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IN THE SUPREME COURT OF IOWA
Supreme Court No. 22–0397
Woodbury County No. FECR112015

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LAWRENCE GEORGE CANADY III,
Defendant-Appellant.

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

APPLICATION FOR FURTHER REVIEW

(Iowa Court of Appeals Decision: July 13, 2023)

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QUESTIONS PRESENTED FOR FURTHER REVIEW

The trial court admitted evidence of a video where Canady rapped over a track and seemed to say the name of the murder victim, in connection with descriptions of acts of violence. It also admitted evidence of his accomplice's Snapchat post, hours before the killing, where he bragged about carrying a gun. The Iowa Court of Appeals held that each of those rulings was an abuse of discretion.

Did the trial court abuse its discretion in admitting either exhibit?

Properly admitted evidence showed Canady was furious with the victim and had said he would kill him. Canady and his accomplices tracked the victim to a bar, tried to get inside, and then waited outside. Canady told one accomplice to get his gun. When the victim came out, Canady attacked. They brawled. Canady got on top of the victim and punched him repeatedly. His accomplice approached with the gun and fired at the victim. Canady kept punching. The accomplice fired at the victim again, at closer range. Canady got a few more hits in, then ran from the scene with his accomplices. All of that was caught on video. The trial court said the video evidence was "overwhelming."

The Iowa Court of Appeals held that the error in admitting the rap video and the Snapchat post was not harmless, so it reversed all of Canady's convictions and remanded for retrial.

If the trial court erred, was the error harmless?

STATEMENT SUPPORTING FURTHER REVIEW

On July 13, 2023, the Iowa Court of Appeals reversed Canady's convictions for voluntary manslaughter, willful injury causing bodily injury, and assault causing bodily injury. It held that evidence was improperly admitted, and that its admission was not harmless error. *See State v. Canady*, No. 22–0397, 2023 WL 4531668 (Iowa Ct. App. July 13, 2023). It held that a video of a rap that included the name of the homicide victim was not relevant to showing Canady's intent towards the victim, in the days before the killing. In its view, that was not relevant because other evidence had established a more persuasive and clearer motive for Canady's attack, which arose after Canady recorded that rap video. It also held that it was error to admit an accomplice's Snapchat post from the day of the attack, in which he bragged about carrying a gun. These holdings are incompatible with Iowa precedent on the applicable standard of review. Relevance is a low bar, and balancing probative value against potential for prejudice is a fact-intensive analysis that trial judges must perform without the benefit of hindsight. The question is not what a reviewing court would have done—it is whether the trial court abused its broad discretion. *See, e.g.*, *State v. Thompson*, 954 N.W.2d 402, 407 (Iowa 2021).

The panel opinion also erred in failing to find harmless error, even after it correctly noted that the evidence that proved Canady's role in this attack was "overwhelmingly strong—his actions having been both caught on video and largely uncontested." *See* Opinion, at 13. At the very least, the panel should have found harmless error on the convictions for willful injury and assault causing bodily injury, since those convictions were wholly based on that undisputed evidence. And Canady's intent to aid and abet the fatal shooting was also very clear from evidence that he told the shooter to get the gun, as he demanded a confrontation with the victim. *See* TrialTr.V5 45:3–47:7. Moreover, if the rap video was inadmissible because stronger evidence had more persuasively proven motive and intent, then it makes no sense to hold that the error in admitting that rap video was not harmless. *See, e.g.*, *State v. Plain*, 898 N.W.2d 801, 815 (Iowa 2017) ("Because the State's evidence on the contested point was strong, the prejudicial effect of the challenged testimony is minimal.").

This Court should grant review because the panel opinion is in conflict with Iowa precedent that sets a low bar for relevance, commits relevance-balancing to the broad discretion of trial courts, and defines harmless error. *See* Iowa R. App. P. 6.1103(1)(b)(1).

