IN THE SUPREME COURT OF IOWA
Supreme Court No. 22–0397

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LAWRENCE CANADY III,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
THE HON. PATRICK H. TOTT, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

Canady seeks retention. *See* Def's Br. at 18. But there is no issue requiring retention. All issues raised in this appeal can be resolved by applying well-established legal principles, so it 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 Lawrence Canady III's direct appeal from his convictions for voluntary manslaughter, a Class C felony, in violation of Iowa Code section 707.4 (2021); willful injury causing bodily injury, a Class D felony, in violation of Iowa Code section 708.4(2); and assault causing bodily injury, a serious misdemeanor, in violation of section 708.2(2). Evidence at his jury trial established that Canady initiated a fight with Martez Harrison (by punching his fiancée, Jessica Goodman). Then, he punched Harrison, and he aided and abetted Dwight Evans in shooting and killing Harrison. At sentencing, he was sentenced to indeterminate terms of incarceration on each count, to run consecutively, producing an aggregate 16-year term. *See* Sentencing Order (2/25/22); App. 193–207.

In this appeal, Canady argues: **(1)** the trial court erred in overruling four of his objections to admission of evidence; **(2)** the

evidence was insufficient to support his manslaughter conviction; and **(3)** the sentencing court erred in failing to merge his sentences for voluntary manslaughter and willful injury, and abused its discretion in setting his sentences to run consecutively.

Statement of Facts

On the night of April 30, 2021, Harrison went to Uncle Dave's bar in Sioux City. His fiancée (Jessica Goodman) planned to pick him up when the bar closed at 2:00 a.m. *See* TrialTr.V5 11:4–15:8. But Harrison called Goodman at about 12:30 a.m. He told her "there was people outside trying to jump him." Harrison specifically identified "L" as one of those people. Goodman knew that "L" was Canady. *See* TrialTr.V5 15:9–16:12. So Goodman went directly to Uncle Dave's.

Footage from a nearby security camera showed a fight that preceded Goodman's arrival. That footage showed Canady running up and punching Harrison in the face, twice. Other people intervened and broke up the fight. Canady kept trying to punch Harrison. Then, Harrison went into the bar. Canady was with Nya Rang, Dwight Evans, and Jordan Hills. They went "[t]o the parking lot off across the street." Over the course of the next few minutes, they walked back and forth

between that parking lot and the entrance to the bar. *See* TrialTr.V5 25:2–38:3; State's Ex. 108, at 00:44:18–00:59:22 (timestamp).

Amanda Anderson was working as a bartender at Uncle Dave's. She remembered a small group that was "yelling and screaming" and "trying to get past [the bouncer] to come inside." *See* TrialTr.V3 5:13–6:21. Canady was one of them. Canady told Anderson that he wanted to "beat somebody up" and was "going to wait outside for him," because that person "bashed his sister over the head with a beer bottle." *See* TrialTr.V3 6:8–12:10. Then, Canady leaned around Anderson and the bouncer, looked at Harrison, and said: "I'm going to see you out here. I'm waiting for you." *See* TrialTr.V3 12:11–24. Canady also "started saying that he had a gun." Anderson told Canady to leave, and not to hang out in the area outside the bar. *See* TrialTr.V3 12:25–13:19.

When Goodman arrived, she parked and got out of her car. Goodman saw Canady outside the bar. Canady was with Rang, Evans, and Hills. They surrounded Goodman. Hills was yelling at Goodman. Canady told Goodman to "go get [her] baby daddy out of the bar," and he stated that Harrison had struck Mariah Franklin with a beer bottle. *See* TrialTr.V5 17:21–20:22; TrialTr.V5 38:4–40:3; State's Ex. 108, at 00:59:22–00:59:59. Goodman described what Canady said next:

> We were arguing before [Harrison] had came out of the bar, and when we were arguing he told me to go get my bitch ass baby dad out of the bar, and I was, like, for what. And then he had leaned over to [Evans], just go ahead and get that. I was, like, so we're gun playing now? That's what we're really doing? We're playing with guns?

TrialTr.V5 45:3–47:7. Evans walked off; Goodman did not see where he went. Then, Harrison came out of the bar. Canady and Harrison yelled at each other. *See* TrialTr.V5 47:16–21. Then, Canady threw a punch at Harrison. He missed. Canady swung again and hit Goodman in the eyebrow. That left "a gash" that was "bleeding a lot." Goodman stumbled back. *See* TrialTr.V5 47:22–48:19; *accord* TrialTr.V5 41:13–42:12; State's Ex. 108, at 00:59:59–01:01:00; TrialTr.V5 44:22–45:2; TrialTr.V5 115:23–117:4. Rang started spraying Goodman with mace.

Then, Hills hit Harrison in the back of the head. Canady pulled Harrison out into the street and onto the ground, while punching him. Then, "Evans just came up and shot [Harrison]." *See* TrialTr.V5 43:3–44:10; State's Ex. 108A, at 1:01. Goodman looked over when she heard that first gunshot. She saw Harrison laying on his back on the ground, with Canady on top of him, pinning him down, TrialTr.V5 49:11–51:8. Evans was standing over them, with his arm extended towards them, holding a revolver in his hand. *See* TrialTr.V5 51:9–52:21. Even after that first gunshot, Canady was still "punching [Harrison] in the face,"

repeatedly. *See* TrialTr.V5 52:22–53:17. Goodman ran towards them. Evans fired a second shot at Harrison, at point-blank range. Goodman rushed in and pushed Canady off of Harrison. "Canady got off of him and kicked him in his face a couple times." *See* TrialTr.V5 53:18–57:5; *accord* TrialTr.V5 58:1–67:22; State's Ex. 42–48; Ex. App. 3–9.

Evans, Canady, Hills, and Rang ran away. Goodman went to the hospital. *See* TrialTr.V5 67:23–69:2. EMTs and doctors were unable to save Harrison's life. Harrison had two gunshot wounds. One wound was from a bullet that entered Harrison's right side and traveled up through his abdomen, liver, stomach, and left lung. *See* TrialTr.V4 51:14–58:4. The other bullet entered through the left side of his torso, causing massive internal bleeding. *See* TrialTr.V4 58:5–63:17.

Police found Canady, Rang, and Hills fleeing from the scene in a vehicle that matched witness descriptions. They initiated a felony stop. *See* TrialTr.V3 63:12–67:4. Canady and Hills asked the police officers what was going on. They also said that "they didn't do anything, they weren't involved" and they said the officers "needed to be looking for a Chrysler 300 rather than the [car] that they were in. *See* TrialTr.V3 67:5–68:4; State's Ex. 20–21. Canady had what looked like a "big . . . dirty scuff mark" on "the thigh of his pants." *See* TrialTr.V3 81:3–8.

