IN THE SUPREME COURT OF IOWA
Supreme Court No. 22–1974
Polk County FECR353314

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WICHANG GACH CHAWECH,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE JEANIE K. VAUDT, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

None of the retention criteria in Iowa Rule of Appellate Procedure 6.1101(2) apply to the issues raised in this case, so transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(1).

STATEMENT OF THE CASE

Nature of the Case

A jury convicted the defendant, Wichang Gach Chawech, of four crimes: (1) assaulting Nyamal Deng with the intent to commit serious injury, (2) assaulting Maikudi Abdullahi[1] with the intent to commit serious injury, (3) willfully injuring Maikudi causing serious injury, and (4) intimidation with a dangerous weapon with intent to injure. He appealed his convictions and sentence.

Course of Proceedings

The State accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

Soccer teammates Maikudi and Redemer Gbeddeh exited a Des Moines nightclub together. Tr. Trial Vol. 2, 120:15–18, 129:21–

[1] While the instructions spell the victim's name "Maiqudi," the State uses "Maikudi" because that is how the victim spelled his name. Tr. Trial Vol. 2, 117:10–12. Also, the State generally refers to witnesses by first name as multiple witnesses have the same last name.

130:25. The defendant's friends attacked Redemer. Tr. Trial Vol. 3, 57:1–9. The defendant pulled a gun, and Maikudi turned to flee. Tr. Trial Vol. 2. 131:5–9; Tr. Trial Vol. 4, 57:6–9; Ex.88 at 1:54:30–45.[2] The defendant shot, hitting Maikudi's jaw from behind. Tr. Trial Vol. 2, 135:1–136:9; Tr. Trial Vol. 3, 119:3–25; Ex.40, Dkt. No. 0152; Ex. App. 3. The bullet continued flying and struck Nyamal Deng. Tr. Trial Vol. 3, 111:22–112:7; Ex.42, Dkt. No. 0154; Conf. App. 10. She died from her injuries. Tr. Trial Vol. 3, 100:22–104:2.

The day before the shooting.

The defendant went to a memorial for a beloved member of Des Moines's Sudanese community. Tr. Trial Vol. 2, 81:24–82:15. Nyamal, Nyalat Deng, Nyador Bilim, and Nyalat Dak also attended. *Id.*; Ex.86, Dkt. No. 0134; Ex. App. 4. All four women had known the defendant many years, considering him family. Tr. Trial Vol. 2, 61:17–25, 68:3–17, 81:6–23; Tr. Trial Vol. 4, 50:16–51:13. Many community members went to the High Life Lounge that night to continue spending time together. Tr. Trial Vol. 2, 68:21–69:6, 86:4–10; Tr. Trial Vol. 4, 52:10–19.

[2] The State cites to the time stamps in videos.

The same day, Maikudi and Redemer played in a soccer tournament. Tr. Trial Vol. 2, 122:9–123:23. They advanced to the semi final. *Id*. The team went to the High Life Lounge to celebrate. *Id.* at 124:14–17.

At the High Life Lounge before the shooting.

The soccer team socialized in the back parking lot. *Id*. at 125:3–127:19. The defendant arrived with his girlfriend and friends. *Id*. A member of the soccer team got in an argument with the defendant's group. *Id.*; Tr. Trial Vol. 3, 48:13–49:23. The defendant and Redemer diffused the situation. Tr. Trial Vol. 3, 48:13–49:23.

The soccer team, including Maikudi and Redemer, entered the bar. Tr. Trial Vol. 2, 128:14–22; Tr. Trial Vol. 3, 50:18–19. Security checked them for weapons. Tr. Trial Vol. 3, 8:18–9:8. At some point, Redemer fetched his gun from his car but a friend returned it to the car before the shooting. *Id*. at 53:8–55:6.

The defendant entered and exited the bar and milled around outside. *See generally* Ex.87. Before the shooting, the defendant brandished two pistols in a Snapchat video; his girlfriend brandished another pistol in the same video. Ex.77; Tr. Trial Vol. 2, 72:16–24; Tr. Trial Vol. 4, 112:18–113:10. The defendant showed Nyalat Deng his

guns and told her not to worry about her safety. Tr. Trial Vol. 2, 70:11–23.

Meanwhile, inside, members of the defendant's group and the soccer team got in an altercation. Tr. Trial Vol. 2, 71:19–24, 129:4–7. At about 12:48 a.m., Redemer left the bar to go to his car. Ex.R at 1:48:25. He re-entered the bar a minute and a half later. *Id.* at 1:49:57. A couple minutes after Redemer re-entered the bar, members of the defendant's group exited. Ex.88 at 1:52:40.

The defendant shot Maikudi and Nyamal.

Grainy surveillance video captured the scene outside when Redemer and Maikudi exited the bar at 12:53. *Id.* at 1:53:32. Nyamal, Nyador, and Nyalat Dak stood outside. *Id.* A few feet away, the defendant and his friends loitered. *Id.* Redemer and Maikudi exited the bar, and the defendant's friends intercepted them as they tried to leave. *Id.* at 1:53:39–1:53:46.