STATEMENT OF THE CASE

Nature of the Case & Course of Proceedings

This is Canady's direct appeal. He was charged with first-degree murder for killing Martez Harrison (aka Tezzo). He acted together with Dwight Evans and other accomplices. Eyewitness testimony and video established that Canady and Evans accosted Harrison and his girlfriend (Jessica Goodman). First, Canady punched Goodman. Then, he brawled with Harrison. While Canady was on top of Harrison, Evans approached with a gun (which Canady had instructed him to retrieve). Evans fired, hitting Harrison. Canady kept punching Harrison. Evans shot Harrison a second time. Canady jumped off of Harrison, kicked him in the face, and ran away with Evans. Later that same night, Canady told police that he and his group were not involved. The jury found Canady guilty of a lesser included offense of voluntary manslaughter. It also found him guilty as charged on willful injury causing bodily injury for punching Harrison, and assault causing bodily injury for punching Goodman.

A panel of the Iowa Court of Appeals found that the trial court abused its discretion by overruling Canady's relevance objections to two exhibits. The first was Exhibit 90, which was a video of Canady and Evans rapping over a beat. From the video itself, it was not clear

whether Canady was rapping the actual lyrics to an existing song or making up his own words for some or all of the lyrics. The video was filmed four days before the attack, and it included at least one clear reference to violence against "Tezzo." Before trial, Canady objected to admission of this exhibit—but he offered no competing explanation of what the video showed, or where the lyrics came from. The trial court listened to the rap closely, then issued this 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. . . . 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. After the video was admitted at trial, on cross-examination of the proponent, Canady revealed that those were the actual lyrics of a rap track by a Chicago-based group.

On appeal, the panel opinion held that it was error to admit that video because it showed Canady "rapping along to a popular diss track" which meant it was unlikely to be "autobiographical." *See* Opinion, at 6–8. The panel found it was more prejudicial than probative because Canady was "rapping along to lyrics involving violent imagery," and because tattoos, money, and Canady's "ad libs" over the track would all have "suggested to the jury that Canady was a member of a gang." *See id.* at 8–9. And it rejected the argument that Canady's choice of lyrics for that rap video was "evidence of Canady's intent to harm Harrison" because other strong evidence showed that Canady's motive and intent to injure or kill Harrison had arisen four days later—when Canady was told (on a recorded jail call) that Harrison had assaulted a girl he knew and put her in the hospital, and Canady responded by saying he would "knock [Harrison] on his head dead." *See id.* at 7 & n.3; State's Ex. 34.

The panel also found it was error to admit Exhibit 52, which was a Snapchat post by Evans, from hours before the attack. The post was a picture of Evans with another accomplice, with a caption: "We bussing but don't think shit sweat"—and a gun emoji. *See* State's Ex. 52. The panel held it was irrelevant and unduly prejudicial because there was no evidence to show that Canady saw the post. *See* Opinion, at 12–13.

On harmless error, the panel recognized that the evidence was "overwhelmingly strong" on Canady's convictions for willful injury and assault causing bodily injury. But it said it was not confident the error was harmless with regard to his conviction for voluntary manslaughter. It ordered retrial on *all* counts, without further analysis or explanation. *See* Opinion, at 13–17.

Additional facts will be discussed when relevant.

ARGUMENT

I. The trial court did not abuse its broad discretion in admitting these two exhibits as relevant evidence.

The panel opinion recited the correct standard of review: "We review evidentiary rulings for an abuse of discretion." *See* Opinion, at 5 (quoting *State v. Wilson*, 878 N.W.2d 203, 210 (Iowa 2016)). But it did not apply it correctly. "[D]ifferences of opinion do not amount to abuses of discretion." *See, e.g.*, *State v. Tucker*, 982 N.W.2d 645, 656 (Iowa 2022). A thorough and "tailored evidentiary ruling" that charts a "reasonable course" should not be overturned, even if "other judges might have made a different call." *See id*. The panel opinion stated its views about the value of this evidence. But the real question is whether the trial court's rulings were based on untenable grounds, or whether its rulings were unreasonable. Moreover, "[w]eighing probative value against prejudicial effect is not an exact science, so we give a great deal of leeway to the trial judge who must make this judgment call." *See State v. Lacey*, 968 N.W.2d 792, 807 (Iowa 2021) (quoting *State v. Thompson*, 954 N.W.2d 402, 408 (Iowa 2021)). The panel opinion did not apply that standard. This Court should correct the error.

A. It was not unreasonable to view the rap video as relevant to establish Canady's motive and intent, even if it did not tell the full story on its own.