DNA testing showed that Canady's pants were stained with Harrison's blood. *See* TrialTr.V4 92:20–97:23; State's Ex. 75–76; App. 12–13.

At about 4:30 a.m., officers got a call from a local resident who reported that he had found a gun. Officers went to that location and recovered that gun—and they also found Dwight Evans, "a block away from where the firearm was." TrialTr.V3 81:12–84:20. The gun was a revolver, with three spent rounds inside. *See* TrialTr.V3 87:18–89:6.

Canady was arrested that night. Canady had "a cut just below his knuckle along with some dried splatter." *See* TrialTr.V5 142:23–144:18; State's Ex. 60; App. 11. And he had a "small scrape mark" on his left knee. But apart from that, Canady was entirely uninjured. *See* TrialTr.V5 160:14–25. Evans, Hills, and Rang were also arrested, and they were also uninjured. *See* TrialTr.V5 161:14–162:4.

While he was being arrested, Canady asked a detective "if [he] knew who the shooter was." *See* TrialTr.V5 165:24–166:14. And then:

> . . . [H]e made the comments to me that we did not solve a murder that had taken place approximately a year before and we were not going to solve this murder either.

TrialTr.V5 220:3–222:1; State's Ex. 93.

On count one, Canady was charged with first-degree murder. The jury found him guilty of the lesser included offense of voluntary manslaughter. It found him guilty as charged on both other counts.

Additional facts will be discussed when relevant.

ARGUMENT

I. The trial court did not abuse its discretion in its rulings on Canady's evidentiary objections.

Preservation of Error

Canady raises four different challenges to four different rulings. Error preservation will be discussed separately for each of them.

Standard of Review

These evidentiary rulings are reviewed for abuse of discretion. *See generally State v. Buelow*, 951 N.W.2d 879, 884 (Iowa 2020); *State v. Richards*, 879 N.W.2d 140, 145 (Iowa 2016).

Merits

A. The rap video was relevant to establish malice, premeditation, and specific intent.

Canady challenges the admission of a cell phone video, where he and Evans are rapping to a song with lyrics about violence against someone named "Tez" or "Tezzo"—which was Harrison's nickname. *See* State's Ex. 90. Canady objected that the video was not relevant. The trial court overruled his objection. *See* TrialTr.V5 206:10–207:17. That was a final ruling that preserved error. *See State v. Tangie*, 616 N.W.2d 564, 568–69 (Iowa 2000).

Canady challenged the admissibility of this video in a pretrial motion in limine. The trial court issued a written preliminary ruling:

> Upon an initial review of the video, it is difficult to understand what is being said by the Defendant. However, upon closer review, there are at least two references to a "Tez" in the recording made by the Defendant. In those two references to "Tez" are depictions of violence or threats of violence towards or to "Tez." There is no question that this evidence is highly prejudicial to the Defendant. At that the same time, however, it is equally clear that the probative value of the evidence regarding the Defendant's intent is at least as highly probative as its prejudicial effect. There appears to be witnesses prepared to testify that "Tez" is one of the nicknames of the decedent in this case. Without the references to "Tez" in the video, the Court would agree with the Defendant that any probative value the video might have would be outweighed by its prejudicial effect However, with the references to "Tez" and the description of violence involved and the relative close proximity to the events of this case, the Court finds that the prejudicial effect of the video is outweighed by its probative value. The Court finds that the State will be allowed to present this video as an admission of party opponent assuming proper foundation for the video is provided.

Ruling (12/2/21) at 8; App. 148. The State laid that foundation during trial: multiple witnesses testified that Harrison's nickname was "Tez" or "Tezzo." *See* TrialTr.V2 156:10–16; TrialTr.V3 4:5–9; TrialTr.V5 11:4–16. The video showed Canady singing along to lyrics describing violence against a number of people, including "Tezzo." Evans was in the background, fanning out money. There were parts of the lyrics that Canady did not know or chose not to rap. But he knew and rapped a line that specifically mentioned "Tezzo." He pantomimed shooting a gun, and he drew a finger across his neck. *See* State's Ex. 90.

Canady argues that rap lyrics are performative art and are not autobiographical. He cites various cases and secondary authority that considers the relevance of rap lyrics that were written by a defendant, then offered as admissions of fact about what happened. *See* Def's Br. at 42–46. But Canady and Evans *selected* this song for their lip-sync—they chose a song that contained descriptions of violence against a person with the same name or alias as Harrison. Generally, rap lyrics are inadmissible when "offered to show a propensity for violence," but they can be relevant and admissible when they "incorporate details of a charged offense." *See State v. Leslie*, No. 12–1335, 2014 WL 70259, at *6 (Iowa Ct. App. Jan. 9, 2014) (citing *Holmes v. State*, 306 P.3d 415, 419 (Nev. 2013)); *accord Montague v. State*, 243 A.3d 546, 566 (Mont. 2020) (summarizing view that "lyrics should be analyzed on a case-by-case basis using the evidentiary rules that courts routinely use in determining the threshold admissibility of evidence," and holding "[t]he closer the nexus between a defendant's rap lyrics and the details of an alleged crime, the lower the danger of admitting the lyrics as unfairly prejudicial propensity evidence").

Here, Canady and Evans selected a song that described acts of violence against a person named "Tezzo"—which was the name that

everyone used to refer to Harrison. They could have chosen any song. They chose that particular verse of that particular song. Canady did not even appear to know all of the words. But he rapped that specific lyric about "Tezzo" getting "hit"—that was the point. *See* State's Ex. 90.

Canady is correct that these are not lyrics that Canady or Evans wrote—they are actually lyrics to an existing song called "63rd to 65th" by the group "Nutso Slide." *See* TrialTr.V6 8:10–14:12; Def's Ex. G. But Canady never mentioned that to the trial court (or the State) in resisting or objecting to the admission of this evidence. *See* Def's Mot. in Limine (11/18/21) at 2–3; App. 83–84; PretrialTr. (11/23/21) at 52:24–60:6; TrialTr.V5 206:10–207:17. The trial court ruled on the admissibility of the video without the benefit of any argument or knowledge that it was a lip-sync of a song that already mentioned "Tezzo." *See* Ruling (12/2/21) at 8; App. 148; TrialTr.V5 206:10–207:17. Consequently, error is not preserved for any argument that the court should have ruled differently because Canady and Evans did not write the lyrics. *See State v. Decker*, 744 N.W.2d 346, 353 (Iowa 2008) (explaining general rule: "unless the reasons for an objection are obvious a party attempting to exclude evidence has the duty to indicate the specific grounds to the court so as to alert the judge to the question raised").

