ELECTRONICALLY FILED OCT 10, 2025 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA
Supreme Court No. 24-1691
Polk County No. FECR368187

STATE OF IOWA,
Plaintiff–Appellee,

vs.

JAMES MIKALE WIGGINS,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE DAVID NELMARK, JUDGE

BRIEF FOR APPELLEE

BRENNA BIRD
Attorney General of Iowa

TIMOTHY M. HAU
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
Tim.Hau@ag.iowa.gov

KIMBERLY GRAHAM
Polk County Attorney

KEVIN D. HATHAWAY AND JUSTIN G. ALLEN
Assistant County Attorneys

ATTORNEYS FOR PLAINTIFF–APPELLEE

TABLE OF CONTENTS

TABLE OF AUTHORITIES 4

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW 9

ROUTING STATEMENT 10

NATURE OF THE CASE 10

STATEMENT OF THE FACTS 10

ARGUMENT 13

I. A deputy's presence behind the witness box was not inherently prejudicial to Wiggins's right to a fair trial. The district court exercised its discretion to implement this reasonable security measure. 13

A. A deputy's presence near the witness stand does not inherently prejudice the right to a fair trial and Wiggins has not proven it prejudiced him here. 15

1. Courts consistently hold there is no inherent prejudice from officers stationed near the defendant to maintain secure proceedings. 16

2. Wiggins made no attempt to establish actual prejudice below. Without it, there is no need to repeat his trial. 26

B. The district court reasonably exercised its discretion to seat a single deputy between the witness stand and the jury to maintain courtroom security. 30

C. Even if this Court found that the district court erred or abused its discretion, that error was harmless in the context of this prosecution. 34

D. Conclusion: Wiggins received a fair trial. 38

II. Strong evidence supported the jury's verdict finding Wiggins shot Hutchins in the back without justification. 38

A. Wiggins lacked a reasonable belief force was necessary. 42

B. The force Wiggins used was unnecessary and disproportionate. It was not reasonable. 45

C. Wiggins's disagreement with the jury's conclusions is not grounds to vacate its verdict. 48

III. A reference to "aiding and abetting" within the instruction defining malice was legally correct, relevant in the case, and ultimately harmless 49

A. This was a first-degree murder trial. The jury could use Wiggins's accomplices acts to determine his intent. 51

B. Any error in the malice instruction was non-prejudicial: the jury watched as Wiggins shot Hutchins with a dangerous weapon. 55

IV. Although a reasonable term of probation, the Iowa Code does not allow a district court to order participation in a Victim Offender Dialogue program for defendants like Wiggins who are only sentenced to carceral sentences 61

CONCLUSION 64

REQUEST FOR NONORAL SUBMISSION 64

CERTIFICATE OF COMPLIANCE 65

TABLE OF AUTHORITIES

Federal Cases

Ainsworth v. Calderon, 138 F.3d 787 (9th Cir. 1998) 20

Boyde v. California, 494 U.S. 370 (1990) 55

Deck v. Missouri, 644 U.S. 622 (2005) 22, 23

Dunlop v. United States, 165 U.S. 486 (1897) 55

Estelle v. Williams, 425 U.S. 501 (1976) 15, 17, 18

Holbrook v. Flynn, 475 U.S. 560 (1986) 10, 16, 17, 19, 20, 24, 26, 30, 33

Illinois v. Allen, 397 U.S. 337 (1970) 15

Morgan v. Aispuro, 946 F.2d 1462 (9th Cir. 1991) 18

Sochor v. Florida, 504 U.S. 527 (1992) 23

Taylor v. Kentucky, 436 U.S. 478 (1978) 15

United States v. Elder, 90 F.3d 1110 (6th Cir. 1996) 20, 27

United States v. Vasquez, 745 F.App'x, 291 (9th Cir. 2018) 20

Wainwright v. Lockhart, 80 F.3d 1226 (8th Cir. 1996) 20

State Cases

Bruce v. State, 569 A.2d 1254 (Md. 1990) 20, 31

In re Morrow, 616 N.W.2d 544 (Iowa 2000) 13

Kills on Top v. State, 901 P.2d 1368 (Mont. 1995) 20

Ludman v. Davenport Assumption High Sch., 895 N.W.2d 919 (Iowa 2017) 54

People v. Hernandez, 247 P.3d 167 (Cal. 2011) 33, 34

People v. Johnson, No. 329134, 2017 WL 4078051 (Mich. Ct. App. Sept. 14, 2017) 20, 27, 35