The defendant's friends attacked Redemer. Tr. Trial Vol. 2, 131:1–132:19; Tr. Trial Vol. 3, 57:5–15. The defendant pulled a gun and pointed it at Maikudi's head. Tr. Trial Vol. 2, 131:1–132:20. At 12:54:39, people began to scatter. Ex.88 at 1:54:39. At 12:54:41, both Maikudi and Nyamal fell. *Id.* at 1:54:41. At 12:54:45, the defendant

moved from between two vehicles and stopped his friends who were beating Redemer. *Id.* at 1:54:45.

Nyador, Maikudi, Redemer, and Nyalat Dak testified that they saw the defendant with a gun during the shooting. Tr. Trial Vol. 2, 89:4–90:6, 131:5–135:19; Tr. Trial Vol. 3, 59:22–60:6; Tr. Trial Vol. 4, 57:6–58:12. Nyador, Maikudi, Redemer, and Nyalat Dak said that neither Maikudi nor Redemer had a gun. Tr. Trial Vol. 2, 89:25–90:6, 138:12–17; Tr. Trial Vol. 3, 59:10–13; Tr. Trial Vol. 4, 57:6–58:25. The defendant fired at Maikudi, hitting him in the face. Tr. Trial Vol. 2, 135:5–18. Nyalat Deng, Nyador, Maikudi, and Nyalat Dak said they heard a single shot. Tr. Trial Vol. 2, 77:17–21, 93:11–14; Tr. Trial Vol. 3, 25:16–18; Tr. Trial Vol. 4, 66:3–4.

The defendant surveyed the scene after the shooting then strolled to the back parking lot. Ex.87 at 1:55:00–1:58:05. He stopped to cycle a round from his pistol. *Id.* at 1:55:43. He poured his friends a drink. Tr. Trial Vol. 6, 117:11–118:7. He left as police arrived. Ex.87 at 1:58:05; Ex.88 at 1:57:47.

Police investigated the shooting.

Police arrived within minutes of the shooting. Ex.88 at 1:54:41–1:57:47. Maikudi informed an officer he had been shot. Tr. Trial Vol.

3, 162:1–7. Police found Nyamal lying on the pavement. *Id.* at 162:8–17. At first, people thought she hit her head in a fall but soon realized she had been shot in the neck. *Id.* at 163:13–25. Maikudi and Nyamal were taken to the hospital. Tr. Trial Vol. 4, 64:14–19, 97:13–16.

That night and the next morning, police interviewed many witnesses, including Maikudi, Redemer, security guards, Nyalat Deng, Nyador, and Nyalat Dak. *Id.* at 98:11–99:18. Those conversations led police to classify the defendant as a suspect. *Id.* at 28:6–33:12.

Police processed the crime scene. Tr. Trial Vol. 3, 177:6–178:20. They found a single spent shell casing outside the bar. *Id.* at 169:25–170:6; Tr. Trial Vol. 4, 99:19–100:1. That casing was head stamped FC 9-millimeter Luger. Tr. Trial Vol. 3, 169:25–170:6. They also found a live round head stamped FC 9-millimeter Luger. Tr. Trial Vol. 3, 173:6–174:6.

A couple hours after the High Life Lounge shooting, police received a call that shots had been fired at a nearby park. Tr. Trial Vol. 4, 6:22–7:11. An officer responded to the park, where he spoke with the defendant. *Id.* at 8:16–9:18. Police found two spent shell

casings at the park, both bearing the head stamp FC 9-millimeter Luger. *Id.* at 9:15–18, 18:8–13.

Testing revealed that the same gun fired the shell casing found outside the High Life Lounge and the shell casings found at the park. Tr. Trial Vol. 6, 18:16–24. Police never located that gun. *Id.* at 11:13–17. They did exclude Redemer's gun as the gun that fired those casings. Tr. Trial Vol. 5, 51:20–25.

Nyamal died; police looked for the defendant.

Because the defendant was a suspect, police tried to locate him. Tr. Trial Vol. 4, 28:6–29:2, 33:6–12. Two days after the shooting, they saw him driving a yellow Mustang. *Id.* at 28:3–22. Police followed him, and he sped off before he crashed the Mustang and fled on foot. *Id.* at 29:14–22, 33:17–19; Ex.49. Police gave chase but failed to catch him. Ex.49.

Nyamal died nine days after the shooting. Tr. Trial Vol. 3, 100:11–16. A medical examiner performed an autopsy. *Id.* at 100:6–8. He determined that Nyamal had been shot in the back of her neck. *Id.* at 101:1–7. The bullet moved, based on standard anatomical position lying face up, from right to left and at a slightly upward trajectory. *Id.* at 120:3–7, 121:2–7.