At any rate, even knowing that Canady and Evans did not write these lyrics, it would still be indisputable that they *selected* a song and a specific verse for their lip-sync post that described violence against a person named "Tezzo," and they recorded this lip-sync on a date that was less than a week before they killed Harrison (aka "Tezzo"). *See* TrialTr.V6 8:7–16. This was specifically relevant to establish malice, premeditation, and specific intent. All of those needed to be proven to sustain the charge of first-degree murder, and all had to be proven by circumstantial evidence—including their feelings towards Harrison in the days before they killed him. *See, e.g.*, *State v. Ernst*, 954 N.W.2d 50, 55 (Iowa 2021) (quoting *State v. Walker*, 574 N.W.2d 280, 289 (Iowa 1998)) (explaining "[s]pecific intent is seldom capable of direct proof" and is typically "shown by circumstantial evidence and the reasonable inferences drawn from that evidence"); *State v. Knox*, 464 N.W.2d 445, 449 (Iowa 1990) (citing *State v. Cole*, 17 N.W. 183, 184 (Iowa 1883)) ("[E]vidence of conduct exhibiting a bad state of feeling on the part of the defendant toward a murder victim is admissible."). Canady could argue that this was just a coincidence. But the jury could disagree and find that this lip-sync was about Harrison (and therefore relevant), so this evidence was properly admitted. *See* Iowa R. Evid. 5.104(b).

Alternatively, if there was any error in admitting this video, it was harmless. The jury did not convict Canady of aiding and abetting a murder—instead, the jury convicted Canady of the lesser offense of aiding and abetting voluntary manslaughter. *See* Verdict (12/16/21); App. 175–76; Jury Instr. 35; App. 172. That means the jury did not find malice, premeditation, or specific intent to kill Harrison—instead, it concluded that "[t]he shooting was done solely by reason of sudden, violent and irresistible passion resulting from serious provocation." *See* Jury Instr. 35–36; App. 172–73. This establishes harmless error in two ways. First, it shows that excluding this evidence could not have changed the result—jurors would have reached the same conclusion that the choice to kill Harrison was made in the heat of the moment and was not premeditated. Second, it forecloses Canady's argument that this rap video was unfairly prejudicial, because it shows that the video "did not provoke the jury to convict him 'out of hostility, passion, bias or any other improper basis.'" *See State v. Chaney*, No. 17–1095, 2018 WL 3650307, at *2 (Iowa Ct. App. Aug. 1, 2018) (quoting *State v. Payton*, 481 N.W.2d 325, 327 (Iowa 1992)); *accord State v. Taylor*, 689 N.W.2d 116, 130

(Iowa 2004); *State v. Rodriquez*, 636 N.W.2d 234, 243 n.4 (Iowa 2001). Thus, any error was harmless.

Error was also harmless because these verdicts were supported by overwhelming evidence of Canady's guilt, for reasons that will be discussed in other segments of the State's argument.

B. The jail call between Rockwood and Canady was properly authenticated by testimony from people who could identify both voices on the recording.

Canady challenges the admission of a recording of a jail call that Austin Rockwood placed to Canady on April 30, 2021—the day before the killing. *See* Def's Br. at 46–50; TrialTr.V3 162:2–166:21; State's Ex. 34. After the hearing on the motions in limine, the trial court issued a pretrial ruling on the admissibility of this recording:

> The Court finds that if the State is able to create a proper authentication for the recording of the phone call under Rule 5.901(a)(5) or (6) that it would be admissible as admissions by a party opponent under Rule 5.801(d)(2)(A). The jail phone log will establish that the call was with Austin Rockwood and references were made to "L" by Rockwood during the call. As long as State's witnesses are able to lay the foundation that "L" would be a reference to the Defendant and/or can identify the Defendant's voice on the call, the call would be admissible as admissions by a party opponent to show the Defendant's reaction to the allegation that "Tezzo" had assaulted Rockwood's girlfriend.

Ruling (12/2/21) at 8–9; App. 148–49. At trial, Canady lodged the same objections that he raised before trial. The court overruled them. *See* TrialTr.V3 166:11–21. That ruling preserved error for this challenge.

Canady argues that the State never put forth evidence to establish that the voice on the recording was his voice. *See* Def's Br. at 47–48. But Goodman had known Canady for years, and she had spoken with him on the phone. She said that she could identify his voice. *See* TrialTr.V5 16:4–20. Goodman knew Rockwood, too. She could also identify Rockwood's voice. *See* TrialTr.V5 21:16–22:15. Goodman had listened to State's Exhibit 34, and she testified that the two voices on that recorded call were Canady and Rockwood. *See* TrialTr.V5 22:16–23:23; State's Ex. 34. Detective Paul Yaneff was also familiar with both Rockwood's voice and Canady's voice, and he testified that he heard both of them on the recording of that call. *See* TrialTr.V5 164:3–17. That is sufficient for authentication of a voice. *See State v. Reynolds*, No. 15–0226, 2016 WL 6652311, at *5 (Iowa Ct. App. Nov. 9, 2016). Canady's argument in his brief does not mention that testimony. *See* Def's Br. at 47–48. It is true that the recording was admitted before Goodman or Detective Yaneff testified. But that does not matter. *See*

Iowa R. Evid. 5.104(b) ("When the relevance of evidence depends on whether a fact exists, . . . [t]he court may admit the proposed evidence on the condition that the proof be introduced later."). Alternatively, this subsequent authentication testimony establishes harmless error.

Canady also argues that Rockwood's statements on the call were hearsay. *See* Def's Br. at 48–49. But Rockwood's statements were not offered for a hearsay purpose, to prove the truth of matters asserted. The trial court noted the point was "to show the Defendant's reaction to the allegation that 'Tezzo' had assaulted Rockwood's girlfriend." *See* Ruling (12/2/21) at 8–9; App. 148–49. Note that the State only used Rockwood's statements for their response on Canady, the listener:

> [T]hese events began with evidence of a jail phone call. The jail calls over at the jail were recorded on April 30th around noon. An inmate, his name is Austin Rockwood, made a phone call to Lawrence Canady. Rockwood told Canady, Martez Harrison assaulted my girlfriend, Mariah. He took a beer bottle to her face, put her in the hospital. You're going to hear Lawrence Canady's voice on that jail phone call, and you're going to hear his anger, how mad he was. You're going to hear Lawrence Canady's voice say, I'm going to knock him on his head. He's going to cuss and say, I'm going to knock him on his head dead. This is evidence of Lawrence Canady's motive.

TrialTr.V2 118:25–119:13. It did not matter whether Harrison really did hit Mariah with a beer bottle. What mattered was that Canady heard Rockwood say that, and he wanted to hurt or kill Harrison as payback.

