary to the State's argument, the basis for the verdict is unknown.

Furthermore, the probative value of the cellphone rap video in State's Exhibit #90 was substantially outweighed by unfair prejudice. The State fails to recognize that 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). 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).

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).

There is no strong nexus between State's Exhibit #90 and the incident in this case. As previously stated, 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.

The State's argument further fails to recognize that in a harmless error analysis in a case of nonconstitutional error, "'we presume prejudice — that is, a substantial right of the defendant is affected — and reverse unless the record affirmatively establishes otherwise.'" *State v. Buelow*, 951 N.W.2d 879, 890 (Iowa 2020) (quoting *State v. Sullivan*, 679

N.W.2d 19, 30 (Iowa 2004). As outlined, the record does not affirmatively establish the lack of prejudice. The State's case against Canady "does not rise to the same amount of overwhelming evidence of guilt that this Court has found sufficient to avoid harmless error in the past." *See id.*

"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). The admission of State's Exhibit #90 was not harmless error.

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. The State argues that the jail call from Austin Rockwood which was made from Woodbury County Jail at 11:58 a.m. on April 30, 2021 was properly authenticated and Canady was not prejudiced by the admission of the recording. (State's Brief pp. 25-28). The State's arguments are without merit.

The 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).

The State argues that proper authentication of the voices on the jail call was provided by several witnesses. (State's Brief p. 26). To support its argument, the State highlighted testimony from Goodman and Yaneff that testified the voices on the jail call were Rockwood and Canady. (State's Brief p. 26). However, the State fails to recognize that no such testimony occurred at the time the exhibit was admitted into evidence and played for the jury. At the jury trial, the State called Jorma Schwedler who was a sergeant at the Woodbury County Jail. (12/10/21 Tr. p. 161, Line 8 – 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. 161, Line 8 – 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. 161, Line 8 – p. 167, Line 2). Once the call was admitted into evidence, it was played for the jury. (12/10/21 Tr. p. 161, Line 8 – p. 167, Line 2; State's Exhibit #34).

The State's argument that the admission of State's Exhibit #34 was supported by the doctrine "conditional relevancy" under Rule 5.104(b) is misplaced. *See* Iowa R. Evid. 5.104(b) ("The court may admit the proposed evidence on the condition that the proof be introduced later.). The court did not admit State's Exhibit #34 condition on the State introducing evidence later in trial that establishes the proper foundation under 5.901. (12/10/21 Tr. p. 161, Line 8 – p. 167, Line 2). Rather, the court overruled Canady's objections and received the exhibit and it was made part of the record, which played immediately for the jury. (12/10/21 Tr. p. 161, Line 8 – p. 167, Line 2). Because the State was the proponent of this evidence, the State bore the burden of producing evidence to establish the prima

facie showing under Rule 5.901 when the jail call was admitted. It failed to do so.

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.

In its brief, the State attempts to argue that the recording was admissible because it was not offered to prove the truth of matter asserted but rather to show it effects on the listener, Canady. (State's Brief p. 27). The State has failed to preserved this argument for appeal. In its pretrial motion, the State argued that the recoding was admissible as an admission by a party opponent under Iowa Rules of Evidence 8.801(d)(2)(A). (Motion to Admit) (App. pp. 114-120). The court ruled that the recording was admissible as admissions by a party opponent under Rule 5.801(d)(2)(A) as long as the State is able to identify Canady's voice on the call. (12/2/21 Order) (App. pp. 141-158). Therefore, the State chose to abandon its argument that the recording was admissible as admissions by a party opponent on appeal and put forth an argument that was not raised at trial nor ruled on by the district court. *See Devoss v. State*, 648

N.W.2d 56, 63 (Iowa 2002) (recognizing the doctrine of error preservation is rooted in principles of fairness where neither the state nor the defendant can raise a new claim or defense on appeal that could have been, but failed to be, raised at trial.).

The Iowa 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). But the Iowa Supreme Court has recently recognized "erroneously admitted hearsay can be prejudicial even when it is cumulative." *State v. Skahill,* 966 N.W.2d 1, 16 (Iowa 2021); *see also State v. Elliot,* 806 N.W.2d 660, 669 (Iowa 2011) ("Although courts frequently find the erroneous admission of hearsay evidence constitutes harmless error because it is merely cumulative, that does not mean that all erroneously

admitted hearsay evidence is harmless merely because it is cumulative.").

