

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

APPLICATION FOR FURTHER REVIEW
(Decision Date: Feb. 19, 2025)

BRENNA BIRD
Attorney General of Iowa

ZACHARY MILLER
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
Zachary.Miller@ag.iowa.gov

KIMBERLY GRAHAM
Polk County Attorney

RILEY NOBLE & LUCAS STERBICK
Assistant County Attorneys

ATTORNEYS FOR PLAINTIFF–APPELLEE

QUESTION PRESENTED FOR REVIEW

Should an Iowa appellate court consider the entire record before reversing a ruling that a party authenticated an exhibit?

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STATEMENT SUPPORTING FURTHER REVIEW

This Court should grant further review because the opinion of the Court of Appeals conflicts with this Court's decisions on an important matter. Iowa R. App. P. 6.1103(1)(b)(1). In deciding that the State failed to authenticate a surveillance video, the panel held that it could only consider the record at the time the district court admitted the video. Slip Op. at 12. That decision conflicts with this Court's decisions that evidentiary rulings are affirmed on any ground. *E.g. State v. Fontenot*, 958 N.W.2d 549, 555 (Iowa 2021). It also conflicts with the rule that appellate courts only reverse when evidentiary errors affect a defendant's "substantial rights." *State v. Krogmann*, 998 N.W.2d 141, 153 (Iowa 2023) (quoting Iowa R. Evid. 5.103(a)). And it conflicts with two Court of Appeals opinions. *State v. Canady*, No. 22–0397, 2023 WL 4531668, at *5, n.8 (Iowa Ct. App. July 13, 2023) *rev'd on other grounds* 4 N.W.3d 661 (Iowa 2024); *In re. S.D.*, No. 22–0683, 2022 WL 2347512, at *3, n.5 (Iowa Ct. App. June 29, 2022). Because the panel's error deals with evidence, it is likely to arise in other cases, confusing the law. *See* Iowa R. App. P. 6.1103(1)(b)(4). This Court should grant further review to confirm that Iowa appellate courts consider the entire record when deciding whether a party properly authenticated evidence.

STATEMENT OF THE CASE

Nature of the Case

The State seeks further review of a Court of Appeals opinion reversing the defendant's willful injury causing serious injury conviction. Iowa R. App. P. 6.1103.

Facts

The victim and his fiancée gave the defendant a ride home. D0138, Tr. Trial Day 2 (6/27/2023) at 59:15–24. Because the defendant disrespected the victim's fiancée, she stopped at a QuikTrip, and the victim told the defendant to get out. *Id.* at 60:1–61:18. That led to an altercation in which the defendant brutally beat the victim. *Id.* at 62:4–13, 63:22–64:18, 66:7–10; D0072, 0073, 0075, 0077, 0078, Exs.5–9 (photos victim, 6/21/2023).

QuikTrip surveillance cameras captured it. Ex.2 (Officer body-camera) at 2:10–47. At trial, the State offered a responding officer's body camera video showing that QuikTrip surveillance video. *Id.* The officer testified that his body camera video accurately recorded the surveillance video, he watched the surveillance video shortly after the assault occurred, and it “match[ed] the representations” the victim and his fiancée made about what happened. D0138 at 5:23–7:24, 44:10–45:17. The defendant objected to the surveillance video on authentication and best evidence grounds, though he acknowledged that the body camera video was not

altered and did not allege that the surveillance video was altered. 3:10–14, 10:24 to 12:24, 22:18–24:16. The district court admitted the exhibit. *Id.* at 28:12–34:21.

Later, the victim testified. He doubted at first that the surveillance video showed the assault before realizing that it did. *Id.* at 62:15–66:12. The defendant watched the video when he testified and agreed that it showed him kicking and punching the victim. *Id.* at 129:16–132:8.

The jury convicted the defendant as charged. D0085, Verdict (6/28/2023). The defendant appealed, and the Court of Appeals reversed his conviction, ordering a new trial. Slip Op. at 15. It held that “the district court abused its discretion by admitting the [surveillance video] without proper authentication.” *Id.* at 12. It reasoned that “[e]ven if” the victim’s and defendant’s “testimony was consistent with what the video showed, they could not retroactively authenticate the already-admitted exhibit.” *Id.* The State seeks further review.

ARGUMENT

I. The Iowa Court of Appeals erred by refusing to consider the entire record before determining that the district court abused its discretion in ruling that the State properly authenticated a video.

The panel limited its review of the authentication ruling to the record at the time the court admitted the exhibit. Slip Op. at 12. It refused to consider later testimony proving the surveillance video's authenticity, explaining that "[e]ven if th[at] testimony was consistent with what the video showed, [it] could not retroactively authenticate the already-admitted exhibit." *Id.* This rule conflicts with two lines of this Court's cases.