See TrialTr.V3 6:8–12:10 (Anderson stating that Canady said he would "beat somebody up" because the person "bashed his sister over the head with a beer bottle"); TrialTr.V5 17:21–20:22 (Goodman testifying that Canady was yelling about Harrison striking a girl with a beer bottle).

Note that Canady's own statements establish harmless error. Both Anderson and Goodman testified that Canady made statements indicating that he was upset with Harrison, because he believed that Harrison had struck a girl or woman with a beer bottle. *See* TrialTr.V3 6:8–12:10; TrialTr.V5 17:21–20:22. None of Canady's statements are inadmissible hearsay. *See* Iowa R. Evid. 5.801(d)(2)(A). So even if Rockwood's statements to Canady about what Harrison allegedly did were inadmissible hearsay, that evidence would be cumulative with properly admitted evidence of Canady's non-hearsay statements. *See, e.g.*, *State v. Newell*, 710 N.W.2d 6, 19 (Iowa 2006).

In arguing that error was prejudicial, Canady's brief identifies the permissible non-hearsay purpose for Rockwood's statements on that recorded call. Canady argues that he was prejudiced because the recording enabled the State to argue that "Canady was upset about what he learned from [Rockwood] and that he used that information from the call to seek out [Harrison] and get revenge." *See* Def's Br. at

49–50 (citing TrialTr.V7 7:7–19). Canady is correct: the call recording was relevant and admissible to establish his motive and intent to hurt and kill Harrison. It was not offered to prove matters asserted in any of Rockwood's statements. Thus, the court did not err in admitting it.

C. The Snapchat post was admissible to establish that Evans had a gun, before the killing (and that his contacts on Snapchat would have known that).

Hours after the killing, Goodman looked for social media posts. She found a Snapchat from Evans. He posted it about five hours before Harrison was killed. *See* TrialTr.V5 92:18–93:6; State's Ex. 52; App. 10. This post caught Goodman's attention because it showed Evans holding a gun. *See* TrialTr.V5 87:2–11. Canady objected to the picture as irrelevant and unduly prejudicial, and he also objected to a caption on the post as hearsay. The court overruled those objections. It ruled the picture was relevant "in light of the timing of that Snapchat photo" and the caption was non-hearsay "as statements of co-conspirators." *See* TrialTr.V5 80:20–86:19; TrialTr.V5 90:15–25. On appeal, Canady does not dispute the relevance or admissibility of the photo. *See* Def's Br. at 51–53. Instead, he only argues that the caption was hearsay.

It is unnecessary to decide whether the caption is actually a statement by a co-conspirator made in furtherance of the conspiracy.

See Iowa R. Evid. 5.801(d)(2)(E). It was made on Snapchat, where Goodman could find it—so it was not specifically directed to other members of the group that assaulted Harrison and Goodman. Still, it furthered the conspiracy by informing Canady that Evans had a gun.

It would have been better to admit this caption as a statement of present-sense impression and then-existing mental condition. *See* Iowa R. Evid. 5.803(1) & (3). The caption said: "We bussin but don't think shit sweat [gun emoji]." *See* State's Ex. 52; App. 10. Goodman testified that she read that to mean "that they got the guns and they're not sweating shit." *See* TrialTr.V5 89:19–25. A statement claiming to have guns is a present-sense impression about what they are carrying. Also, that half of the caption is cumulative with the photo itself, which showed the gun in Evans's waistband. *See* State's Ex. 52; App. 10. The statement that they are "not sweating shit" meant that "they're going to shoot whoever" and "[t]hey're not scared of anything." *See* TrialTr.V5 93:24–94:14. That describes an existing mental state, so it would be admissible under Rule 5.803(3). This Court can affirm the trial court's ruling that overruled Canady's objection and admitted the unredacted Snapchat, on any basis that is apparent from the record. *See, e.g.*, *State v. Dessinger*, 958 N.W.2d 590, 599 (Iowa 2021) (citing

DeVoss v. State, 648 N.W.2d 56, 63 (Iowa 2002)) ("We consider the applicability of exceptions in criminal cases even when not urged at trial as there is no point in reversing a conviction when the evidence will be admissible at retrial in any event.").

Even if it was error to admit the caption, it was harmless. Canady's brief does not identify any finding of fact that could have been affected by the admission of that caption. Nor does he identify how it was unfairly prejudicial. He argues that the caption had "no connection to [him] or to the incident that took place that evening." *See* Def's Br. at 52–53. Indeed, *the picture* was the point of the post and the point of admitting the post as evidence: it showed that Evans was carrying a gun, just hours before the killing. *See* Resistance to Def's Mot. in Limine (11/22/21) at 2; App. 122 (citing *State v. Grady*, No. 14–0586, 2015 WL 1817029, at *14 (Iowa Ct. App. Apr. 22, 2015)). The caption added almost nothing, beyond what the picture showed.

Redacting the caption would not have affected the outcome of the trial. There was video evidence of the assaults and the killing. *See* State's Ex. 108, at 1:01. Canady and his cohorts lied to police and said they had not been involved. *See* TrialTr.V3 67:5–68:4; State's Ex. 21. There was no evidence that Canady or Evans were justified in using

any amount of force, let alone lethal force. To the contrary, Canady told Anderson that they would attack Harrison—and then they did. *See* TrialTr.V3 12:11–13:9. Evans shot Harrison *twice*. Canady kept punching Harrison after the first shot, and kicked Harrison as he left. *See* TrialTr.V5 53:18–57:5; *accord* TrialTr.V5 58:1–67:22; State's Ex. 42–48; App. 3–9. There is no way that this caption had any impact on the verdict, in light of the overwhelming evidence of Canady's guilt. *See State v. Parker*, 747 N.W.2d 196, 210 (Iowa 2008). Thus, even if it was error to admit the unredacted caption, this Court should affirm.

D. Goodman did not speculate about the meaning of slang words. She testified that she knew what they meant. That was admissible lay testimony from her personal experience.

Goodman listened to the recording of the phone call between Rockwood and Canady. She identified both of them by their voices, and she confirmed that the address that Rockwood and Canady were discussing had been her home address. *See* TrialTr.V5 22:16–24:15. The State asked Goodman about a particular term that they had used:

> **STATE**: There was some discussion about it's tax season, it's tax time.
>
> **GOODMAN**: Mm-hmm.
>
> **STATE**: Did you know what that meant?
>
> **DEFENSE**: Objection, speculation.
>
> **THE COURT**: Overruled. She may answer if she knows.

> **GOODMAN**: Taking them — taking him for everything he gots; as in his pockets, everything, fighting him, whatever it takes at this point. That's what tax season means.