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. The State chose not to call Austin Rockwood as a witness but rather chose to try to admit inadmissible hearsay statements through State Exhibit's #34 under the admission by party opponent exception

which was improper. A review of the record shows that the admission of the challenged exhibit 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. Because Defendant-Appellant's Brief adequately addresses the issues presented for review, this issue is not discussed in Defendant-Appellant's Reply Brief.

D. The District Court Erred in Admitting Jessica Goodman's Opinion Testimony on Slang Language. The argues that Jessica Goodman's testimony regarding her interpretation of 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 – was proper lay opinion testimony. (State's Brief pp. 32-37). The State's argument is without merit.

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 concept of slang is not familiar in everyday life as suggested by the State and not every lay witness who knows the meaning of slang term can testify to its meaning. The State did not establish that Goodman had sufficient knowledge on slang terms. In fact, when Goodman was testifying on the message contained on the Snapchat message she was speculating 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).

The record is lacking to show Goodman was familiar with those terms based on her personal experience and she had personal or first-hand knowledge of those slang terms as required by Rule 5.701. She was not a participant on the jail call nor the Snapchat message. 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. As such, Goodman's testimony was the hallmarks of expert evidence which should have been inadmissible.

The State further argues that Canady misstated the holding in New Jersey Supreme Court in *State v. Derry*, 250 N.J. 611, 275 A.3d 444 (2022). (State's Brief pp. 34-35). In *Derry*, the defendants objected to detective's translation and interpretation of slang terms used by defendants and others, arguing that detective's testimony was expert testimony rather

than lay opinion testimony. *Derry,* 250 N.J. at 621, 227 A.3d at 449. The trial court concluded that Kopp's interpretations constituted permissible lay opinion under New Jersey's Rule of Evidence 701 because they were "based upon his acquaintance and knowledge with the parties and how they spoke." *Derry,* 250 N.J. at 621, 227 A.3d at 449. The New Jersey Supreme Court granted defendants' petition to review whether there was error by the admission of testimony by a witness defining slang terms without the witness having been qualified as an expert. *Derry,* 250 N.J. at 623, 227 A.3d at 451.

The New Jersey Supreme Court held that the detective's testimony explaining the slang terms "presents the hallmarks of expert evidence. It purports to define and explain slang terms that are beyond the ken of an average juror, even if some of the terms' definitions are clear from context." *Derry*, 250 N.J. at 635, 227 A.3d at 458. The New Jersey Supreme Court then recognized that "[m]any decisions from the federal courts and other states recognize the importance of expert testimony in circumstances such as these [explaining slang terms]." *Derry*, 250 N.J. at 635, 227 A.3d at 458; *see also United States v.*

Delpit, 94 F.3d 1134, 1145 (8th Cir. 1996) ("[t]here is no more reason to expect unassisted jurors to understand cryptic slang than antitrust theory or asbestosis"); *United States v. Lowe*, 9 F.3d 43, 47 (8th Cir. 1993) (recognizing that experts may help the jury with the meaning of jargon and codewords.).

Furthermore, the State argues that Iowa caselaw shows that the meaning of slang term is relevant evidence. (State's Brief p. 36). To support this, the State cites *State v. Pendleton*, No. 13–1647, 2014 WL 6977188, at *2 (Iowa Ct. App. Dec. 10, 2014) and *State v. Campbell*, No. 18–0764, 2020 WL 1049755, at *2 & n.1 (Iowa Ct. App. Mar. 4, 2020). However, neither of those cases was addressing whether expert witness testimony is needed to interpret slang language as Canady argues in this appeal but rather was referencing slang terms in dicta while analyzing other issues in the cases. *Pendleton*, 2014 WL 6977188, at *2; *Campbell*, 2020 WL 1049755, at *2 & n.1. More guidance is needed by the Iowa Supreme Court on the fulcrum of whether a lay person can opine on the meaning of slang terms or if an expert witness is needed in such situation.

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). The evidence of Canady's guilt was far from overwhelming. In other words, the State's case against Canady "does not rise to the same amount of overwhelming evidence of guilt that this Court has found sufficient to avoid harmless error in the past." *See Buelow*, 951 N.W.2d at 890. As such, the admission of this 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?

The Evidence was Insufficient to Support the Jury's Verdict on the Voluntary Manslaughter Charge. The State argues that there is sufficient evidence to support the jury's verdict on the voluntary manslaughter charge. (State's Brief pp. 39-44). The State's argument is without merit and is not supported by the record that was made during the jury trial.