He explained that the bullet wound to Nyamal had an irregular shape instead of a clean, round hole typical of gunshot wounds. *Id.* at 106:17–107:24. That irregular shape meant the bullet that struck Nyamal likely hit an intermediate target causing it to tumble. *Id.* at 160:17–108:7. He testified that regularly spinning bullets leave round, regular, punched out entrance wounds. *Id.* at 106:17–24. The medical examiner determined that injuries from the gunshot wound killed Nyamal and ruled her death a homicide. *Id.* at 101:1–11.

The medical examiner also reviewed pictures of the gunshot wound to Maikudi's jaw. *Id.* at 108:18–111:15. At first, the doctor believed that Maikudi was shot from the front. *Id.* at 109:19–23. On closer inspection, the doctor realized that Maikudi had been shot from behind. *Id.* at 109:19–111:15. Based on standard anatomical position, the doctor opined that Maikudi was shot at a downward angle. *Id.* at 119:15–22. The doctor explained that Maikudi's body position when shot could mean that the bullet actually traveled on an upward trajectory. *Id.* at 141:14–143:5.

Police interviewed the defendant a day after Nyamal died. Tr. Trial Vol. 6, 27:13–15. He admitted he was at the High Life Lounge with his girlfriend but refused to say who else he went with. Ex.50 at

17:37:46–17:38:01. He denied having a gun multiple times, including when police showed him a picture from shortly before the shooting in which the defendant had two guns. *Id.* at 17:44:19, 17:46:29, 17:46:37, 18:12:58–18:13:28, 18:14:03–18:14:51. He also denied having a yellow Mustang and running from police. *Id.* at 17:50:29–17:51:34. The defendant said that he did not see anyone else with a gun. *Id.* at 17:43:15. He did not mention self-defense. Tr. Trial Vol. 6, 28:5–9; *see generally* Ex.50.

The State charged the defendant with four crimes: Count 1, first-degree murder for killing Nyamal; Count 2, attempted murder for shooting Maikudi; Count 3, willful injury causing serious injury for shooting Maikudi; and Count 4, "intimidation with a dangerous weapon-injure/provoke fear." Trial Info. (typography altered), Dkt. No. 0044; App. 5–6. The defendant pled not guilty. Tr. Trial Vol. 2, 35:13–15.

The defense.

At trial, the defendant argued that he shot Maikudi in self-defense. Tr. Trial Vol. 2, 51:12–52:5, 56:1–11; Tr. Trial Vol. 7, 54:12–17. He said that Maikudi stumbled as he ran and fired when he did so, hitting Nyamal. Tr. Trial Vol. 2, 56:1–11; Tr. Trial Vol. 7, 54:12–17.

The defendant said that when he arrived at the bar, members of the soccer team flashed guns at him in the parking lot. Tr. Trial Vol. 6, 105:6–19. He claimed that when Redemer and Maikudi exited the bar just before the shooting, both had a gun. *Id.* at 89:9–90:10.

The defendant said he went to break up the fight between his friends and Redemer. *Id.* at 86:11–88:24. As he moved to do so, Maikudi raised his arm and aimed a pistol at the defendant. *Id.* at 89:17–90:10. The defendant hit Maikudi's arm, causing Maikudi to fire and miss. *Id.* at 90:1–10. Only then did the defendant shoot Maikudi. *Id.* The defendant said he fired one shot. *Id.* at 90:1–18. He told the jury he left to defuse the situation, though he admitted that he had time to pour someone a drink in the back parking lot before leaving. *Id.* at 95:1–8, 117:11–118:4. He admitted that he lied to police, explaining that he was scared. *Id.* at 49:6–16.

The defendant emphasized still shots of security footage from near the time of the shooting. *See* Ex.F1–16, Dkt. No. 0310; Ex. App. 5–20. One showed Maikudi with an arm raised. Ex.F2, Dkt. No. 0310; Ex. App. 6. The defendant thought another showed Maikudi with a gun. Ex.F3, Dkt. No. 0310; Ex. App. 7. While the medical examiner agreed, Nyador, Maikudi, Nyalat Dak, and a detective disagreed,

testifying that the still shot did not show that Maikudi had a gun. Tr. Trial Vol. 2, 109:2–24; Tr. Trial Vol. 3, 24:9–12, 148:9–17; Tr. Trial Vol. 4, 90:22–91:6; Tr. Trial Vol. 5, 81:9–82:6. The defendant pointed out that some witnesses told police they heard multiple shots. Tr. Trial Vol. 4, 80:23–81:1; Tr. Trial Vol. 5, 53:18–54:9.

