IN THE SUPREME COURT OF IOWA
Supreme Court No. 23–1390
Polk County No. SRCR365958

STATE OF IOWA,
Plaintiff–Appellee,

vs.

TERRANCE E. MANNING, JR.,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE HEATHER L. LAUBER, JUDGE

BRIEF FOR APPELLEE

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ROUTING STATEMENT

This case can be decided based on existing legal principles, so transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(3).

NATURE OF THE CASE

A jury convicted the defendant, Terrance Edward Manning, Jr., of willful injury causing serious injury, and he appeals.

STATEMENT OF THE FACTS

The victim, Stenslaw Makauy, and his girlfriend gave the defendant a ride home. D0138, Tr. Trial Day 2 (6/27/2023) at 59:15–24. During the ride, the defendant disrespected the victim's fiancée. *Id.* at 60:1–12. The victim's girlfriend stopped their vehicle at a QuikTrip, and the victim told the defendant to get out. *Id.* at 60:10–61:1. The defendant refused. *Id.* at 61:12–18.

The victim tried to open the defendant's door multiple times, but the defendant pulled the door shut. *Id.* at 61:19–62:3. The victim re-entered the vehicle's passenger seat. *See* Ex.2 (Officer body-camera) at 2:10–21. His girlfriend began reversing, then stopped. *Id.* at 2:00–08. The victim exited the vehicle. *Id.* at 2:10–17.

As the victim rounded the back of the vehicle, the defendant exited. *Id.* at 2:10–21. He punched the victim in the face, dropping him. *Id.* at 2:18–21. He punched the victim in the head while the victim lay on the

ground then kicked him in the head twice. *Id.* at 2:21–32. The victim stood up. *Id.* at 2:35. He raised his hands in a defensive posture. *Id.* at 2:35–45. The defendant advanced and told the victim "I will put you to sleep. I'll kill you. I will knock you out." *Id.*; D0138 at 66:7–10. He punched the victim in the head, dropping the victim again. Ex.2 at 2:35–47. The attack knocked out four of the victim's teeth, gave him a bloody mouth, swollen face, and fractured his nose and eye. D0138 at 62:4–13, 63:22–64:18; D0072–73, 0075, 0077–78, Exs.5–9 (photos victim, 6/21/2023). The victim still had blurry vision six months later. D0138 at 64:10–18.

The victim's girlfriend took the defendant to a nearby Conoco. *Id.* at 44:10–18, 104:18–22. Meanwhile, police were called to QuikTrip. *Id.* at 39:23–40:7. Police talked to the victim and his girlfriend and watched surveillance footage of the altercation. *Id.* at 41:3–14, 86:3–16; Ex.2.

After that, police arrested the defendant. D0138 at 86:17–87:11. He admitted to knocking the victim over in a fight, though the defendant claimed self-defense. Ex.1 (Video Defendant in Police Car) at 0:52–1:58, 3:30–50. The State charged the defendant with willful injury causing serious injury. D0009, Trial Info. (1/11/2023). He elected a jury trial. D0138.

Before trial, the defendant moved to exclude body camera video of the surveillance video. D0138 at 3:10–14, 10:24 to 12:24. In responding to the 911 call, an officer had a QuikTrip clerk call security to view surveillance video. *Id.* at 6:7–23. The officer recorded the surveillance video on his body camera. Ex.2. Later, the State requested the surveillance video, but QuikTrip sent the wrong video, and the correct video was "no longer available" when the State realized the mistake. D0138 at 24:19–25:3. The defendant argued authentication and best evidence. *Id.* at 3:10–14, 10:24 to 12:24. He acknowledged that the body camera video was not altered, and he did not allege that the surveillance video was altered, though he noted that the security technician switched cameras and zoomed in. *Id.* at 22:18–24:16. The district court overruled the objections. *Id.* at 28:12–34:21.