TrialTr.V5 24:16–25:1; *accord* State's Ex. 34, at 1:17–1:42. Canady also explicitly stated his violent intent towards Harrison. *See* State's Ex. 34, at 0:23–0:35 ("On my mama, when I see him I'm gonna split him on his fuckin' neck"); *id.* at 2:19–2:27 ("I swear to god, bro, I'm gonna pick his lil ass up and slam him dead on his fuckin' head").

Goodman also testified about the meaning of the caption on the Snapchat post that showed Evans holding a gun. She said:

> **GOODMAN**: It says, We bussing but don't think shit sweat. I'm pretty sure he meant sweet. But, basically, that they got the guns and they're not sweating shit.
>
> [. . .]
>
> **THE STATE**: And is there also another emoji by sweat?
>
> **GOODMAN**: Mm-hmm. It's a gun emoji.
>
> **THE STATE**: And do you know — or what does that mean to you when it says we bussin but don't think shit sweat?
>
> **DEFENSE**: Objection, speculation.
>
> **THE COURT**: Overruled. The question is what it means to her so she can answer what it means to her.
>
> **GOODMAN**: Okay. I just think that it means that they got guns and they're going to shoot whoever. That's what comes to me. They're not scared of anything.

See TrialTr.V5 89:12–25 and 93:24–94:14. Canady argues that it was error to overrule his objections that Goodman's testimony about slang

was speculation, and that it was error to permit that testimony from anyone other than an expert witness. *See* Def's Br. at 53–57.

Ordinarily, witnesses can testify about the meaning of words and slang that they are familiar with, from their own life experience. This is permissible opinion testimony from a lay witness. *See* Iowa R. Evid. 5.701. As a general rule, "the distinction between lay and expert [opinion] testimony is that lay testimony results from a process of reasoning familiar in everyday life, while expert testimony results from a process of reasoning which can be mastered only by specialists in the field." *See State v. Boothby*, 951 N.W.2d 859, 866 (Iowa 2020) (quotations omitted). The concept of slang is familiar in everyday life: vernacular words that may not have a formal dictionary definition, but instead gain meaning from context and from repeated use over time, as it spreads within a group of people that has heard it or used it. No court has ever held that an expert linguist must testify to explain the meaning of particular slang terms. Rather, any lay witness who knows the meaning of a slang term from her own lived experience can testify about what the term means, as long as that explanation is "[h]elpful to clearly understanding the witness's testimony or to determining a fact in issue." *See* Iowa R. Evid. 5.701(b).

Canady quotes an isolated phrase from *State v. Derry* as an assertion that courts "recognize the importance of expert testimony in circumstances such as these." *See* Def's Br. at 56 (quoting *State v. Derry*, 275 A.3d 444, 458 (N.J. 2022)). But the circumstances in *Derry* were very different. The witness in *Derry* was interpreting slang by applying his specialized expert training and experience to information that other investigators found, not by lay experience as applied to facts within his personal knowledge:

> . . . [A]n officer who participated in the conversation could offer lay opinion testimony, but an officer who was not a participant and instead relied on experience, training, or other knowledge obtained during the investigation must be qualified as an expert under the relevant rules of evidence and procedure.
>
> . . . Kopp's testimony was undoubtedly based on his training, experience, and supervision of the investigation, and not solely on his listening to the calls and reading the messages. Indeed, Kopp explained that other officers participating in the investigation performed physical surveillance, reports of which [Kopp] . . . relied upon . . . .

Derry, 275 A.3d at 457–58 (citing *State v. Hyman*, 168 A.3d 1194 (N.J. App. Div. 2017)). But that is an exception to the general rule that lay testimony "confirming or clarifying the meaning of phrases containing slang" is testimony that "meets Rule 701's requirement that lay witness testimony be based on personal knowledge that is helpful to the jury." *See United States v. Honeysucker*, No. 21–2614,

2023 WL 142265, at *7 (6th Cir. Jan. 10, 2023); *accord United States v. Valbrun*, 877 F.3d 440, 443–44 (1st Cir. 2017) ("[I]t is settled beyond hope of contradiction that a witness with personal knowledge of slang or jargon commonly used. . . may, consistent with Rule 701, be allowed to interpret ambiguous language used conversationally. . . .").

In practice, this happens all the time. Canady elicited similar testimony about the meaning of a different slang term that he used:

> **DEFENSE**: Also at some point did Mr. Canady ask you, is the dude okay, because I know who he is? That's my homey. Is he good or not? Do you remember him saying that?
>
> **OFFICER ERAL**: Yes.
>
> **DEFENSE**: Okay. And in your experience, what does — if somebody refers to somebody as a homey, what does that usually mean?
>
> **OFFICER ERAL**: It can mean a whole bunch of different things. It can be a term of endearment or it can just be how people refer to other people.

TrialTr.V5 223:14–224:12. This happens in other Iowa cases, without much fanfare: if the meaning of a slang term is relevant evidence, a witness who knows what it means can testify to that meaning.

> Eisbach testified that. . . Pendleton and Snead joked about "catching people's wallets" and "hitting a lick"—both phrases she understood to mean committing robberies. She recalled Pendleton and Snead pointing out people on the street they saw as "therms"—a term for weak people who would be easy to bully. When they spotted an older man, they called him "an easy stang"—meaning a person from whom they could easily steal.

State v. Pendleton, No. 13–1647, 2014 WL 6977188, at *2 (Iowa Ct. App. Dec. 10, 2014); *accord State v. Campbell*, No. 18–0764, 2020 WL 1049755, at *2 & n.1 (Iowa Ct. App. Mar. 4, 2020) (noting that a lay witness testified to meaning of slang term for robbery).

Concerns about whether Goodman was correct about what those terms meant would go to the weight of that testimony—not to its admissibility. Canady was free to offer evidence to support any competing interpretation of those terms. *See* PretrialTr. (11/23/21) 13:14–15:13 (explaining that the court would "[o]bviously" permit the defense to respond with testimony to provide their own interpretation of any slang terms in evidence). He did not. Nor has he ever offered a plausible alternative interpretation in argument, either during trial or in his brief on appeal. *But see* TrialTr.V6 36:1–38:7 (defense witness testifying that Canady's *other* statements on the recorded phone call were just "idle threats" that Canady would often make); TrialTr.V6 43:22–44:9 (defense eliciting testimony from the same witness about the meaning of the term "nigga" when Canady used it). The court did not err in ruling that Goodman could testify about the meaning of the slang terms that Canady and Evans used, if she knew what they meant. It was permissible lay opinion testimony, and it was not speculation.

