IN THE SUPREME COURT OF IOWA
Supreme Court No. 23–0434
Greene County No. SMCR015434

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JASON MICHAEL PIRIE,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR GREENE COUNTY
THE HON. JOSEPH B. MCCARVILLE, JUDGE

APPELLEE'S BRIEF

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FINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Cases

State Statute

State Rules

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Did the district court err in denying Pirie's motion for judicial recusal?

Authorities

Lamasters v. State, 821 N.W.2d 856 (Iowa 2012)
State v. Millsap, 704 N.W.2d 426 (Iowa 2005)
State v. Peason, No. 04–1285, 2005 WL 975641 (Iowa Ct. App. Apr. 28, 2005)
State v. Sinclair, 582 N.W.2d 762 (Iowa 1998)
State v. Toles, 885 N.W.2d 407 (Iowa 2016)
Taylor v. State, 632 N.W.2d 891 (Iowa 2001)

II. Did the trial court err in admitting testimony from an officer who spoke with Pirie and his friends, and said that Pirie's friends gave consistent versions of events that were inconsistent with what Pirie told him?

Authorities

Lamasters v. State, 821 N.W.2d 856 (Iowa 2012)
State v. Bloom, 983 N.W.2d 44 (Iowa 2022)
State v. Davis, 988 N.W.2d 458 (Iowa Ct. App. 2022)
State v. Garrity, 765 N.W.2d 592 (Iowa 2009)
State v. Gibbs, 941 N.W.2d 888 (Iowa 2020)
State v. Ernst, 954 N.W.2d 50 (Iowa 2021)
State v. Newell, 710 N.W.2d 6 (Iowa 2006)
State v. Thompson, No. 15–1463, 2016 WL 6270237 (Iowa Ct. App. Oct. 26, 2016)
Iowa R. Evid. 5.103(a)
Iowa R. Evid. 5.801

III. Did the district court err in overruling Pirie's motion for new trial, which alleged his trial was unfair due to absence of evidence that was neither newly discovered nor raised in any request for relief before the verdict?

Authorities

Carter v. Carter, 957 N.W.2d 623 (Iowa 2021)
Jones v. Scurr, 316 N.W.2d 905 (Iowa 1982)
Lamasters v. State, 821 N.W.2d 856 (Iowa 2012)
State v. Doughty, 397 N.W.2d 503 (Iowa 1986)
State v. Johnson, 476 N.W.2d 330 (Iowa 1991)
State v. Love, 302 N.W.2d 115 (Iowa 1981)
State v. Pace, No. 11–0847, 2012 WL 2122611 (Iowa Ct. App. June 13, 2012)
State v. Reeves, 636 N.W.2d 22 (Iowa 2001)
State v. Spann, No. 20–1456, 2022 WL 16631225 (Iowa Ct. App. Nov. 2, 2022)
State v. Uranga, 950 N.W.2d 239 (Iowa 2020)
State v. Williams, 929 N.W.2d 621 (Iowa 2019)
Iowa R. Crim. P. 2.24(2)(b)(9)

IV. Did the sentencing court err in conducting sentencing on GoToMeeting, after the sentencing court judge tested positive for Covid-19?

Authorities

State v. Carter, No. 22–1016, 2023 WL 2673226 (Iowa Ct. App. Mar. 29, 2023)
State v. Cooley, 587 N.W.2d 752 (Iowa 1998)
State v. Emanuel I, 967 N.W.2d 63 (Iowa Ct. App. 2021)
State v. Emanuel II, 968 N.W.2d 919 (Iowa Ct. App. 2021)
State v. Gordon, 921 N.W.2d 19 (Iowa 2018)
State v. Roe, No. 21–0457, 2022 WL 2824732 (Iowa Ct. App. July 20, 2022)
Iowa R. Crim. P. 2.27(1)

V. Did the sentencing court abuse its discretion in sentencing Pirie to a term of incarceration, set to run consecutively with his sentence in another case?