At trial, the defendant testified and claimed self-defense. *Id.* at 124:8–22. He said the victim tried to open his door multiple times and got in the driver's seat and repeatedly hit him. *Id.* at 120:4–121:12. Only after that did the defendant get out of the vehicle and hit the victim to stop the attack. *Id.* at 124:8–22.

The defendant watched the surveillance video at trial. *Id.* at 129:16–17. He admitted that he punched the victim while the victim was down and kicked the victim twice while down. *Id.* at 129:18–130:13. The defendant

agreed that a viewer could "perceive[]" that he "approached the victim in an aggressive manner with dialogue," then "struck [the victim] one final time in the head." *Id.* at 132:2–8. The defendant agreed that he assaulted the victim. *Id.* at 135:1–2.

The jury convicted the defendant as charged. D0085, Verdict (6/28/2023). He timely appealed. D0109, Order Disposition (8/25/2023); D0116, Notice Appeal (8/29/2023).

ARGUMENT

I. The district court properly admitted a body camera video showing a surveillance video over authenticity and best evidence objections.

Preservation of Error

The defendant preserved error by raising this claim and receiving an adverse ruling. D0138 at 3:10–14, 10:24 to 12:24, 28:12–31:25.

Standard of Review

This Court reviews the admission of evidence for abuse of discretion. *State v. Paredes*, 775 N.W.2d 554, 560 (Iowa 2009)

Merits

The defendant argues that the "district court erred by allowing the State to enter the QuikTrip surveillance video, as captured on the responding officer's body camera video, into evidence." Def. Br. at 23 (bold removed). He says that the "district court abused its discretion in admitting

Exhibit 2" because "the State failed to properly authenticate" the QuikTrip video and "the video is not the best evidence." *Id.* at 24–25. The district court acted within its discretion in denying both objections.

A. The testimony of a responding officer, victim, and defendant all proved that the surveillance video showed the defendant attacking the victim, authenticating the video.

To authenticate evidence, "the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Iowa Rule Evid. 5.901(a). "Testimony of [a] witness with knowledge … that an item is what it is claimed to be" is sufficient. *Id.* at 5.901(b)(1) (italics removed).

The State authenticated the QuikTrip surveillance video of the assault captured on the officer's body camera by testimony from the officer, victim, and defendant. The officer testified that exhibit 2 was his body camera video from responding to this assault and it accurately recorded the QuikTrip surveillance video. D0138 at 44:10–45:7. The officer watched the surveillance video shortly after the assault occurred. *Id.* at 5:23–7:24. The surveillance video "match[ed] the representations" made by the victim and his girlfriend to the officer about what happened. *Id.* at 45:13–17. The victim testified that the surveillance video showed the defendant beating him. *Id.* at 62:15–66:12. While the victim initially disputed that the video

showed the beating because the victim thought he was in a Black Camry, not a Silver SUV, he later realized that the video showed the assault. *Id.* Finally, the defendant saw the video on the stand and agreed that it showed him kicking and punching the victim. *Id.* at 129:16–132:8. He did not dispute the video's accuracy. *Id.* The responding officer, victim, and defendant all agreeing that the surveillance video showed the assault authenticated the surveillance video. *State v. Deering*, 291 N.W.2d 38, 40 (Iowa 1980) ("When … a witness to the event purportedly depicted by the film testifies that the film accurately portrays that event, a foundation has been established upon which the trial court, in the exercise of its sound discretion, may admit the film into evidence.").

The defendant questions the district court's rationale to admit the video under the silent witness rule. Def. Br. at 24, 25–29. Under that rule, a video or photo is admissible even when no witness can testify to what happened in the recording if a witness can explain the reliability of the recording procedures. *E.g. Washington v. State*, 961 A.2d 1110, 1116 (Md. 2008). Iowa has adopted that rule. *State v. Holderness*, 293 N.W.2d 226, 230 (Iowa 1980). Yet the State need not rely on that rule because three witnesses with knowledge testified that the surveillance video accurately recorded what happened. *See* Iowa R. Evid. 5.901(a), (b)(1).