When the defendant cross-examined the medical examiner, the medical examiner agreed that if one accepted the defendant's version of the positioning of the defendant, Maikudi, and Nyamal, one bullet could not have hit Maikudi and Nyamal and produced their injuries. Tr. Trial Vol. 3, 136:6–20. But the medical examiner also testified that one bullet could have caused the injuries to Maikudi and Nyamal if their positioning was different than the defendant suggested. *Id.* at 111:16–112:7, 142:24–143:11, 152:18–153:3. Other witnesses said one bullet could have hit both Maikudi and Nyamal based on their injuries and their positioning in the surveillance video. Ex.92; Tr. Trial Vol. 5, 100:13–22, 102:8–24.

A jury convicted the defendant, and the district court sentenced him to prison.

The jury rejected the justification defense. Verdict, Dkt. No. 0187; App. 25–32. It convicted the defendant of two counts of assault with intent to cause serious injury, one for Nyamal and one for

Maikudi. *Id.* at 2, 3; App. 26, 27. It also convicted him as charged on Counts 3 and 4. *Id.* at 4, 6; App. 28, 30. It found that the defendant used a dangerous weapon in committing all four crimes. *Id.* at 7–8; App. 31–32.

At sentencing, the State noted that Counts 2 and 3 merge, but otherwise asked the court to run the sentences consecutively. Tr. Sentencing Hr'g, 7:11–16. The defendant asked for a five-year mandatory minimum due to the dangerous weapon enhancement. *Id.* at 4:1–6.

The district court sentenced the defendant to prison on all four counts. J. & Sentence, Dkt. No. 0194; App. 33–37. It ran Counts 1, 3, and 4 consecutively for a 22-year sentence, while it ran Count 2 concurrently. *Id.* at 2; App. 34. It also imposed a 10-year mandatory minimum prison sentence because the jury found the dangerous weapon enhancement on Counts 3 and 4. *Id.*; App. 43. The defendant timely appealed. Notice Appeal, Dkt. No. 0260; App. 38.

ARGUMENT

I. The State offered sufficient evidence that the defendant lacked justification and shot Nyamal.

Preservation of Error

The defendant preserved error by receiving a jury verdict. *State v. Crawford*, 972 N.W.2d 189, 202 (Iowa 2022).

Standard of Review

> [This Court] review[s] the sufficiency of the evidence for correction of errors at law. In conducting that review, [it is] highly deferential to the jury's verdict. The jury's verdict binds this court if the verdict is supported by substantial evidence. Substantial evidence is evidence sufficient to convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. In determining whether the jury's verdict is supported by substantial evidence, [this court] view[s] the evidence in the light most favorable to the State, including all legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence.

Id.

Merits

The defendant makes two attacks on the evidence's sufficiency. First, he says that the State failed to prove he was unjustified in firing a shot at Maikudi. Def. Br. at 31–39. Second, he claims that the State failed to prove that he shot Nyamal. *Id.* at 39–43.

A. The State offered sufficient evidence to prove that the defendant acted without justification when he shot unarmed Maikudi from behind.

The defendant claimed justification when he shot Maikudi. The district court instructed the jury: "A person may use reasonable force to prevent injury …. Reasonable force is only the amount of force a reasonable person would find necessary to use under the circumstance to prevent death or injury…. [The State] must prove that Defendant was not acting with justification …." Jury Instr. No. 21, Dkt. No. 0188; App. 12. It further instructed the jury that if the State:

> has proved any one of the following elements, Defendant was not justified:
>
> 1. Defendant started or continued the incident.
>
> 2. An alternative course of action was available to Defendant.
>
> 3. Defendant did not believe he was in imminent danger of injury, and the use of force was not necessary to save him.
>
> 4. Defendant did not have reasonable grounds for the belief.
>
> 5. The force used by the defendant was unreasonable.

Jury Instr. No. 22, Dkt. No. 0188; App. 13. The State offered sufficient evidence for the jury to find the defendant not justified.

1. The State offered sufficient evidence for the jury to find that the defendant was the only person armed, fired a single shot at Maikudi's back, and lied to try to get out of trouble.

The State offered sufficient evidence for a jury to find that only the defendant was armed. The defendant admitted he had a gun and fired a shot. Tr. Trial Vol. 6, 90:1–10. Maikudi and Redemer did not have guns. Tr. Trial Vol. 2, 138:12–17; Tr. Trial Vol. 3, 59:10–13. Multiple witnesses confirmed that they saw the defendant with a gun but did not see Maikudi or Redemer with a gun when the defendant shot Maikudi. Tr. Trial Vol. 2, 89:25–90:6; Tr. Trial Vol. 4, 57:6–58:25.

The defendant points to a still shot from a video right before the shooting to argue that it shows Maikudi was armed. Ex.F3, Dkt. No. 0310; Ex. App. 7; *see* Def. Br. at 43. But multiple witnesses testified that the still shot showed that Maikudi was unarmed; only one witness thought the still shot showed that Maikudi had a gun. Tr. Trial Vol. 2, 109:2–24; Tr. Trial Vol. 3, 24:9–12, 148:9–17; Tr. Trial Vol. 4, 90:22–91:6; Tr. Trial Vol. 5, 81:9–82:6. In other words, the still shot is too blurry to definitively say whether Maikudi had a gun. Given the lack of conclusive evidence to contradict the multiple eyewitnesses who said that Maikudi was unarmed, the jury could

credit those witnesses and find that only the defendant was armed. *See* Jury Instr. No. 5, Dkt. No. 0188 ("[A]ccept the evidence you find more believable."); App. 11.