Authorities

State v. Church, No. 21–0913, 2022 WL 1100927 (Iowa Ct. App. Apr. 13, 2022)
State v. Cooley, 587 N.W.2d 752 (Iowa 1998)
State v. Evans, 672 N.W.2d 328 (Iowa 2003)
State v. Formaro, 638 N.W.2d 720 (Iowa 2002)
State v. Hopkins, 860 N.W.2d 550 (Iowa 2015)
State v. Laffey, 600 N.W.2d 57 (Iowa 1999)
State v. Loyd, 530 N.W.2d 708 (Iowa 1995)
State v. Seats, 865 N.W.2d 545 (Iowa 2015)
State v. Thomas, 547 N.W.2d 223 (Iowa 1996)
Iowa Code § 901.8

ROUTING STATEMENT

The State concurs with Pirie's routing statement. *See* Def's Br. at 11. The issues raised in this appeal can all be resolved by applying established legal principles, so this appeal should be transferred to the Iowa Court of Appeals. *See* Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

This is Jason Michael Pirie's direct appeal from his conviction for third-degree theft, an aggravated misdemeanor, in violation of Iowa Code sections 714.1 and 714.2(3) (2022). He was found guilty by a jury. At sentencing, the court noted his "long criminal history" and sentenced him to a two-year term of incarceration, run consecutively with his sentence in another case. *See* D0090, Sentence (3/1/23).

In this appeal, Pirie argues: **(1)** the district court judge erred in denying his motion to recuse because the judge represented Pirie in a criminal case, at some point in his career; **(2)** the trial court erred in overruling Pirie's hearsay objection to testimony that his friends (who did not testify) gave versions of events that were consistent with each other and inconsistent with Pirie's version; **(3)** the district court erred in overruling his motion for new trial that alleged that a key witness was unavailable; **(4)** the court erred in proceeding with sentencing

over GoToMeeting after the judge tested positive for Covid-19; and **(5)** the court abused its discretion in selecting this sentence.

Statement of Facts

On August 3, 2022, Pirie went to Hy-Vee in Jefferson, Iowa. He took a bottle of Patrón, stuffed it into his pants, and then left the store without paying. Video footage showed him doing that. It also showed him in the parking lot; he removed the bottle of liquor from his pants and held it in his hands. *See* State's Ex. 1, 6; TrialTr. 7:13–15:15. That bottle of liquor was never paid for; Pirie left the store with the bottle, without going through a check-out line. *See* TrialTr. 15:16–16:25.

Patrón is packaged in a green box. One of those Patrón boxes was later found on the Hy-Vee premises. It was empty. *See* TrialTr. 59:19–60:10. The Hy-Vee's records showed that a bottle of Patrón went missing on that date. It was not accounted for by any purchase. *See* TrialTr. 18:15–17.

The next day, a police officer saw with Pirie with two friends. Those two friends had arrived at the Hy-Vee with Pirie, and then left with him (but they had split up while they were inside the store). *See* TrialTr. 19:12–20:6; TrialTr. 30:9–18. Pirie denied being at Hy-Vee, on the preceding day. *See* TrialTr. 51:5–10. The officer talked to both

of Pirie's friends, too. Pirie's friends gave versions of events that were "consistent" with each other, and "inconsistent" with Pirie's version. *See* TrialTr. 48:18–51:13.

Additional facts will be discussed when relevant.

ARGUMENT

I. The district court did not err in denying Pirie's motion for judicial recusal.

Preservation of Error

Pirie moved for recusal on this basis. The court held a hearing, considered the motion, and rejected it. *See* HearingTr. (1/12/23); D0033, Motion to Recuse (1/18/23); D0034, Order (1/18/23). That ruling preserved error. *See Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012).

Standard of Review

Review of a recusal decision is for abuse of discretion. *See State v. Millsap*, 704 N.W.2d 426, 432 (Iowa 2005) (citing *Taylor v. State*, 632 N.W.2d 891, 893 (Iowa 2001)).

Merits

Judge McCarville represented Pirie in two criminal cases, at some point before he became a judge. *See* HearingTr. 8:17–9:1. Pirie testified that, when he entered a guilty plea in another case (which was about "a year ago"), Judge McCarville told his attorney: "Good thing [Pirie] took the deal because Joe McCarville knows [him] and it wasn't going to be good." *See* HearingTr. 9:2–12. Pirie said that he believed Judge McCarville was biased against him. *See* HearingTr. 9:13–11:20.

On cross-examination, Pirie denied that he had prior convictions for theft. Those denials were false. *See* HearingTr. 12:2–15:8.