If the court erred in either ruling, any error was harmless. The recorded call was replete with statements in which Canady expressed violent intent towards Harrison, in much clearer terms. *See* State's Ex. 34, at 0:23–0:35 ("On my mama, when I see him I'm gonna split him on his fuckin' neck"); *id.* at 2:19–2:27 ("I swear to god, bro, I'm gonna pick his lil ass up and slam him dead on his fuckin' head"). So any testimony about the meaning of "tax season" was cumulative with other evidence of similar statements that Canady made on that call, just before and just after he used that particular slang phrase. And as discussed in the previous section, any error in admitting the caption of the Snapchat post (or testimony about the caption) was harmless because the same relevant message is conveyed in the picture itself—it shows Evans with a gun in the hours before the killing, and it shows that his friends knew that he had the gun (both because it was visible on his person, and because he was posting Snapchats about it). *See* State's Ex. 52; App. 10. And any error is also harmless because of the overwhelming evidence (including video footage) that established that Canady attacked Goodman, then straddled and punched Harrison while Evans shot him *twice*, then kicked him again for good measure as their group fled. So any error in these rulings would be harmless.

II. The evidence was sufficient to support conviction for aiding and abetting voluntary manslaughter.

Preservation of Error

There is no longer any error-preservation requirement for challenges to sufficiency of the evidence on direct appeal. *See State v. Crawford*, 972 N.W.2d 189, 194–202 (Iowa 2022).

Standard of Review

"Sufficiency of evidence claims are reviewed for a correction of errors at law." *See State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012).

A verdict withstands a sufficiency challenge if it is supported by substantial evidence. That means evidence which, if believed, would be enough to "convince a rational trier of fact the defendant is guilty beyond a reasonable doubt." *See State v. Hennings*, 791 N.W.2d 828, 823 (Iowa 2010) (quoting *State v. Jorgensen*, 758 N.W.2d 830, 834 (Iowa 2008)). A reviewing court will "view the evidence in the light most favorable to the verdict and accept as established all reasonable inferences tending to support it." *See State v. Gay*, 526 N.W.2d 294, 295 (Iowa 1995); *accord Ernst*, 954 N.W.2d at 57–60.

Merits

Canady challenges the sufficiency of the evidence to support his conviction for aiding and abetting voluntary manslaughter. *See* Def's

Br. at 57–72. The marshalling instructions for that particular charge, submitted without objection, are the law of the case for the purposes of a sufficiency challenge on direct appeal. *See State v. Banes*, 910 N.W.2d 634, 639 (Iowa Ct. App. 2018). The State had to prove:

> 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 Instr. 35; App. 172. Canady's real challenge is that the evidence "did not establish [that] he aided and abetted Evans in the shooting." *See* Def's Br. at 67. He claims that "the State's case is based solely on speculation and conjecture." *See* Def's Br. at 69; *accord id.* at 70, 71. He is wrong. Canady stated that he would commit violent retaliation against Harrison. *See* State's Ex. 34. He told Anderson that they were going to beat up the person who hit someone with a beer bottle, and he told Harrison that they were waiting outside for him—and then he said "that he had a gun." *See* TrialTr.V3 6:8–13:19. Critically, Goodman heard Canady tell Evans to get the gun, before he took the first swing:

> We were arguing before [Harrison] had came out of the bar, and when we were arguing he told me to go get my bitch ass baby dad out of the bar, and I was, like, for what. And then he had leaned over to [Evans], just go ahead and get that. I was, like, so we're gun playing now? That's what we're really doing? We're playing with guns?

TrialTr.V5 45:3–47:7. Evans walked off. During the fight, Evans fired two fatal shots at Harrison. Canady kept punching Harrison after the first shot, and he kicked Harrison in the head after the second shot (which Evans fired into Harrison's torso at point-blank range). *See* TrialTr.V5 52:22–67:22; State's Ex. 108, at 1:01. The jury could infer that Canady had encouraged Evans to arm himself with the gun and use it to injure or kill Harrison, if the opportunity arose. That would explain why Canady did not stop assaulting Harrison and flee when he heard the first gunshot: Canady knew that it was Evans firing, so he knew that the shot was not fired at him—it was fired at Harrison. Jurors could infer that Canady had that knowledge because he was acting in concert with Evans. *See State v. Hood*, No. 13–1998, 2015 WL 3613243, at *10 (Iowa Ct. App. June 10, 2015) (finding that the evidence was sufficient because the jury could "infer that Hood knew her accomplice was armed," and it "could reasonably conclude that Hood knew the drug deal would end in an armed robbery" based on her "active participation" both before and after the fatal shooting).

Canady kept punching Harrison, and he kept Harrison on the ground so that Evans could shoot him again. Even if Canady had not known that Evans would shoot Harrison *before*, he would know that Harrison had been hit. Harrison was bleeding—his blood was all over Canady's pants, after the fact. *See* TrialTr.V4 92:20–97:23; State's Ex. 75–76; App. 12–13. But Canady kept punching Harrison, and he kept Harrison on the ground as Evans approached to fire a second shot, at point-blank range. Jurors could infer that Canady knew that Evans fired the first shot and that he was encouraging Evans to fire again, by preventing Harrison from escaping or protecting himself. *See State v. Williams*, No. 99–1312, 2000 WL 1827168, at *8 (Iowa Ct. App. Dec. 13, 2000) (noting jurors could infer Williams knew that accomplice "was carrying a weapon when they entered the Vrchota house," but even if they did not, "Williams certainly knew [the accomplice] was carrying a gun when he pointed it at Vrchota").

Even after the second gunshot, Canady did not relent until Goodman drew close enough to intercede—and even then, Canady "kicked [Harrison] in his face a couple times," for good measure. *See* TrialTr.V5 52:22–57:5. Then, Canady did not call 911, even though he would have known that Harrison was hurt. Instead, he fled the scene.

Jurors could infer that Canady knew that he had participated in an unjustified killing—not a mere fistfight. *See State v. Wilson*, 878 N.W.2d 203, 212 (Iowa 2016) ("It is well-settled law that the act of avoiding law enforcement after a crime has been committed may constitute circumstantial evidence of consciousness of guilt that is probative of guilt itself."). And when police found Canady, he denied having any involvement. *See* TrialTr.V3 67:5–68:4; State's Ex. 20–21. That was false. The jury could infer that Canady lied because he knew that the truth was damning: that he had helped Evans kill Harrison. *See Ernst*, 954 N.W.2d at 56. Jurors could infer that Canady declined to name Evans as the person who fired shots at Harrison, because he had acted together with Evans. Instead, he taunted the police—but in doing so, Canady revealed that he knew that *this was a murder*. *See* TrialTr.V5 220:3–222:1; State's Ex. 93. Jurors could infer that meant Canady knew that Evans had shot Harrison with intent to kill him—and that Canady would have known that was what Evans was doing, as Evans pulled the trigger. *See State v. Huser*, 894 N.W.2d 472, 493 (Iowa 2017) (noting significance of "Huser's apparent knowledge of Morningstar's death prior to the discovery of the body" in supporting conviction for aiding and abetting Morningstar's murder).