The jury could also find that the defendant knew Maikudi was unarmed. Maikudi and the defendant both testified that they were feet apart when the defendant fired. Tr. Trial Vol. 2, 131:5–9; Tr. Trial Vol. 6, 90:1–10. The surveillance video generally confirmed that testimony. Ex.87 1:53:30–1:54:41. Moreover, the defendant said he could see Maikudi's hand, claiming that Maikudi held a gun. Tr. Trial Vol. 6, 90:1–10. The jury could credit the defendant's testimony that he could see Maikudi's hand, while rejecting his testimony that he saw a gun in Maikudi's hand, preferring to credit all the witnesses who said Maikudi was unarmed. Jury Instr. No. 5, Dkt. No. 0188; App. 11. That would leave the jury to believe that the defendant saw Maikudi's hand, but it held no gun, meaning that the defendant knew Maikudi was unarmed.

The State offered sufficient proof that the defendant fired the only shot. Multiple witnesses testified that they heard a single shot. Tr. Trial Vol. 2, 77:17–21, 93:11–14; Tr. Trial Vol. 3, 25:16–18; Tr. Trial Vol. 4, 66:3–4. True, some of those witnesses first told police

they heard multiple shots, but the jury could believe their testimony that they heard a single shot. Tr. Trial Vol. 4, 80:23–81:1; Tr. Trial Vol. 5, 53:18–54:9; Jury Instr. No. 5, Dkt. No. 0188; App. 11. Police recovered a single spent shell casing at the crime scene. Tr. Trial Vol. 3, 169:25–170:6; Tr. Trial Vol. 4, 99:19–100:1. That spent shell casing matched spent shell casings fired at a park later that night where police encountered the defendant. Tr. Trial Vol. 6, 18:16–24. The spent shell casing found at the scene also had the same head stamp as unfired ammunition in the defendant's other guns and truck. Tr. Trial Vol. 4, 108:13–20, 109:4–17, 110:24–111:5. And the defendant admitted that he fired a shot at the High Life Lounge. Tr. Trial Vol. 6, 90:1–10.

The evidence allowed the jury to find that the defendant shot Maikudi from behind. Maikudi testified that the defendant shot him, and the medical examiner confirmed that the bullet hit Maikudi from back to front. Tr. Trial Vol. 2, 135:1–136:3; Tr. Trial Vol. 3, 109:19–111:15. Plus, the video showed Maikudi turning away from the defendant and fleeing when he and Nyamal both fell. Ex.87 at 1:54:39–41.

The defendant's conduct after the shooting evinced his guilt. He stopped his friends attacking Redemer even though the defendant had just shot Redemer's friend and claimed that Redemer had a gun. *Id.* at 1:54:45–50; Tr. Trial Vol. 6, 89:9–90:10. Then the defendant leisurely surveyed the scene before strolling away as others panicked and ran. Ex.87 at 1:54:52–1:55:27. The defendant spoke to friends before getting in his truck and leaving. *Id.* at 1:57:00–55. He even poured a friend a drink before leaving. Tr. Trial Vol. 6, 95:1–8, 117:11–118:4. The defendant's calm exit while others fled allowed the jury to infer that the defendant knew he was the only person armed among himself, Redemer, and Maikudi.

The defendant's flight from police in a yellow Mustang two days later —which he oddly denied—further revealed his guilty conscience. Ex.49; Ex.50 at 17:50:24–17:51:26; *see State v. Wilson*, 878 N.W.2d 203, 215 (Iowa 2016) (explaining that evidence of flight is probative of consciousness of guilt as long as "evidence permits a reasonable inference the defendant acted out of fear of apprehension for the charged crime"). And his lying to police—that he was unarmed at the bar—was substantive evidence of his guilt. Ex.50 at 17:44:19, 17:46:29, 17:46:37, 18:12:58–18:13:28, 18:14:03–18:14:51; *State v.*

Ernst, 954 N.W.2d 50, 56 (Iowa 2021) ("[A] false story told by a defendant to explain or deny a material fact against him is by itself an indication of guilt and … is relevant to show that the defendant fabricated evidence to aid his defense." (quoting *State v. Cox*, 500 N.W.2d 23, 25 (Iowa 1993))).