Judge McCarville denied the motion to recuse. He explained:

> [T]he motion to recuse is filed . . . not quite, but on the eve of trial, which is set for January 24th. Today is January 18th. It seems awfully late in the day to—well, it seems like an attempt to get a continuance of the trial that's scheduled for next Tuesday.
>
> I don't think I have a conflict. I'm not denying I said something along the lines of it's a good thing he took the deal. I don't think that shows bias. I think it shows that apparently he got a good deal. And it also — I don't recall the specifics, but it may also show that the defense attorney, Mr. Rasmussen, did a good job for Mr. Pirie because in my view of the case, possibly I would have granted him a harsher sentence not because of any prior representation, but because of the facts of that particular case. So, anyway, for all those reasons, I don't think I am biased or prejudiced against Mr. Pirie. The trial next week is to a jury. I think the only possible bias or prejudice that could be present in that situation would be — would come up at sentencing. I don't think I'm biased or prejudiced against Mr. Pirie. And so for those reasons, I deny the motion to recuse . . . .

HearingTr. 18:18–19:21. Pirie challenges that ruling. There is no error.

Generally, "even if the record had established that the judge had previously *prosecuted* [Pirie] in an unrelated matter," that would not require recusal. *See State v. Toles*, 885 N.W.2d 407, 408 (Iowa 2016) (emphasis added). In *Toles*, the judge told the defendant that he knew he had seen Toles's name repeatedly, and that was "not a good thing."

See id. at 407. The Iowa Supreme Court held "the judge's remarks merely revealed that he had a level of familiarity with Toles and did not reveal bias or prejudice against Toles," so denying the motion to recuse was not an abuse of discretion. *See id.* at 408.

So too here. The judge's remark (as clarified by the judge) was just that he thought that Pirie "got a good deal" given facts of the case that otherwise would earn him "a harsher sentence not because of any prior representation, but because of the facts of that particular case." *See* HearingTr. 18:18–19:21. This was not a bias or prejudice from an extrajudicial source that would carry over to a new case with new facts.

Pirie also did not show that the judge held any bias/view that was based on any fact that the judge learned while representing Pirie, years ago. So that does not require recusal, either. *See State v. Peason*, No. 04–1285, 2005 WL 975641, at *2 (Iowa Ct. App. Apr. 28, 2005).

Pirie would also need to show "actual prejudice" before recusal would become necessary, and before a ruling that denies recusal would become error. *See, e.g.*, *Millsap*, 704 N.W.2d at 432 (quoting *State v. Sinclair*, 582 N.W.2d 762, 766 (Iowa 1998)). Pirie cannot do that. The court treated Pirie fairly and without bias throughout the proceedings. So the finding of a lack of any bias was not an abuse of discretion.

II. The district court did not err in overruling Pirie's hearsay objection to testimony that his two friends' versions of events were consistent with each other.

Preservation of Error

Pirie raised a hearsay objection to this testimony. The trial court overruled it. *See* TrialTr. 48:18–51:13. That ruling preserved error for this challenge on appeal. *See Lamasters*, 821 N.W.2d at 864.

Standard of Review

Rulings on hearsay objections are reviewed for errors at law. *See State v. Newell*, 710 N.W.2d 6, 18 (Iowa 2006).

Merits

Hearsay is an out-of-court statement introduced to prove the truth of the matter asserted. *See* Iowa R. Evid. 5.801. Here, the court did not admit any testimony about what, exactly, Pirie's friends said. It only admitted testimony that their statements matched each other and were inconsistent with Pirie's account. *See* TrialTr. 48:18–51:13.