The most important thing to remember in determining whether the trial court's ruling on Canady's objection to the rap video is that it did not know that this was a "popular diss track." *See* Opinion, at 7–8. Canady saved that information for use on cross-examination (and for this appeal). *See* Motion in Limine (11/18/21) at 3; App. 84; TrialTr.V5 206:6–207:17. The panel opinion is correct that it is readily apparent that Canady rapped over an existing track. *See* Opinion, at 7 n.6. But it was not clear whether Canady was rapping the same words as the original track (whatever it was), or if he was replacing certain words with the names of people he knew that fit the cadence—like "Tezzo." [1]

Of course, on the record as it stood when the trial court made this ruling and when it overruled Canady's objection, that would be a distinction without a difference. The panel opinion correctly noted that "Canady chose a song that includes a name that sounds like Tezzo and then decided to record himself performing it." *See* Opinion, at 7 n.4.

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[1] The panel opinion criticized the trial court for indicating that it heard the name "Tez" or "Tezzo" at two separate points in the video. *See* Opinion, at 6 n.2. The second reference that the court identified was likely the phrase that sounded like "Tez got put up on his shit / pick his brains up off the curb." *See* State's Ex. 90, at 0:17–0:21.

That, on its own, establishes a prima facie basis for relevance: the fact that Canady chose to perform this song that described acts of violence against someone named Tezzo (or someone else whose name Canady could swap for Tezzo's) makes it more likely that Canady did, in fact, feel an animus towards Harrison that existed before the recorded call. That would make it more likely that Canady's subsequent participation in beating and killing Harrison was intentional and premeditated, and it would undercut the defense that Canady could not have intended to kill Harrison because they were good friends. *See* TrialTr.V7 20:9–20. The trial court understood that, and it found "the necessary minimum level of logical connection between the offered evidence and the fact to be proven"—and it is "within the broad discretion of the trial court" to make that finding of logical relevance. *See Thompson*, 954 N.W.2d at 407 (quoting *State v. Tracy*, 482 N.W.2d 675, 680–81 (Iowa 1992)).

After recognizing that basis for relevance, the panel pivoted to:

> But we have no information regarding whether Canady often rapped and recorded himself; there might have been many songs that Canady chose to perform and record. Just because the State chose to show this one specific video to the jury does not necessarily follow that Canady made only one video of himself rapping.

Opinion, at 7 n.4. There are two problems with that. First, there was nothing in the record to support that speculation (and there still isn't).

Canady never introduced evidence of other rap videos, nor did he argue that they existed (or might exist) in his objections to this exhibit. *See* Motion in Limine (11/18/21) at 3; App. 84. Second, if there really were other videos of Canady rapping, that would have been great fodder for an attack on the *weight* of this evidence—not its admissibility. Canady could have presented testimony or video evidence to establish that he made other rap videos. If he did, he might have persuaded a juror that the fact that he chose to make *this* video should receive minimal weight. But attacks on the weight of the evidence generally "do not serve as a basis for excluding the evidence." *See Thompson*, 954 N.W.2d at 408.

Those two problems in the panel's analysis are greater than the sum of their parts. The panel speculated that unmentioned evidence might exist that, *if real and if presented*, might undercut the weight of this exhibit—and then it mistook that hypothetical weight argument for a failure to establish "minimum logical relevance" for admissibility. That inverts the analysis. Neither the proponent nor the trial court has the burden of disproving various unstated and unargued theories for why seemingly relevant evidence might actually be less relevant under certain hypotheticals, as a preliminary barrier to admissibility. The panel opinion is incompatible with Iowa precedent on relevance.

Like any piece of evidence, the rap video was only one part of a bigger story. But that does not make it irrelevant. On the record that existed before this exhibit was admitted, it was reasonable to rule that this video cleared the low threshold of minimum logical relevance and was therefore admissible. The trial court did not know that this was a "popular diss track" and did not know that Canady was reciting lyrics that someone else wrote (rather than his own lyrics or ad-libs). What was clear was that this evidence, if viewed in a certain (plausible) light, would provide additional circumstantial evidence of motive, intent, or malice aforethought. The panel erred by failing to recognize the state of the record when the ruling was made, and by faulting the trial court for failing to address its speculation about possible counter-showings on the exhibit's weight. There is no such precondition to admissibility.