The defendant's statement to police also contradicted his trial testimony. When the defendant spoke to police ten days after he shot Maikudi and Nyamal, he never mentioned self-defense. Tr. Trial Vol. 6, 28:5–9. He said he did not see anyone with a gun. Ex.50 at 17:43:08–18. Yet he claimed the opposite at trial. Tr. Trial Vol. 6, 89:9–90:10. And the State showed that the defendant had a history of lying in documents and to police. *Id.* at 99:11–23, 103:13–104:13. The defendant's defense depended on his credibility. He torpedoed that credibility when he told police multiple lies and contradicted the story he told at trial.

2. Those facts allowed the jury to find that the defendant was unjustified in shooting at Maikudi in a crowd.

The evidence allowed the jury to find that Maikudi was unarmed and that the defendant realized Maikudi was unarmed. From there, the jury could find that the defendant did not believe he

was in imminent danger of injury because Maikudi had no gun. Jury Instr. No. 22(3), Dkt. No. 0188; App. 13. The defendant could have taken an alternative course of action by helping stop his friends from beating Redemer instead of firing a shot at a person who the defendant knew to be unarmed. Jury Instr. No. 22(2), Dkt. No. 0188; App. 13. The defendant lacked reasonable grounds to believe that Maikudi had a gun because the defendant could see Maikudi's hand but it held no gun. Because the defendant knew Maikudi had no gun, any fear that the defendant had of Maikudi was unreasonable. Jury Instr. No. 22(4). Dkt. No. 0188; App. 13. And the force used by the defendant was unreasonable because it is not reasonable to shoot someone from behind who is both unarmed and fleeing. Jury Instr. No. 22(5), Dkt. No. 0188; App. 13.

Moreover, the facts showed that the defendant started the incident. *See* Jury Instr. No. 22(1), Dkt. No. 0188; App. 13. His friends attacked Redemer outside the bar. Tr. Trial Vol. 2, 131:1–132:19; Tr. Trial Vol. 3, 57:5–15. The defendant pointed a gun at Maikudi's head and shot Maikudi. Tr. Trial Vol. 3, 131:5–9, 135:1–136:3. That allowed the jury to find that the defendant started the incident by shooting Maikudi without reason.

In sum, the State offered evidence from which the jury could find that the defendant knew that Maikudi was unarmed. Nonetheless, he drew his pistol and shot Maikudi as Maikudi turned to flee. The defendant fired the only shot. And the defendant lied to cover his guilt. The State proved that the defendant was not justified.

B. The State proved that the defendant shot Nyamal.

The defendant also argues that the "evidence did not establish that [his] bullet is the one that struck Nyamal." Def. Br. at 39 (bold removed). He says that there was evidence from which the jury could have found that Maikudi had a gun, more than one shot was fired, and based on the positioning and bullet wounds to Maikudi and Nyamal, Maikudi likely shot Nyamal. *Id.* at 39–43. But the jury rejected that argument; it fares no better on appeal.

Notably, as already explained, the State offered sufficient evidence from which the jury could find that the defendant fired the only shot at the bar. And if the defendant fired the only shot, then his shot must have hit both Maikudi and Nyamal. To recapitulate: multiple witnesses said that they heard a single shot, a single spent shell casing was found at the scene, and the defendant admitted firing a shot. Tr. Trial Vol. 2, 77:17–21, 93:11–14; Tr. Trial Vol. 3, 25:16–18,

169:25–170:6; Tr. Trial Vol. 4, 66:3–4, 99:19–100:1; Tr. Trial Vol. 6, 90:1–18. That evidence allowed the jury to find that the defendant fired the only shot and it hit Maikudi and killed Nyamal.

The defendant attempts to show that it was impossible—or at least sufficiently improbable—that one bullet hit both Maikudi and Nyamal based on their positioning and the paths of their wounds, thereby preventing his conviction. Def. Br. at 40–41. He says that the medical examiner testified the "bullet path through Maikudi was downward while the trajectory of the bullet path through Nyamal … was upward." Def. Br. at 40 (citing Tr. Trial Vol. 3, 119:18–120:13). But those paths are relative to anatomical position; they do not mean the bullet changed trajectories mid-flight. Tr. Trial Vol. 3, 121:2–19. They depended on the position of the shooter and the victims. No one could say with certainty how the defendant, Maikudi, and Nyamal were positioned when the defendant fired the fatal shot. *See* Ex.87 at 1:54:39–41. The surveillance video is not clear enough to say, either. *Id.* Still, multiple witnesses testified that from what they could glean, the defendant's, Maikudi's, and Nyamal's positioning made it possible that one bullet fired by the defendant hit both Maikudi and Nyamal.

Tr. Trial Vol. 3, 111:16–112:7, 142:24–143:11, 152:18–153:3; Tr. Trial Vol. 5, 100:13–22, 102:8–24; Ex.92.

Moreover, the defendant's theory that Maikudi shot Nyamal is inconsistent with other evidence. Most notably, Nyamal's uneven gunshot wound is consistent with a tumbling bullet that hit an intermediate target—like Maikudi's face. Tr. Trial Vol. 3, 106:17–108:7. Yet the defendant offered no explanation for what caused the bullet to tumble if Maikudi shot it. *See* Def. Br. at 39–43.

