

**IN THE COURT OF APPEALS OF IOWA**

No. 6-233 / 05-0761  
Filed May 24, 2006

**STATE OF IOWA,**  
Plaintiff-Appellant,

**vs.**

**JONATHAN DAVID BROWN,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,  
Judge.

Jonathan David Brown appeals from his convictions and sentences for  
voluntary manslaughter and willful injury causing serious injury.     **AFFIRMED**  
**IN PART, VACATED IN PART, AND REMANDED.**

Linda Del Gallo, State Appellate Defender, and Nan Jennisch, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney  
General, William E. Davis, County Attorney, and Mike Walton, Assistant County  
Attorney, for appellee.

Considered by Huitink, P.J., and Vaitheswaran and Eisenhauer, JJ.

**EISENHAUER, J.**

Jonathan David Brown appeals from his convictions and sentences for voluntary manslaughter and willful injury causing serious injury. He contends the district court erred in failing to merge the two convictions. He claims his sentences are therefore illegal. We review his claim for corrections of errors at law. *State v. Grindele*, 577 N.W.2d 858, 859 (Iowa Ct. App. 1998).

Brown was convicted of both voluntary manslaughter and willful injury following the death of Johnny Ray Watkins. Watkins was shot five times; wounds to his abdomen, left palm and right forearm were not life-threatening. Two wounds to Watkins's chest were fatal.

On appeal, Brown contends the convictions should merge because the crime of willful injury causing serious injury is a lesser-included offense of the crime of voluntary manslaughter. In determining whether a lesser offense is included in a greater one, we look to the elements of each and determine if the greater offense can be committed without also committing the lesser offense. *State v. Hickman*, 623 N.W.2d 847, 850 (Iowa 2001). If the greater offense cannot be committed without also committing the lesser offense, the lesser is included in the greater. *Id.* This analysis addresses situations where multiple charges apply to a single occurrence. *State v. Flanders*, 546 N.W.2d 221, 224 (Iowa Ct. App. 1996). Where the alleged acts occur separately and constitute distinct offenses, there can be no complaint one is a lesser-included offense of the other. *Id.*

Willful injury is a lesser-included offense of the crime of voluntary manslaughter. *State v. Walker*, 610 N.W.2d 524, 526 (Iowa 2000). The issue before us, then, is whether the five shots occurred separately and therefore constitute distinct offenses. We find they did not. See *State v. Mapp*, 585 N.W.2d 746, 747-49 (Iowa 1998) (concluding the convictions for conspiracy to commit murder and conspiracy to commit willful injury must merge in murder where multiple gunshots were fired); *c.f. State v. Walker*, 610 N.W.2d 524, 527 (Iowa 2000) (concluding the record minimally supported factual basis for two separate assaults). Accordingly, the two offenses are merged. Brown's judgment and sentence for voluntary manslaughter is affirmed, his judgment and sentence for willful injury is vacated, and we remand the case for entry of an order dismissing the willful injury charge.

**AFFIRMED IN PART, VACATED IN PART, AND REMANDED.**