Pirie argues that the implication from this evidence, together with evidence that Pirie denied being at Hy-Vee, was that his friends told the officer that they *were* at the Hy-Vee. *See* Def's Br. at 27. But the fact that Pirie's friends said that they were at Hy-Vee was not used as proof of the matter asserted. It was used to establish that Pirie was

the only one who *denied* being at Hy-Vee. The point is that it does not matter *what* they said; it only matters that Pirie's version was *different* from what his friends said (whatever that was). This tends to suggest that Pirie was lying—without any need to figure out what, exactly, his friends told the officer (much less any need to admit the contents of their statements for the truth of the matter asserted). The fact of a lie is probative evidence of consciousness of guilt, standing alone. *See, e.g.*, *State v. Bloom*, 983 N.W.2d 44, 50 (Iowa 2022) (quoting *State v. Ernst*, 954 N.W.2d 50, 56 (Iowa 2021)). More to the point, it would only violate the rule against hearsay if Pirie's friends' statements that they were at Hy-Vee were used to prove that they were, in fact, there. But that is not what happened. The evidence was offered to show that Pirie (and only Pirie) had a reason to deny being at Hy-Vee—because only Pirie knew enough to worry about evidence tying him to a theft, because it was Pirie who committed it. *See Ernst*, 954 N.W.2d at 56.

If there was error, it was harmless. There was video evidence that showed that Pirie stuffed this bottle of Patrón in his pants, then left the store without paying. *See* State's Ex. 1, 6; TrialTr. 7:13–16:25. When the video evidence shows the defendant committing the crime, evidentiary or instructional error is usually harmless. *See, e.g.*, *State*

v. Gibbs, 941 N.W.2d 888, 900–01 (Iowa 2020); *State v. Davis*, 988 N.W.2d 458, 468 (Iowa Ct. App. 2022); *State v. Thompson*, No. 15–1463, 2016 WL 6270237, at *5 (Iowa Ct. App. Oct. 26, 2016); *State v. Garrity*, 765 N.W.2d 592, 597–98 (Iowa 2009). The defense offered no evidence. This conviction was overdetermined, even without the challenged evidence. And the challenged evidence (if somehow used for the truth of the matter asserted) would have been cumulative with testimony and evidence showing that Pirie's friends *were*, in fact, at the Hy-Vee with Pirie on the preceding day. *See* TrialTr. 30:21–49:5. Jurors could compare the body-cam footage/stills with images from the Hy-Vee cameras and see for themselves. *See* TrialTr. 19:20–20:6. So any error in admitting this evidence would be wholly harmless, and Pirie cannot not be entitled to a new trial. *See* Iowa R. Evid. 5.103(a).

III. The district court did not err in overruling Pirie's motion for new trial because a listed witness with whom Pirie had contact did not appear.

Preservation of Error

Pirie moved for a new trial on this basis. *See* D0082, Motion for New Trial (2/3/23); Sent.Tr. 19:7–22:4. The district court overruled the motion. *See* Sent.Tr. 22:5–19. That ruling preserved error. *See Lamasters*, 821 N.W.2d at 864.

Standard of Review

Rulings that deny a motion for new trial are generally reviewed for abuse of discretion. *See State v. Uranga*, 950 N.W.2d 239, 243 (Iowa 2020).

Merits

Pirie's motion for new trial alleged that he wanted to present testimony from one of those two friends (Jason Vote), but could not because Vote had no known address and was not successfully served with a subpoena. But Pirie testified that he found and spoke with Vote on the night before his trial. *See* Sent.Tr. 19:21–20:18.

"Exculpatory evidence that is unavailable, but known, at the time of trial is not newly discovered evidence." *See Carter v. Carter*, 957 N.W.2d 623, 639 (Iowa 2021) (citing *Jones v. Scurr*, 316 N.W.2d 905, 910 (Iowa 1982)). So Pirie does not claim that Vote's testimony is newly discovered evidence. Instead, he claims that Vote's absence triggers the catch-all: that without Vote's testimony, Pirie could not receive "a fair and impartial trial." *See* Iowa R. Crim. P. 2.24(2)(b)(9). Pirie is wrong. For one thing, he never raised this issue before trial or during trial; he never moved for a continuance or did anything else to alert the trial court to any potential for unfairness if the trial went on.