The State offered sufficient evidence from which the jury could find that the defendant fired the only shot, and that shot hit Nyamal. It offered sufficient evidence.

II. The State agrees that the defendant's convictions for willful injury causing serious injury and assault with intent to commit serious injury merge.

Preservation of Error

The defendant is challenging an illegal sentence that can be corrected at any time. *State v. Love*, 858 N.W.2d 721, 723 (Iowa 2015).

Standard of Review

Review is for errors at law. *Id.*

Merits

The defendant argues that his convictions for willful injury causing serious injury to Maikudi and assault with intent to inflict serious injury on Maikudi "should have merged." Def. Br. at 44. The State agrees.

First, the defendant could not commit willful injury causing serious injury to Maikudi without also committing assault with intent to commit serious injury on him. *See State v. Johnson*, 950 N.W.2d 21, 24 (Iowa 2020) (stating that the first step in determining if convictions merge is comparing "the elements of the two offenses to determine whether it is possible to commit the greater offense without also committing the lesser offense"). Comparing the elements of the two convictions confirms that by committing willful injury causing serious injury the defendant also committed assault with intent to cause serious injury. *Compare* Jury Instr. No. 52, *with* Jury Instr. No. 51, Dkt. No. 0188; App. 22, 23. In fact, the district court submitted assault with intent to cause serious injury as a lesser included offense on the willful injury charge. Jury Instr. No. 57, Dkt. No. 0188; App. 24. And there were not multiple acts that could have produced two convictions. *See Love*, 858 N.W.2d at 724.

Second, there is no reason to believe that "the legislature intended multiple punishments for both offenses." *See Johnson*, 950 N.W.2d at 25 (describing step two in a merger analysis as determining whether the legislature intended double punishment for the two offenses). Indeed, the Iowa Supreme Court has determined that assault with intent to commit serious injury is a lesser included offense of willful injury causing bodily injury. *Love*, 858 N.W.2d at 722, 725. That holding applies. Count 2 should merge with Count 3.

III. The district court properly imposed mandatory minimums for the defendant using a dangerous weapon because the State pled the enhancement and the jury found that the defendant possessed a gun.

Preservation of Error

The defendant says that the "District Court imposed an illegal mandatory minimum sentence under Iowa Code section 902.7 where the enhancement was never charged." Def. Br. at 49 (bold removed). But he failed to preserve error.

The defendant argues that to impose the gun enhancement under Iowa Code section 902.7, the State had to charge it and a jury had to find that he possessed a gun while committing his crimes. *Id.* at 49–51 (citing Iowa R. Crim. P. 2.6(6)). While the jury found that the enhancement applied, he says that the State failed to charge the

enhancement. *Id.* at 52–53. Even if he is correct, that is a procedural defect in his sentence, not an illegal sentence. *See Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001) (explaining that "challenges to *illegal* sentences [are allowed] at any time, but" challenges to sentences that "are illegally *imposed*" "because of procedural errors" must be preserved). The sentence is not illegal because the district court can impose a mandatory minimum when the jury finds the facts necessary for the enhancement, but a pleading issue is procedural. *See Alleyene v. United States*, 570 U.S. 99, 103 (2013) (holding a jury must find facts beyond a reasonable doubt that increase a mandatory minimum); Iowa Rs. Crim. P. 2.4(5), 2.5(5) (disallowing reversal of a judgment due to non-prejudicial error in a trial information). Because the sentence is not illegal, he had to preserve error. *Tindell*, 629 N.W.2d at 359.

Instead of preserving error, the defendant waived any claim of error. He asked the court to impose a mandatory minimum of five years, presumably because he knew that the State charged the dangerous weapon enhancement, the jury found it, and it applied. Tr. Sentencing Hr'g, 4:1–6. He also never objected to the forms of verdict which included the special interrogatories asking the jury whether it

found that the defendant used a dangerous weapon in committing each count. Tr. Trial Vol. 7, 3:4–13; Verdict, Dkt. No. 0187; App. 25–32; *see generally* Tr. Verdict.

This case is unlike *State v. Dann*, 591 N.W.2d 635 (Iowa 1999) (per curiam), or *State v. Luckett*, 387 N.W.2d 298 (Iowa 1986). In those cases, the State failed to charge the gun enhancement and that enhancement was not submitted to the jury via special interrogatory. *Dann*, 591 N.W.2d at 637; *Luckett*, 387 N.W.2d at 301; *see Alleyene*, 570 U.S. at 103 (determining that it violated the Constitution to increase a mandatory minimum sentence based on a fact without a finding of that fact beyond a reasonable doubt). The Iowa Supreme Court found those failures made imposing the dangerous weapon mandatory minimum illegal. *Dann*, 591 N.W.2d at 637; *Luckett*, 387 N.W.2d at 301. But here, the jury found that the defendant possessed a dangerous weapon, making this case unlike *Dann* or *Luckett*. Verdict at 7–8, Dkt. No. 0167; App. 31–32; Trial Info., Dkt. No. 0044; App. 5–6.