B. The trial court did not abuse its broad discretion in finding the video was not unfairly prejudicial.

"Courts should use rule 5.403 sparingly since it allows for relevant evidence to be excluded." *See State v. Buelow*, 951 N.W.2d 879, 889 (Iowa 2020). The panel opinion relied on academic criticism of rap lyrics as evidence. *See* Opinion, at 7–8 n.7. But this injects a *per se* rule into what should be a fact-specific, case-by-case analysis. *See generally Montague v. State*, 243 A.3d 546, 564–66 (Md. 2020)

(noting rap lyrics may be more probative than prejudicial based on interplay of multiple factors, so "when a defendant's rap lyrics are offered as substantive evidence of their guilt, those 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").

Evidence is unfairly prejudicial if it "has an undue tendency to suggest a decision on an improper basis." *See Thompson*, 954 N.W.2d at 408 (quoting *State v. Delaney*, 526 N.W.2d 170, 175 (Iowa Ct. App. 1994)). The trial court recognized some potential for prejudice, but it ruled that it did not substantially outweigh the video's probative value. *See* Ruling (12/2/21) at 8; App. 148. That is the kind of "judgment call" that appellate courts should assess with "a great deal of leeway." *See Lacey*, 968 N.W.2d at 807 (quoting *Thompson*, 954 N.W.2d at 408).

The panel did not grant that leeway or deference to the trial court. Instead, it relied on its own view that "lyrics involving violent imagery," tattoos, money, and Canady's "ad libs" would all have "suggested to the jury that Canady was a member of a gang." *See* Opinion, at 8–9. But it is not the 90's anymore. Rap artists enjoy mainstream success. Less than three months after Canady's trial, the 2022 Superbowl halftime show put Dr. Dre, Snoop Dogg, 50 Cent, Eminem, and Kendrick Lamar on

every TV in America. Everybody understands that making or enjoying rap music does not make someone a criminal—that almost all rappers, like actors, are playing characters for the benefit of the audience. And to the extent that there may be latent bias against youngsters who rap, voir dire can help expose that bias and inoculate jurors against it. *See State v. Gomez Garcia*, 904 N.W.2d 172, 183–84 (Iowa 2017) (noting panel opinion's stated concerns about bias or prejudice among jurors but explaining that the defendant "would have had the opportunity to explore such attitudes during jury selection and challenge such jurors for cause or remove them through peremptory strikes").

Additionally, there was no actual evidence of gang affiliation, nor any suggestion that this attack had something to do with a gang.[2] Nor was it possible that jurors were moved to overmastering hostility out of some desire to punish gang members—they acquitted Canady on both of the most serious charges. *See, e.g.*, *State v. Wise*, No. 19–1353, 2021 WL 1400771, at *4 (Iowa Ct. App. Apr. 14, 2021) (noting

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[2] For what it's worth, the phrase "gang gang" is popular slang that has nothing to do with a criminal gang. *See, e.g.*, *Gang Gang*, SLANG.NET (Nov. 17, 2021), https://slang.net/meaning/gang_gang; Gene Park, *Why TikTokers Are Pretending to Be Robots and Saying "Ice Cream So Good"* (July 17, 2023), https://www.washingtonpost.com/arts-entertainment/2023/07/17/npc-pinkydoll-tiktok-live-streaming-robot/.

"jurors returned verdicts on lesser included offenses . . . signaling their ability to set emotion aside in assessing the evidence"). And in this prosecution for first-degree murder, for a killing caught on video, even the most unpleasant gang aesthetic could not steal the spotlight from the actual evidence of the killing. *See State v. White*, 668 N.W.2d 850, 855 (Iowa 2003) (finding evidence of prior acts of violence was not unfairly prejudicial because they were "substantially less brutal" than the acts in evidence that established the charged offenses).