Both Anderson and Goodman testified that Canady made statements that established that, when he attacked Harrison and dragged him into the street, he knew that Evans would have a gun and would be prepared to use it. *See* TrialTr.V3 6:8–13:19; TrialTr.V5 45:3–47:7. Evans had also notified everyone on Snapchat that he was carrying a gun. *See* State's Ex. 52; App. 10. Canady is incorrect to argue that there was no evidence that he knew that Evans had a gun. *See* Def's Br. at 69–70. Jurors could infer that he did. And they could infer Canady was encouraging Evans to use the gun to shoot Harrison when Canady instructed Evans to retrieve it, while making statements that anticipated violence against Harrison. *See* TrialTr.V5 45:3–47:7. Jurors could draw the same inference from Canady's acts, just before and immediately after Evans fired each one of those two shots: Canady felt the need to flee when Goodman drew near, but *not* when he heard either gunshot, because those gunshots were part of the plan. And he lied to police and claimed not to have been involved (and claimed to have seen an unnamed shooter in a different white car). *See* TrialTr.V3 67:5–68:4; State's Ex. 21. Jurors could infer that Canady lied because he could not tell the truth: that he helped Evans kill Harrison. This is sufficient to support the jury's verdict, so Canady's challenge fails.

III. Merger was not required. Convictions for voluntary manslaughter and willful injury do not merge. And the instructions referenced separate conduct and separate theories of liability for these two particular charges.

Preservation of Error

If merger had been required, separate sentences would be illegal. A challenge to an illegal sentence evades error preservation and may be raised at any time. *State v. Halliburton*, 539 N.W.2d 343 (Iowa 1995); *State v. Stratton*, 519 N.W.2d 403, 405 (Iowa 1994).

Standard of Review

"Alleged violations of the merger statute are reviewed for corrections of errors at law." *See State v. Stewart*, 858 N.W.2d 17, 19 (Iowa 2015) (citing *State v. Finnel*, 515 N.W.2d 41, 43 (Iowa 1994)).

Merits

"[I]n the merger and double jeopardy context, the threshold question is whether it is legally impossible to commit the greater crime without also committing the lesser." *See id.* at 21 (citing *State v. Miller*, 841 N.W.2d 583, 588 (Iowa 2014)). The threshold question is whether each charged crime passes the *Blockburger* test: multiple punishments do not merge if each crime "requires proof of an additional fact which the other does not." *See State v. McKettrick*, 480 N.W.2d 52, 57 (Iowa 1992) (quoting *Blockburger v. United States*, 284 U.S. 299, 304 (1932)).

Willful injury requires proof of a specific intent to cause injury. *See* Iowa Code § 708.4; Jury Instr. 48(2); App. 174. That element is not required for voluntary manslaughter, so it is possible to commit voluntary manslaughter without committing willful injury. *See* Iowa Code § 707.4; Jury Instr. 35; App. 172; *cf. State v. Escobedo*, 573 N.W.2d 271, 279 (Iowa Ct. App. 1997) ("[I]ntent to cause serious injury and malice aforethought remain distinct elements, and the presence of one does not establish the other."). It is also possible to commit willful injury without committing voluntary manslaughter, because voluntary manslaughter requires the death of the victim. Thus, under the *Blockburger* test, these two offenses should never merge.

In *Ceretti*, the Iowa Supreme Court found that convictions for attempted murder and voluntary manslaughter that arose from the same completed killing must merge, under the one-homicide rule. *See State v. Ceretti*, 871 N.W.2d 88, 95–96 (Iowa 2015). But Ceretti had also pled guilty to a third charge—willful injury. He argued that should *also* merge with his conviction for voluntary manslaughter. *Id.* at 91. *Ceretti* applied the *Blockburger* test and found that "the elements plainly do not align," because "[e]ach offense 'requires proof of a fact which the other does not.'" *See id.* at 92 (quoting *Blockburger*, 284

U.S. at 304). Voluntary manslaughter requires the death of the victim. Willful injury does not. As for the claim that voluntary manslaughter includes willful injury, *Ceretti* explained that "willful injury requires a specific intent to injure, whereas voluntary manslaughter does not require any specific intent." *See id.* The defendant argued that there was "an implicit specific intent element" in voluntary manslaughter. *Ceretti* analyzed that claim at length and rejected it. *See id.* at 93–95. As such, even after the court determined that Ceretti's convictions for voluntary manslaughter and attempted murder should merge under the one-homicide rule, it noted that it had the option to "vacate [his] conviction for attempted murder and remand for resentencing on the voluntary manslaughter and willful injury . . . convictions." *Id.* at 97. So *Ceretti* establishes that these two offenses do not merge.

Before *Ceretti*, the Iowa Court of Appeals required merger when "a single assault results in convictions for voluntary manslaughter and willful injury," and "[n]o distinction was made in the charging document as to separate assaults to support the different counts." *See State v. Johnston*, No. 06–0206, 2007 WL 3377087, at *1–2 (Iowa Ct. App. Nov. 15, 2007). That unpublished opinion is incorrect, for the reasons stated above. And it certainly has no validity after *Ceretti*. But

even if *Johnston* were correct, the instructions in this case *did* make a distinction between the separate offense conduct that was alleged and proven to the jury's satisfaction, for each of these separate convictions. On Count I, the jury found that Canady "aided and abetted [Evans] in shooting [Harrison] with a gun," which killed him. *See* Jury Instr. 35; App. 172. On Count 2, the jury found that Canady had also "punched and kicked [Harrison]" and "caused a bodily injury" by doing so. *See* Jury Instr. 48; App. 174. These are separate assaults, committed by separate people, through separate instrumentalities. So it does not matter if voluntary manslaughter and willful injury should merge in different circumstances. Here, "[b]ecause the record establishes more than one assault, the court was authorized to impose more than one sentence." *See State v. Walker*, 610 N.W.2d 524, 527 (Iowa 2000); *accord State v. Rowley*, No. 07–0168, 2008 WL 4725291, at *2–3 (Iowa Ct. App. Oct. 29, 2008) (expressing doubt that willful injury is a lesser included offense of second-degree murder, but declining to resolve the issue because "[w]hether one offense is a lesser included offense of another is irrelevant when the State files the two charges as separate offenses and proves them both"). So Canady could never be entitled to merger of these two convictions, and his challenge fails.