Because the defendant targets a procedural defect, not an illegal sentence, he had to preserver error. He failed to do so. This Court should decline to review this claim.

Standard of Review

If this Court considers this issue, review is for correction of legal error. *Love*, 858 N.W.2d at 723.

Merits

"If the offense charged is one for which the defendant, if convicted, will be subject by reason of the Iowa Code to a greater minimum or maximum sentence because of some fact, such as use of a dangerous weapon, the allegation of such fact shall be contained in the indictment" and "submit[ted] to the jury [via] special interrogatory." Iowa R. Crim. P. 2.6(4); *see also* Iowa R. Crim. P. 2.5(5) (stating that rules applying to indictments apply to informations). The defendant acknowledges that the jury found that he used a dangerous weapon via special interrogatory, so his claim depends on the State not alleging that he used a dangerous weapon. Def. Br. at 52. But the State alleged that he used a dangerous weapon.

The State alleged that the defendant used a dangerous weapon in the trial information. It alleged that the defendant committed "intimidation with a dangerous weapon-injure/provoke fear, in violation of Iowa Code Section(s) 708.6, with intent to provoke fear or anger in another person, shoot, throw, launch or discharge a

dangerous weapon at … an assembly of people….” Trial Info., Dkt. No. 0044; App. 5–6. Because section 708.6 is a forcible felony subject to the dangerous weapon enhancement, the charges twice saying that the defendant used a dangerous weapon in committing a forcible felony adequately alerted the defendant that the State alleged that the dangerous weapon enhancement applied. Iowa Code §§ 702.11, 708.4, 902.7. The State adequately charged the enhancement.

The minutes augmented that conclusion. They informed the defendant that the State would present evidence that he fired a shot outside a night club that hit Maukudi and killed Nyamal. Mins. Test. at 2–3, 5, Dkt. No. 0045; Conf. App. 5–6, 8. The minutes further informed him that witnesses would testify he fired his gun into a crowd. *Id.*; Conf. App. 5–6, 8. He knew that every charge included him using a dangerous weapon.

That is probably why the defendant never objected to the special interrogatories asking the jury to find whether or not he used a dangerous weapon in committing each count. The jury made the required findings. Verdict at 7–8, Dkt. No. 0188; App. 31–32. The defendant also asked the district court to impose the dangerous weapon enhancement. Tr. Sentencing Hr’g, 4:1–6.

It is worth remembering that the purpose of a trial information is putting the defendant on notice of the charges so that he may defend himself. *State v. Grice*, 515 N.W.2d 20, 22 (Iowa 1994). The trial information did that by telling the defendant that the State alleged that he used a dangerous weapon. Trial Info., Dkt. No. 0044; App. 5–6. The defendant defended the charges by arguing justification. *See* Jury Instr. Nos. 21–30; Dkt. No. 0188; App. 12–21. True, the trial information does not cite section 902.7 or mention a dangerous weapon in reference to each charge. But the defendant makes no argument that the rules required either.

In any event, such a technical pleading error, if it is one, does not warrant reversal. Iowa Rule of Criminal Procedure 2.4(5) provides that "[a] trial judgment or other proceeding shall not be affected by any defect in the [information] that does not prejudice a substantial right of the defendant." Iowa R. Crim. P. 2.4(5), 2.5(5). Here, the defendant identifies, at most, a "defect in the [information]." *Id.* Yet he failed to argue that he suffered "prejudice [to] a substantial right." *Id.*; Def. Br. at 49–53. Because he failed to establish prejudice to a substantial right, the judgment and sentence

"shall not be affected." Iowa Rs. Crim. P. 2.4(5), 2.5(5). The Rules require affirming.

The State pled that the defendant used a dangerous weapon when he fired a gun into a crowd and seriously injured Maukudi by shooting him in the face. The district court properly granted the defendant's request that he receive a mandatory minimum. It properly imposed the dangerous weapon enhancement on Counts 3 and 4.

CONCLUSION

For the foregoing reasons, the State requests that this Court affirm the defendant's convictions. It further requests that this Court affirm his sentence, except that it merge Counts 2 and 3.

REQUEST FOR NONORAL SUBMISSION

The State agrees with the defendant that this case is appropriate for nonoral submission.

Respectfully submitted,

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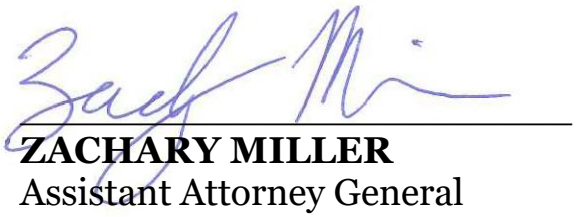
Attorney General of Iowa



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