Iowa precedent is clear: trial courts should resolve tough calls in favor of admitting any potentially relevant evidence. *See Buelow*, 951 N.W.2d at 889. Moreover, this Court has repeatedly explained that balancing probative value against the potential for unfair prejudice is not an exact science and is done without the benefit of hindsight—so Iowa's appellate courts "give a great deal of leeway to the trial judge who must make this judgment call." *Thompson*, 954 N.W.2d at 408 (quoting *State v. Putman*, 848 N.W.2d 1, 10 (Iowa 2014)). The panel recited the correct standard of review, but did not apply it. Instead, it applied a near-categorical rule of *per se* prejudice that conflicts with Iowa precedent. This Court should grant review, correct the error, and hold the trial court's ruling was not an abuse of its broad discretion.

C. The Snapchat post was relevant to establish that Evans made it known to others that he had a gun. Canady used Snapchat on the same evening.

After the killing, Goodman scrolled through social media posts. The Snapchat post depicted in Exhibit 52 came up. Goodman said she "was scrolling through Snapchat waiting and [she] seen the gun, and that's when [she] started screenshotting everything." *See* TrialTr.V5 87:2–94:14. The post showed Evans and another accomplice, showing their waistbands. Evans's waistband is slightly obscured by a jacket. A blurry object protrudes from the accomplice's waistband, as that man gestures to it with his hand. Evans's caption says "We bussing but don't think shit sweat"—punctuated with a gun emoji. *See* State's Ex. 52.

The panel held it was irrelevant and unduly prejudicial because there was no evidence to show that Canady saw the post. *See* Opinion, at 12–13. But Canady and Evans were close friends, and Canady was also using Snapchat, that evening—Goodman saw that Canady posted on Snapchat to share his location. *See* State's Ex. 53; TrialTr.V5 85:17–85:1; TrialTr.V5 94:15–97:16. Goodman saw Canady's post, and she also saw Evans's post in the same app. It was no big leap to conclude that Canady would also be able to view the same posts from Evans, on the same app that Canady was already using on the same evening.

Canady argued that he did not know that Evans had a gun. *See* TrialTr.V7 27:18–28:12. If Evans had stood on a hill and shouted that he had a gun, that would be relevant and admissible—even more so if Canady was seen near that same hill. That would help establish that Canady could have heard that particular statement, or that he heard a similar statement from Evans at another point (because that would be proof that Evans was broadcasting that information, not concealing it). Snapchat is just like that hill. Both Canady and Evans used Snapchat that evening, and proof that Evans was announcing that he had a gun on Snapchat tended to prove that Canady knew that he had a gun.

The panel was concerned that this was unfairly prejudicial because Goodman also testified about her understanding of what the caption meant, because it used slang. *See* Opinion, at 12–13 (citing TrialTr.V5 89:12–25 and 93:24–94:14). But lay witnesses can testify about the meaning of words and phrases that they are familiar with, in their personal experience. *See* Iowa R. Evid. 5.701. Canady could have put on evidence to establish any other plausible interpretation. *See* PretrialTr. (11/23/21) 13:14–15:13. He did not. In any event, her testimony cannot make it error to admit the photo or the caption.

There is a bigger problem with the panel's holding that it was error to admit Exhibit 52 because its probative value was outweighed by a risk of unfair prejudice. The panel correctly noted that the trial court "did not consider whether [Exhibit 52] was unduly prejudicial under rule 5.403." *See* Opinion, at 12 n.9; Ruling (12/2/21) at 16–17; App. 156–57). The trial court specifically ruled on a 5.403 issue for a different Snapchat post from Evans that actually showed him holding the murder weapon. It excluded that video. But it did not rule on any Rule 5.403 objection to Exhibit 52. *See* TrialTr.V5 74:22–86:16. That means that error is not preserved to reverse on the basis of any claim of an unfairly prejudicial effect. There was only a ruling on relevance, as established by the close temporal proximity between Evans's post, Canady's location-sharing post on the same app, and the fatal attack. *See* TrialTr.V5 85:12–86:16; Ruling (12/2/21) at 16–17; App. 156–57); *cf. State v. Sharpe*, 304 N.W.2d 220, 225 (Iowa 1981) ("[O]bjection in the trial court on the ground of relevancy is insufficient to preserve error on the ground of unfair prejudice."); *State v. Hicks*, No. 13–1912, 2015 WL 1046130, at *6 (Iowa Ct. App. Mar. 11, 2015) (same). So the panel reversed a ruling that admitted evidence on the basis of an objection that was never ruled upon, below. This Court should not permit that.