First, Iowa appellate courts affirm evidentiary rulings on any ground apparent in the record. *E.g.*, *Fontenot*, 958 N.W.2d at 555; *DeVoss v. State*, 648 N.W.2d 56, 62 (Iowa 2002); *State v. Hinkle*, 229 N.W.2d 744, 748 (Iowa 1975). Courts do so because a retrial where the error is easily corrected undermines judicial economy and finality. *DeVoss*, 648 N.W.2d at 62. The panel's holding conflicts with that rule. By refusing to consider evidence received after the district court admitted the video, the district court overlooked a ground upon which it could affirm: that the victim's and defendant's testimony authenticated the video. The panel erred.

Second, the Iowa Rules of Evidence provide that a defendant can only win reversal from an evidentiary error that affects his substantial rights.

Iowa R. Evid. 5.103(a). This Court's cases confirm that rule. *Krogmann*, 998 N.W.2d at 153. The panel overlooked that principle when it refused to consider if the entire record showed that the surveillance video was authentic before reversing. *See* Slip Op. at 12. But a defendant's substantial right is not affected by the premature admission of an exhibit when the entire record shows that the exhibit is admissible. In other words, admitting an exhibit too soon when the record later shows the evidence admissible is a harmless error. *See* Iowa R. Evid. 5.103(a). The panel erred by not applying this principle.

Decisions from other courts confirm the State's position. Both federal courts and other state courts will not order a new trial when a trial court prematurely admits an exhibit over an authentication objection when the exhibit is later authenticated. *E.g. United States v. Kimble*, 54 F.4th 538, 549 (8th Cir. 2022); *United States v. Espinal-Almeida*, 699 F.3d 588, 609 (1st Cir. 2012); *State v. Demouchet*, 353 So.2d 1025, 1029 (La. 1977); *Brantley v. State*, 899 S.E.2d 284, 296 (Ga. Ct. App. 2024). Iowa's Court of Appeals has twice applied that rule. *Canady*, 2023 WL 4531668, at *5, n.8; *S.D.*, 2022 WL 2347512, at *3, n.5. And this Court has affirmed admission of an exhibit over an authenticity objection by relying on evidence admitted after the exhibit's admission, confirming that the panel erred. *State v.*

Canady, 4 N.W.3d 661, 668 (Iowa 2024); *Canady*, 2023 WL 4531668, at *5, n.8.

The panel’s decision will result in inefficiency and undermine finality. Because the State eventually authenticated the surveillance video at trial, it will do so again on retrial. The responding officer testified his body camera accurately recorded the surveillance video, he watched that video shortly after the assault, and it “match[ed] the representations” made by the victim and his girlfriend to the officer about what happened. DO138 at 5:23–7:24, 44:10–45:17. That testimony coupled with the video showing the QuikTrip and altercation might have been enough to authenticate the video. *See* Iowa R. Evid. 5.901(b)(1), (4). Adding the victim’s testimony made the case stronger. The victim did not recognize the video at first because he thought he had been in a different car, but upon watching the video realized it showed the assault. DO138 at 62:15–66:12. And the defendant’s testimony sealed it. He watched the video and agreed that it showed him kicking and punching the victim. *Id.* at 129:16–132:8. Together, that evidence proved that the State met the relatively low bar of “produc[ing] evidence sufficient to support a finding that the item is what the proponent claims it is.” Iowa R. Evid. 5.901(a); *see also State v. Goodwin*, No. 18–1822, 2020 WL 1551149, at *4 (Iowa Ct. App. Apr. 1, 2020) (“[T]he burden to authenticate

is not high.” (quoting *United States v. Hassan*, 742 F.3d 104, 133 (4th Cir. 2014))).

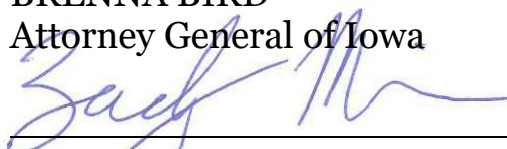
Ordering a new trial here would be especially unfair because the defendant did not claim the surveillance video was inaccurate. Instead, he admitted that it showed him hitting and kicking the victim. Do138 at 129:16–132:8. The defendant received a fair trial; there is no reason to have another. *State v. Webster*, 865 N.W.2d 223, 233 (Iowa 2015) (“[T]he accused is not entitled to a perfect trial, but only a fair trial.”).

CONCLUSION

This Court should grant further review to confirm that courts are to consider the entire record when reviewing authentication rulings. It should then reverse the panel’s opinion and affirm the district court’s judgment because, considering the entire record, the State authenticated the surveillance video.

Respectfully submitted,

BRENNNA BIRD
Attorney General of Iowa



ZACHARY MILLER
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
Zachary.Miller@ag.iowa.gov

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(g) and 6.903(1)(i)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **1,413** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

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ZACHARY MILLER
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
Zachary.Miller@ag.iowa.gov