IV. The sentencing court did not abuse its discretion.

Preservation of Error

Generally applicable rules of error preservation do not apply to these two claims. Canady may raise them for the first time on appeal. *See, e.g.*, *State v. Hill*, 878 N.W.2d 269, 272 (Iowa 2016).

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)). Consideration of an improper factor is an abuse of discretion. *See State v. Lovell*, 857 N.W.2d 241, 242–43 (Iowa 2014).

Merits

A. Canady was sentenced after a trial. The court's single reference to "the minutes of testimony" does not establish that it considered any fact that was not proven at trial, so it does not establish consideration of an improper factor.

The sentencing court's pronouncement of sentence began:

> 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.

Sent.Tr. 31:6–25. Canady alleges an error in four of those words.

Canady's claim is that the court's statement that it had reviewed and considered "the minutes of testimony" automatically meant that it considered an improper factor, because "Canady never admitted to the facts and circumstances contained in those minutes of testimony." *See* Def's Br. at 77–79. But none of the authorities that he cites would support his position that *merely mentioning* the minutes of testimony establishes consideration of any unproven fact. In each of those cases, the sentencing court mentioned a specific unproven/unadmitted fact in its remarks during sentencing. *See Lovell*, 857 N.W.2d 241; *State v. Gonzalez*, 582 N.W.2d 515 (Iowa 1998); *State v. Black*, 324 N.W.2d 313 (Iowa 1982); *State v. Messer*, 306 N.W.2d 731 (Iowa 1981). The State is unable to find an Iowa case that supports the proposition that mentioning that the court reviewed the minutes of testimony (as part of its review of the entire file in the case) establishes consideration of an improper factor or an unproven fact, requiring resentencing. That is because it stands to reason that at least *some* facts in the minutes are always proven by the evidence at trial or facts admitted in a plea.

Canady argues "the district court did not indicate its reliance on the minutes of testimony to only facts that are admitted or otherwise established as true." *See* Def's Br. at 78. But this inverts the analysis.

Iowa appellate courts presume that sentencing courts are aware of applicable limits on factors that they can consider at sentencing, and a challenger must overcome that presumption of regularity in order to establish error on appeal and demonstrate a need for resentencing.

> The presumption of regularity is only overcome when the defendant can point to "clear evidence" that impermissible factors were considered. We give this presumption of regularity because we have "great confidence in judges" to "filter out improper or irrelevant" information, and we "will not assume a judge failed to do so."

State v. Igou, No. 20–1305, 2021 WL 3892863, at *3 (Iowa Ct. App. Sept. 1, 2021) (quoting *State v. Sailer*, 587 N.W.2d 756, 764 (Iowa 1998)); *accord State v. Ritchie*, No. 20–1181, 2021 WL 3074495, at *3 (Iowa Ct. App. July 21, 2021) (quoting *State v. Goad*, No. 17–1057, 2018 WL 2084834, at *1 (Iowa Ct. App. May 2, 2018)) (noting some sentencing ambiguity in the record, then explaining "[t]he scales tip against [the defendant] because '[w]e afford the strong presumption of regularity to the sentencing court due to the great confidence we place in our judges to exercise their discretion appropriately'"). So Canady needed to identify some statement that established reliance on some unproven fact from the minutes of testimony. He has not, and he cannot—the sentencing court only mentioned proven facts. *See* Sent.Tr. 32:5–34:13. Thus, Canady's challenge fails.

B. The sentencing court adequately explained its reasons for imposing consecutive sentences.

A sentencing court's statement of reasons for a sentence is sufficient if it enables appellate review of that sentencing decision. *See Hill*, 878 N.W.2d at 274. A sentencing court does not need to give reasons for *rejecting* each sentencing option that it does *not* choose. *See State v. Loyd*, 530 N.W.2d 708, 713–14 (Iowa 1995). It only needs to give reasons for the sentencing option that it does select. And that statement of reasons for the sentence "may be 'terse and succinct,' as long as it does not prevent appellate review." *See State v. McGraw*, No. 21–0170, 2021 WL 5105019, at *2 (Iowa Ct. App. Nov. 3, 2021) (quoting *State v. Thacker*, 862 N.W.2d 402, 408 (Iowa 2015)).

The sentencing court explained its sentencing decision:

> 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.

See Sent.Tr. 32:5–34:13. Canady argues this "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." *See* Def's Br. at 85. Even standing alone, that would be a sufficient explanation of a reason to impose consecutive sentences. *See State v. Carberry*, 501 N.W.2d 473, 478 (Iowa 1993) (finding an explanation sufficient because it was "reasonably clear from what was said that the judge imposed consecutive sentences based on . . . the aggregate culpability of two separate and distinct heinous offenses"); *accord State v. Cosper*, No. 21–0762, 2022 WL 610319, at *4 (Iowa Ct. App. Mar. 2, 2022); *State v. Jones*, No. 21–0469, 2022 WL 246123, at *1 (Iowa Ct. App. Jan. 27, 2022); *State v. Dudley*, No. 18-1864, 2020 WL 1310296, at *5 (Iowa Ct. App. Mar. 18, 2020). Canady's challenge is a non-starter.

Canady cites *State v. Hopkins* and claims that it stands for the proposition that "the sentencing court may not focus on the nature of the offense alone in determining the appropriate punishment." *See* Def's Br. at 85 (citing *State v. Hopkins*, 860 N.W.2d 550, 555 (Iowa 2015)). But *Hopkins* establishes that a sentencing court may rely on the seriousness of offense conduct as the *only* aggravating factor that supports imposition of sentences of incarceration, as long as the court

considers all of the sentencing factors and pertinent information that it is required to consider in making its overall sentencing decision. *See Hopkins*, 860 N.W.2d at 554–56 (rejecting claim that the court "placed undue weight on the nature of her convictions" and holding "the court did not rely only on the nature of the crimes in determining sentence, but considered all the evidence presented"). Here, the court explained that it considered all of the evidence that was presented at trial and all of the information in the court file. *See* Sent.Tr. 31:6–25.

In any event, that was not the only reason given. The court also indicated that it was imposing consecutive sentences because of "the separate and serious nature of the offenses as well as the fact that the offenses . . . were committed while the defendant was on . . . probation." *See* Sent.Tr. 32:5–34:13. That is still not enough for Canady. He says "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." *See* Def's Br. at 85. But it is obvious from the plain language of the sentencing court's explanation that *both* of those were reasons for imposing consecutive sentences. This is clearly enough of an explanation to enable appellate review of that sentencing decision, so Canady's challenge is frivolous.

CONCLUSION

The State respectfully requests that this Court reject each one of Canady's challenges and affirm his convictions and sentences.

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

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