* * *

"With respect to evidentiary questions in general and Rule 403 in particular, a district court virtually always is in the better position [than an appellate court] to assess the admissibility of the evidence in the context of the particular case before it." *See Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 387 (2008); *State v. Rodriquez*, 636 N.W.2d 234, 240 (Iowa 2001) (quoting 1 John W. Strong, *McCormick on Evidence* § 190, at 672 (5th ed. 1999)). The panel recited the right standard of review, but it missed key facts that helped show relevance and it substituted its own judgment (with the benefit of hindsight) for the trial court's reasoned exercise of its broad discretion. The rulings admitting this evidence were not clearly unreasonable or untenable—they were reasonable exercises of the trial court's broad discretion to decide if the evidence met the minimum threshold of logical relevance and balance its arguable relevance against the potential for prejudice. This Court should grant review, apply the correct standard of review, reverse the panel opinion, and affirm Canady's convictions.

II. If the trial court erred in either evidentiary ruling, any error was harmless. There was no effect on the verdict.

The panel rejected harmless error, with almost no explanation. *See* Opinion, at 13–14. But the purported errors were surely harmless.

A. At a minimum, the panel should have affirmed Canady's convictions for willful injury and for assault causing bodily injury.

To explain its ruling, the panel wrote: "While the evidence supporting [Canady's] convictions for willful injury causing bodily injury and serious assault was overwhelmingly strong—his actions having been both caught on video and largely uncontested—his role in the shooting death of Harrison is much less clear." *See* Opinion, at 13. It was correct about the strength of the evidence on those two charges. And the jury found Canady guilty *as a principal* on those charges—it was not instructed on aiding-and-abetting theories for those offenses. *See* Jury Instr. 48 & 52. So even assuming that everything else in the panel opinion is correct, it was *still* incorrect to reverse and remand those two convictions for retrial. At worst, retrial is only required on the charge of aiding and abetting voluntary manslaughter. *See State v. Martin*, 704 N.W.2d 674, 674–75 (Iowa 2005) (ordering retrial on possession charge, but not two other charges with strong evidence).

B. Canady's knowledge that Evans had a gun was proven through other convincing evidence. So the Snapchat post was cumulative and harmless.

While Canady was trying to get inside the bar to fight Harrison, he told the bartender (Anderson) that "he had a gun." *See* TrialTr.V3

6:8–13:19. And Goodman testified that she heard Canady tell Evans to get the gun from wherever he had stashed it, just before the fight:

> 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. And when Evans fired, Canady did not turn to see where the shots came from—he already knew who had the gun. *See* TrialTr.V5 52:22–67:22; State's Ex. 108, at 1:01. So to the extent that introducing Exhibit 52 allowed unfair speculation that Canady knew that Evans had a gun, that would not matter because other evidence proved the same point, beyond any doubt. *See Plain*, 898 N.W.2d at 813 (citing *State v. Hildreth*, 582 N.W.2d 167, 170 (Iowa 1998)).

C. Canady used an effective line of attack against the weight of the rap video as evidence, by revealing the original track/lyrics after the video came in.

As for the rap video, Canady did not identify the original song or artist (or the person apparently named "Teso") until the trial court had already admitted Exhibit 90. Instead of using that information to challenge the admissibility of the exhibit, Canady used it to challenge the *weight* of the rap video as evidence, by establishing that those were the real lyrics of a popular song. *See* TrialTr.V5 210:9–21; TrialTr.V6

8:10–14:12; *accord* Def's Ex. G. The jury was apparently convinced that the rap video was not evidence of premeditation or intent to kill Harrison—it did not convict Canady on charges that required either. So the jury found the State had not proven any fact that the rap video was offered to prove. It was irrelevant *to the jury*—and thus harmless.

Essentially, Canady had an ace in the hole that could undermine the logical relevance of the rap video. He could have used it to argue against admission of the video. That might have worked.[3] Instead, he used it *after* admission of the video, to persuade jurors that the video did not prove anything. That actually *did* work—jurors agreed that the video did not establish any pre-existing intent to harm or kill Harrison (and neither did any of the other evidence). The fact that Canady was able to neutralize the video so effectively makes any error harmless.