The defendant's attempt to contest the authenticity of the surveillance video rings hollow when he accepted the video's accuracy on the stand. The district court acted within its discretion in admitting the video.

B. The best evidence rule does not apply to the surveillance video. Even if it did, the body camera video was an acceptable duplicate.

The best evidence rule requires a party to produce an "original writing, recording, or photograph" when such is offered "to prove its content…." Iowa R. Evid. 5.1002. A duplicate, meaning "a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process," "is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity…." *Id.* at 5.1001(e), 5.1003. The defendant argues that admitting the body camera video to show the surveillance video violated the best evidence rule. Def. Br. at 32–35. He is wrong for multiple reasons.

First, the best evidence rule does not apply to a video when it is offered to show what a witness has testified about. As discussed in the State's authenticity argument, that happened here. The officer, victim, and defendant all testified to what they knew about the defendant hitting and kicking the victim. D0138 at 44:10–45:17, 62:15–66:12, 129:16–132:8. In doing so, they used the video and agreed it showed the attack. *Id.* The video

was not offered to prove its contents, but rather to show what the witnesses testified about, so the best evidence rule did not apply. *State v. Khalsa*, 542 N.W.2d 263, 268 (Iowa Ct. App. 1995) (citing *United States v. Fagan*, 821 F.2d 1002, 1008–09, n. 1 (5th Cir.1987)).

Second, the best evidence rule does not apply when the opposing party does not seriously dispute the content of the evidence. *Id.*; *State v. Evans*, No. 19–2083, 2020 WL 7385280, at *3–4 (Iowa Ct. App. Dec. 16, 2020). The defendant agreed that the surveillance video showed him hitting and kicking the victim. D0138 at 129:16–132:8. Because the defendant agreed the surveillance video showed his actions, the best evidence rule did not bar its admission.

Third, the district court ruled that the defendant's qualms with the surveillance video went to the weight of that evidence. The best evidence rule is inapplicable when the weight of the evidence is all that is contested. *Khalsa*, 542 N.W.2d at 268; *Evans*, 2020 WL 7385280, at *3.

Last, even if the best evidence rule applied, the State satisfied it by offering a duplicate of the surveillance video. The body camera video is a photographic, electronic, or other equivalent process that accurately reproduced the surveillance video. Ex.2; *see also* Def. Br. at 33–34 (granting that body camera video would be an acceptable duplicate of the

surveillance video if the surveillance video is accurate). The defendant did not contest the surveillance video's accuracy. D0138 at 22:18–24:16, 129:16–132:8. And while the QuikTrip security employee clicked between cameras and zoomed in, that person did not edit or change the recording. Ex.2 at 1:57–2:50. Because the body camera produced an accurate copy of the original, it is an admissible duplicate. Iowa R. Evid. 5.1001(e), 5.1003.

The district court acted within its discretion in overruling the defendant's best evidence objection. This Court should affirm.

C. Any error in admitting the body camera video was harmless.

Even if the district court erred by admitting the body camera video containing the surveillance video, such error was harmless because other evidence duplicated that video and because the State offered overwhelming evidence of guilt. Iowa Rule Evid. 5.103(a); *State v. Newell*, 710 N.W.2d 6, 19–20 (Iowa 2006). The State discusses each point in turn.

As for duplicate evidence, the defendant admitted to doing everything the video showed. Even if the video had not been admitted as substantive evidence, the State would have played it to impeach the defendant's self-defense claim. When the State played the video to impeach the defendant at trial, he agreed that he punched the victim while down; kicked the victim twice in the head while the victim lay on the ground; approached the victim

aggressively and punched him, knocking him down again; and assaulted the victim. D0138 at 129:16–132:8. That testimony, coupled with the video playing for impeachment, duplicated the surveillance video. The victim also testified to the defendant repeatedly hitting him and kicking him, further duplicating the video. *Id.* at 62:15–66:12.