Pirie cannot stand mute and allow trial to proceed, then respond to an unfavorable verdict by raising a new claim that it was unfair to permit the trial to go forward, for reasons that Pirie could have raised earlier. *See, e.g.*, *State v. Love*, 302 N.W.2d 115, 121 (Iowa 1981), *overruled on other grounds by State v. Reeves*, 636 N.W.2d 22, 25 (Iowa 2001) (holding that a motion for new trial that alleged catch-all unfairness from the prosecutor's closing argument was waived and not preserved because defendant "made no objection . . . at the time"); *State v. Pace*, No. 11–0847, 2012 WL 2122611, at *4 (Iowa Ct. App. June 13, 2012) (citing *State v. Johnson*, 476 N.W.2d 330, 333 (Iowa 1991)); *accord State v. Doughty*, 397 N.W.2d 503, 506 (Iowa 1986) ("[A] party who waits until after the verdict to object is precluded from then challenging the irregularity."); *State v. Williams*, 929 N.W.2d 621, 629 n.1 (Iowa 2019) (holding motion for new trial was too late to preserve error on claim that trial was unfair because of a problem with the jury panel, which was knowable before trial and should have been raised then).

Another problem is that Pirie had an opportunity to tell Vote to appear to testify at trial. Pirie spoke with Vote on the eve of trial, and he could have told Vote to come to the courthouse (or he could have found out Vote's current address, to enable service of a subpoena). If

the trial was somehow unfair as a result of Vote's absence, it would still be hard to ignore Pirie's acquiescence through his total inaction when he fortuitously found and spoke with the missing witness, on the night before trial. *See* Sent.Tr. 19:21–20:18. Or as *Uranga* put it:

> As a general rule, a defendant is not entitled to a new trial on the basis of newly discovered evidence where the defendant was aware of the evidence prior to the verdict but made no affirmative attempt to obtain the evidence or offer the evidence into the record.

Uranga, 950 N.W.2d at 243. So Pirie was not entitled to a new trial.

Of course, the biggest problem with Pirie's motion for new trial is that he never established that his trial was unfair in the absence of Vote's testimony. He never showed that Vote would have testified to evidence that would put the case in a different light. He just asserted that he thought he might not have been found guilty if Vote testified. *See* Sent.Tr. 20:19–21:3. This was insufficient to establish any right to a new trial. *See, e.g.*, *State v. Spann*, No. 20–1456, 2022 WL 16631225, at *7 (Iowa Ct. App. Nov. 2, 2022) (affirming a ruling that rejected a motion for new trial that alleged catch-all unfairness from absence of potentially exculpatory evidence because "even if the statements had been admitted during Spann's criminal trial, Spann has not shown the result of the proceeding reasonably would have been different").

The district court was right: Pirie has not shown that he was deprived of the opportunity to present testimony from Vote at trial by anything other than his own inaction. *See* Sent.Tr. 22:5–19. Nor did Pirie raise any concern about fairness given Vote's absence at any point before the verdict. Nor did Pirie establish what was missing as a result of Vote's absence that could render his trial somehow unfair. So it was not an abuse of discretion to overrule this motion for new trial.

IV. The sentencing court did not err in proceeding with sentencing over GoToMeeting after testing positive for Covid-19.

Preservation of Error

Error was not preserved. Pirie asserts this is a claim to which rules of error preservation do not apply, because he alleges an error at a sentencing hearing. *See* Def's Br. at 32. But that exception applies to the sentencing decision itself—not procedural errors in how the court convenes and conducts the sentencing hearing. *See State v. Gordon*, 921 N.W.2d 19, 22–24 (Iowa 2018) (rejecting overbroad view of that exception to error preservation, and holding error must be preserved to assert "errors in the proceedings prior to imposition of sentence").

The rationale for the exception is that a defendant should not be required to interrupt the sentencing decision to "question the court's

exercise of discretion" in that charged moment. *See id.* (quoting *State v. Cooley*, 587 N.W.2d 752, 754 (Iowa 1998)). But an objection at the *beginning* of the sentencing hearing is different, especially if it raises an issue with the record or the rules for the sentencing hearing (and not a challenge to the sentencing court's actual sentencing decision). *See id.* at 22–24. A sentencing court has a right to expect parties to lodge any objections to proceeding with sentencing *before* it does so. *Cf.* Sent.Tr. 10:10–17 (Pirie agreeing to proceed with revocation and sentencing for a probation violation in that same remote hearing). The sentencing court might well have granted a motion for continuance. But it was never given the opportunity to grant that request, because Pirie never made any such request (nor raised any concern/objection to proceeding with sentencing via GoToMeeting). He cannot ambush the sentencing court with this new claim of purely procedural error.