D. Jurors were not moved to overmastering hostility against Canady. They acquitted him of murder.

Evidence that inflames emotions can be unfairly prejudicial if it tempts jurors to convict a defendant out of "overmastering hostility."

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[3] By declining to state his *actual* challenge until after this exhibit was admitted, Canady gets to have his cake and eat it, too—he gets to keep those acquittals that were made possible by his effective defense against all evidence of premeditation (including that rap video), and he can still demand retrial on the charges on which he *was* convicted. This Court should not reward sandbagging and gamesmanship.

The panel thought rap music, violent imagery, and gang references in the video might do just that. *See* Opinion, at 8–9. But it didn't. Jurors acquitted Canady on two degrees of murder (and attempted murder). That indicates 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 Wise*, 2021 WL 1400771, at *4.

E. Canady's motive and intent were established by overwhelmingly strong evidence. He said that he wanted to kill Harrison; he told Evans to get the gun while they waited for Harrison to come out; and he kept beating Harrison as Evans shot him.

On the merits, the panel faulted the trial court for admitting the rap video because other evidence had shown that Canady's motive and intent to harm Harrison arose during a recorded phone call, four days after the rap video was recorded. *See* Opinion, at 6–7. Logically, that same strong evidence should have resurfaced when the panel assessed harmless error—but it did not. *See id.* at 13–14. Canady's motive and intent were stated in emphatic, unambiguous terms (and not in song) on that phone call. *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"). The rap video was no more shocking than those particularized promises of graphic violence, all properly admitted. *Accord White*, 668 N.W.2d at 855. And if the proof of Canady's motive and intent from that call was so strong that it was abuse of discretion to admit the rap video on a fallback/overkill theory of relevance, then admitting it was harmless error. The same proof that overdetermined motive and intent also establishes harmless error.

In the panel's view, "[Canady's] role in the shooting death of Harrison is much less clear." *See* Opinion, at 13–14. But Goodman heard Canady tell Evans to get the gun, just before the fatal attack. *See* TrialTr.V5 45:3–47:7; *accord* TrialTr.V3 6:8–13:19. And Canady's role in the killing was very clear to the trial court, which remarked:

> Most telling to the Court is . . . the video evidence that was presented to the jury, that when the gunshots were fired by Mr. Evans, Mr. Canady didn't even flinch. . . . [T]hat's compelling evidence to this court that Mr. Canady knew the weapon was involved, and not only knew the weapon was involved but was anticipating the use of the weapon on the night in question.
>
> Otherwise, the Court would have expected that someone who didn't expect a weapon to be there or to be fired would have at least flinched when the weapon went off within the matter of a few feet from him. So the Court thinks that there is *overwhelming evidence* to support the jury's finding and the conviction for Voluntary Manslaughter . . . .

Sent.Tr. 9:15–10:24 (emphasis added); *cf.* TrialTr.V5 52:22–67:22; State's Ex. 108, at 1:01. Nothing in the panel opinion addresses or accounts for that overwhelming evidence of Canady's guilt. And the trial court was presumably unaffected by prejudice towards rappers when it ruled that the evidence of Canady's guilt was overwhelming. *Cf. State v. Wilde*, 987 N.W.2d 486, 498 (Iowa Ct. App. Dec. 21, 2022) (citing *State v. Casady*, 491 N.W.2d 782, 786 (Iowa 1992)).

This evidence was "so overwhelming as to leave it beyond a reasonable doubt that the verdict resting on that evidence would have been the same in the absence of the incorrectly admitted evidence." *See State v. Hensley*, 534 N.W.2d 379, 383 (Iowa 1995). Excluding either the rap video or the Snapchat post would not have changed this set of verdicts. The panel erred in ruling otherwise. This Court should grant review and correct that error.

CONCLUSION

The State respectfully requests this Court grant further review, vacate the panel opinion, and affirm Canady's convictions.

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 application complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.1103(4) because:

1. This application has been prepared in a proportionally spaced typeface using Georgia in size 14, and contains **5,759** words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(*a*).

Dated: July 28, 2023

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