The State also offered overwhelming evidence of the defendant's guilt. The victim said that the defendant hit him repeatedly, knocking him out. *Id.* He said that the defendant kicked him in the head. *Id.* at 65:3–10. While attacking the victim, the defendant said he would kill him. *Id.* at 66:7–10. The victim described the gruesome injuries from that attack, corroborated by photos. *Id.* at 63:22–64:18; D0072–73, 0075, 0077–78. The defendant confirmed the attack, saying he assaulted the victim, punched him while down, and kicked him twice while down. D0138 at 129:16–132:8. And as explained, the State would have played the video to impeach the defendant's self-defense testimony, testimony he had to give to get a justification instruction. The State offered overwhelming evidence of the defendant's guilt.

True, the surveillance video was good evidence, and the State played it multiple times during closing argument. But the defendant admitted to what the video showed and did not contest its accuracy. The victim

described the attack. Admitting the video under those circumstances was harmless.

II. The State offered sufficient evidence that the defendant specifically intended to inflict serious injury on the victim when he punched and kicked the victim in the head and said he would kill the victim.

Preservation of Error

Receiving a jury verdict preserves a sufficiency claim. *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." *State v. Kelso-Christy*, 911 N.W.2d 663, 666 (Iowa 2018). It considers all evidence and views it in the light most favorable to the State, "including legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence." *State v. Tipton*, 897 N.W.2d 653, 692 (Iowa 2017) (quoting *State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005)).

Merits

To convict the defendant of willful injury causing serious injury, the State had to prove that "the defendant punched and/or kicked [the victim]" with the "specific[] inten[t] to cause a serious injury to [the victim,]" "caus[ed] a serious injury," and the "Defendant was acting without

justification." D0084, Jury Instr. No. 17 (6/28/2023). The defendant argues that "[t]he State presented insufficient evidence that [he] specifically intended to commit a serious injury to [the victim.]" Def. Br. at 36 (bold removed). He is wrong.

The defendant said that he was going to "kill the victim" during the vicious attack. D0138 at 66:7–10. That threat alone allowed the jury to infer that he had the specific intent to cause a serious injury.

The defendant's vicious attack on the victim offered further evidence of his specific intent to cause a serious injury. The defendant hit the victim in the head multiple times while the victim lay on the ground, including kicking him in the head twice. Ex.2 at 1:57–2:50. When the victim got back up and raised his hands in a submissive posture, the defendant aggressively approached the victim and punched him in the face, knocking him over again. *Id.* at 2:40–47. The jury could infer the defendant's specific intent from the ferocity of his attack, including kicking a defenseless person twice in the head. D0084, Jury Instr. Nos. 13, 14; *State v. Walker*, 610 N.W.2d 524, 525–27 (Iowa 2000) (holding "several swift punches to the head" was a sufficient factual basis for a guilty plea to "C" felony willful injury and kick to head while victim down supported voluntary manslaughter); *State v.*

Hilpipre, 395 N.W.2d 899, 903 (Iowa Ct. App. 1986); *State v. Christner*, No. 0-314, 99–830, 2000 WL 853367, at *3 (Iowa Ct. App. June 28, 2000).

Moreover, the defendant does not contest that he caused serious injury. Def. Br. at 36–42. The extent of the victim's injuries offered further proof of the defendant's intent to inflict those injuries. *State v. Bell*, 223 N.W.2d 181, 184 (Iowa 1974).

The State offered sufficient evidence of the defendant's intent to cause serious injury. This Court should affirm.

CONCLUSION

For the foregoing reasons, the State requests that this Court affirm the defendant's conviction.

REQUEST FOR NONORAL SUBMISSION

This case is appropriate for nonoral submission.

Respectfully submitted,

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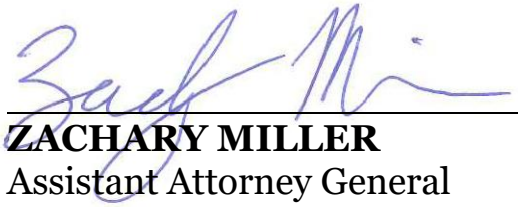

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