"[W]hile many sentencing issues defy the normal rules of error preservation, this one doesn't." *See State v. Carter*, No. 22–1016, 2023 WL 2673226, at *3 (Iowa Ct. App. Mar. 29, 2023)) (citing *Gordon*, 921 N.W.2d 23). Pirie did not preserve error; instead, he stood mute and acquiesced to the remote proceeding. This Court should not permit him raise this unpreserved claim of error for the first time on appeal.

Standard of Review

There is no ruling to review.

Merits

Pirie argues that the judge appearing via GoToMeeting without obtaining a formal waiver of Pirie's rights was a violation of the Iowa Supreme Court's supervisory order. *See* Def's Br. at 33–36 (citing *State v. Emanuel I*, 967 N.W.2d 63, 69 (Iowa Ct. App. 2021); *State v. Roe*, No. 21–0457, 2022 WL 2824732, at *5 (Iowa Ct. App. July 20, 2022)).[1] Here's one problem: this was not a felony prosecution. Pirie only faced an aggravated misdemeanor charge.[2] Pirie could "appear by counsel" without any waiver at all. *See* Iowa R. Crim. P. 2.27(1). Without the requirement of any express waiver, the only question is whether the parties consented to remote proceedings, within the meaning of the supervisory order issued on November 4, 2022. The record tends to establish actual consent to continue with the remote proceeding. *See* Sent.Tr. 10:10–17 (Pirie consenting to go forward with revocation).

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[1] Note that neither *Emanuel I* nor *Roe* addressed concerns with error preservation. The arguments on error preservation that have been made in this brief were neither considered nor rejected by the Iowa Court of Appeals in either *Emanuel I* or *Roe*.

[2] *Emanuel* and *Roe* each involved at least one felony conviction. *See Emanuel I*, 967 N.W.2d at 65; *Roe*, 2022 WL 2824732, at *2.

The record contains no indication that Pirie or his counsel did not consent to the sentencing judge appearing via GoToMeeting. To the contrary, Pirie and his counsel affirmatively stated their desire to proceed with revocation and sentencing in Pirie's other case, near the beginning of the hearing. *See* Sent.Tr. 10:10–17. Pirie did not execute a formal waiver, but none was required—he was only being sentenced on a misdemeanor charge, so he could appear through counsel. And Pirie was able to exercise his right to allocution. *See* Sent.Tr. 29:15–20; *accord State v. Emanuel II*, 968 N.W.2d 919, 922 (Iowa Ct. App. 2021) (finding no abuse of discretion in proceeding with remote sentencing because "Emanuel participated in the hearing by audiovisual means, so the court had a reasonable opportunity to assess his demeanor," and "Emanuel was provided an opportunity for allocution, which the court meaningfully entertained"). Pirie cannot establish that it was unfair—or even technically wrong—to proceed with this sentencing hearing under these circumstances, in the absence of any objection.

V. The sentencing court did not abuse its discretion.

Preservation of Error

This challenge (unlike the previous one) may be raised for the first time on appeal. *See, e.g.*, *Cooley*, 587 N.W.2d at 754.

Standard of Review

"Appellate review of the district court's sentencing decision is for an abuse of discretion." *State v. Evans*, 672 N.W.2d 328, 331–32 (Iowa 2003) (citing *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1999)).

Merits

A sentencing court's decisions "are cloaked with a strong presumption in their favor." *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996) (citing *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995)). District courts are given authority to exercise sentencing discretion in order to "give the necessary latitude to the decision-making process," and that "inherent latitude in the process properly limits [appellate] review." *See State v. Formaro*, 638 N.W.2d 720, 724–25 (Iowa 2002); *see also State v. Hopkins*, 860 N.W.2d 550, 553 (Iowa 2015) ("On our review, we do not decide the sentence we would have imposed.").