The crucial question before this Court is whether the evidence is sufficient to support the jury's finding that Canady aided and abetted Dwight Evans in shooting Martez Harrison with a gun. (Jury Instruction No. 35) (App. p. 172). 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, there is insufficient evidence to show that Canady aided and abetted Evans in shooting Harrison. Specifically, there is insufficient evidence that Canady knew Evans was going to shoot Harrison or that Canady assented to

or lent countenance to the shooting as alleged by the State. Even though State argues that Canady knew Evans had a gun prior to the shooting, the record does not support such a conclusion. Contrary to the State's contentions, Amanda Anderson testified that she thought she told the police that Canady stated he had guns but admitted that she heard the word "pipes" and thought it meant guns. (12/9/21 Tr. p. 23, Line 17 – p. 34, Line 3). Furthermore, Jessica Goodman 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). Therefore, the information these witnesses told the police shortly after the incident demonstrates that Canady did not request Evans to get a gun. Furthermore, the State is speculating that Canady must also have seen Evan's Snapchat message that he has a gun without offering any evidence to supports such speculation.

Furthermore, the State argues that the jury could infer that the Canady was encouraging Evans to use the gun to shoot Harrison during the fight. (State's Brief p. 44). Again, the State's argument is nothing more than speculation or

conjecture that is not supported by the record. What is undisputed that Canady and Evans began fighting in the street which caused them both to fall to the ground. (State's Exhibit #108a). As the fight began, mace was sprayed. (12/14/21 Tr. p. 40, Line 4 – p. 57, Line 12).

Canady was on top of Harrison laying in the street while they were fighting. (State's Exhibit #32). Furthermore, Evans never left the group to retrieve a gun as testified by Goodman. (State's Exhibit #32). Furthermore, it is undisputed that only approximately eighteen seconds elapsed between when the fight started between Canady and Harrison by the bar entrance until Evans shot Harrison. (Exhibit #32 – 01:00:59 to 01:01:17).[1] The second shot occurred approximately five seconds later. (State's Exhibit #32 – 01:01:17 to 01:01:22). Evans stood over both Canady and Harrison who were still fighting when he fired the shots. (State's Exhibit #32 – 01:00:59 to 01:01:22). Canady was engaged with Harrison and had his back turned to Evans. (State's Exhibit #32 – 01:00:59 to 01:01:22). Canady continued

[1] The timestamps noted are those referenced on the top left hand corner of the video.

fighting Harrison for only seven more seconds before he got up and left the scene of the fight. (State's Exhibit #32 – 01:01:22 to 01:01:29).

Goodman, who was the closest witness nearby during this incident, testified 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). 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).

Contrary to the State's contentions, the evidence does not support a reasonable inference that Canady was encouraging Evans to use the gun to shoot Harrison. Canady was fighting Harrison, had his back turned to Evans and he did not know what Evans was doing or going to do since he was engaged in a fight with Harrison on the ground in the street. This all happened in matter of seconds. One can see why the State is

repeatedly highlighting Goodman's trial testimony that Canady allegedly told Evans to get the gun prior to the fighting. Such evidence is crucial for the State's case. But Goodman never told the police following this incident that Canady told Evans to get the gun. Moreover, the video evidence admitted by the State does not support her testimony since Evans did not leave the group to get the gun. As such, contrary to the State's argument, this crucial testimony was not credible and does not support the inferences that the State argues in its brief.

The record may 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).

The State spends a substantial portion of their argument in its brief outlining inferences after interferences that the jury could infer from the record. (State's Brief pp. 41-44). Canady acknowledges 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. *State v. Jones,* 967 N.W.2d 336 , 342 (Iowa 2021).

The State's arguments cross from logical inferences to impermissible speculation. The State's case is based solely on speculation and conjecture. 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 they 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 State v. Crawford*, 972 N.W.2d 189, 196 (Iowa 2022) (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 failing to merge the Willful Injury conviction with the Voluntary Manslaughter conviction, by considering the minutes of testimony, and by imposing consecutive sentences. Did the district court err?

Because Defendant-Appellant's Brief adequately addresses these issues presented for review, this issue is not discussed in Defendant-Appellant's Reply Brief.

CONCLUSION

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

ATTORNEY'S COST CERTIFICATE

I, the undersigned, hereby certify that the true costs of producing the necessary copies of the foregoing Reply Brief and Argument was $ 6.10 , 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:

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