The sentencing court explained its decision like this:

> **THE COURT**: Okay. Well, I will state I did not wake up this morning thinking I would send you to prison but then I read your criminal history and that changed my mind.
>
> **PIRIE**: I know I got a bad history but, I mean —
>
> **THE COURT**: Yes. And it doesn't seem to be changing and it's consistent and it's long and you've been to prison I think four or five times.
>
> **PIRIE**: Right and I don't think prison is a fair punishment. I mean, and I know I didn't —

> **THE COURT**: Mr. Pirie, I get to talk now, okay?
>
> **PIRIE**: Okay. Sorry about that.
>
> **THE COURT**: Your act of leaving the courtroom before the jury came back, I think was in fact contentious. I'm not going to — I'm not going to do anything with that. There's not going to be any extra punishment for what I believe was contemptuous conduct so the contempt hearing will be dismissed. We're not going to do anything with that. I do find that you're adjudicated guilty of the crime of theft in the third degree. . . .
>
> The sentences run consecutive because they are separate and distinct crimes. The theft was committed when Defendant was on probation in AGCR. Also, Defendant is a habitual felon, has a long criminal history. The Court imposes this sentence because it provides for the Defendant's rehabilitation and the protection for the community.

See Sent.Tr. 29:21–31:19. At that point, Pirie closed the laptop and left the room. *See* Sent.Tr. 31:20–32:4. He later rejoined the hearing.

The court explained its decision again in its written ruling:

> The sentences shall run consecutive because they are separate and distinct crimes. The theft was committed when Defendant was on probation in AGCR014826. Also Defendant is an habitual felon he has a long criminal history and simply refuses to live a law abiding life. Consecutive sentences are appropriate for someone with such a long criminal history.
>
> The Court imposes this sentence because it provides for Defendant's rehabilitation and the protection of the community. In determining the sentence, the Court has considered the sentencing recommendations of the parties as well as the other factors stated on the record, including Defendant's age, Defendant's criminal history.

D0090, Sentence (3/1/23), at 2.

Pirie's argument is that "the trial court did not properly weigh and consider several mitigating factors that should have led to another sentence to be served concurrently with the probation violation"—so, no meaningful additional punishment at all. *See* Def's Br. at 39–40. None of those are good reasons for this flagrant theft, or for lying to police when confronted about it. Pirie complains that this was only a third-degree theft because of the repeat-offender enhancement. *See* Def's Br. at 39. Of course—just as the legislature intended, Pirie faced harsher punishment due to his recidivism. And that was nowhere near the full extent of Pirie's criminal history. *See* D0089, Criminal History (2/24/23). The court specifically noted that it would not have sentenced Pirie to prison, *if not* for that criminal history. *See* Sent.Tr. 29:21–30:2. That indicates that it did consider other factors (some mitigating), but it found they were drowned out by the unavoidable aggravating value of Pirie's recidivism, which showed his inability to conform his conduct to the law *even while on probation*, as he was at the time of this theft.

And the sentencing court was right: this *was* a separate offense from the underlying offense in the probation violation case, and Pirie committed this theft while he was on probation for that other offense. *See* Sent.Tr. 29:21–31:19. The sentencing court was authorized to set

these sentences to run consecutively. *See* Iowa Code § 901.8. Doing so was not an abuse of discretion. *See State v. Church*, No. 21–0913, 2022 WL 1100927, at *2–3 & n.2 (Iowa Ct. App. Apr. 13, 2022) (finding no abuse of discretion in imposing consecutive sentences based on "the separate and serious nature of the offenses and the protection of the community" despite presence of some mitigating factors).

The question is not whether an alternative sentencing option may *also* have been feasible, or suitable, or even compatible with the same reasons that were given for the sentence that was imposed. The same reasons might support two or more sentencing options, and the sentencing court may still exercise discretion in choosing one of them.

> Judicial discretion imparts the power to act within legal parameters according to the dictates of a judge's own conscience, uncontrolled by the judgment of others. It is essential to judging because judicial decisions frequently are not colored in black and white. Instead, they deal in differing shades of gray, and discretion is needed to give the necessary latitude to the decision-making process.

State v. Seats, 865 N.W.2d 545, 553 (Iowa 2015) (quoting *Formaro*, 638 N.W.2d at 724–25). This was not the *only* valid sentencing option, but it did not need to be—it was *a* valid option, and the reasons that the sentencing court gave for its decision were well supported by the record. Pirie cannot establish an abuse of discretion, so his challenge fails.

CONCLUSION

The State respectfully requests that this Court reject these challenges and affirm Pirie's conviction and sentence.

REQUEST FOR NONORAL SUBMISSION

This case should be set for nonoral submission. In the event argument is scheduled, the State asks to be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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) or (2) because:

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