People v. Peeples, 793 N.E.2d 641 (Ill. 2002) 15, 20

People v. Stevens, 218 P.3d 272 (Cal. 2009) 19, 20

Porter v. Commonwealth, 661 S.E.2d 415 (Va. 2008) 20

Revelo-Ramos v. State, No. 1867, 2021 WL 6057227 (Md. Ct. Spec. App. Dec. 20, 2021) 33

Rivera v. Woodward Res. Ctr., 865 N.W.2d 887 (Iowa 2015) 55

State v. Bartenhagen, No. 22-1489, 2024 WL 1295960 (Iowa Ct. App. Mar. 27, 2024) 31

State v. Black, 282 N.W.2d 733 (Iowa 1979) 52

State v. Bratcher, No. 14-2058, 2016 WL 1677997 (Iowa Ct. App. Apr. 27, 2016) 21, 26, 27, 35

State v. Butler, 243 N.W.2d 232 (Iowa 1976) 21

State v. Crawford, 972 N.W.2d 189 (Iowa 2022) 38

State v. Crawford, 974 N.W.2d 510 (Iowa 2022) 53

State v. Cruz, No. 24-0168, 2025 WL 707158 (Iowa Ct. App. Mar. 5, 2025) 57

State v. Davis, 951 N.W.2d 8 (Iowa 2020) 10, 49

State v. Ellis, 350 N.W.2d 178 (Iowa 1984) 26, 31, 36

State v. Ellis, No. 23-1852, 2025 WL 855642 (Iowa Ct. App. Mar. 19, 2025) 27, 28

State v. Ellison, 985 N.W.2d 473 (Iowa 2023) 39

State v. Evans, No. 23-0688, 2024 WL 4222597 (Iowa Ct. App. Sept. 18, 2024) 41, 44

State v. Gorman-Lykken, 446 P.3d 694 (Wash. Ct. App. 2019) 20, 33, 34

State v. Green, 896 N.W.2d 770 (Iowa 2017) 52

State v. Griffin, No. 11–0012, 2013 WL 1223689 (Iowa Ct. App. Mar. 27, 2013) 19

State v. Hanes, 790 N.W.2d 545 (Iowa 2010)..... 27, 35

State v. Hearn, 797 N.W.2d 577 (Iowa 2011)..... 53

State v. Hernandez, No. 23-0630, 2025 WL 52424 (Iowa Ct. App. Jan. 9, 2025)..... 48

State v. Howard, 14 N.W.3d 763 (Iowa Ct. App. 2024)..... 10, 38, 44, 45

State v. Hustead, 538 N.W.2d 867, 870 (Iowa Ct. App. 1995) 54

State v. Iowa Dist. Ct., 801 N.W.2d 513 (Iowa 2011)..... 14

State v. Jefferson, 574 N.W.2d 268 (Iowa 1997) 52, 53

State v. Keeton, 710 N.W.2d 531 (Iowa 2006) 48

State v. Kelso-Christy, 911 N.W.2d 663 (Iowa 2018)..... 38

State v. Kile, 313 N.W.2d 558 (Iowa 1981)..... 34

State v. Kneedy, 3 N.W.2d 611 (Iowa 1942)..... 52

State v. Kraai, 969 N.W.2d 487 (Iowa 2022) 50

State v. Lathrop, 781 N.W.2d 288 (Iowa 2010)..... 61, 62

State v. Lewis, 514 N.W.2d 63 (Iowa 1994) 53

State v. Liggins, 557 N.W.2d 263 (1996) 50

State v. Manser, 626 N.W.2d 872 (Iowa Ct. App. 2001) 62

State v. McNeal, 897 N.W.2d 697 (Iowa 2017)..... 32

State v. Meyers, 799 N.W.2d 132 (Iowa 2011) 38

State v. Miller, No. 09-0249, 2009 WL 3775145 (Iowa Ct. App. Nov. 12, 2009) 62

State v. Mitchell, No. 56575, 1995 WL 527599 (Ohio Ct. App. Sept. 7, 1995) 20

State v. Mong, 988 N.W.2d 305 (Iowa 2023) 57

State v. Petithory, 702 N.W.2d 854 (Iowa 2005) 38

State v. Poyner, 306 N.W.2d 716 (Iowa 1981) 56

State v. Reed, No. 24-0256, 2025 WL 2793578 (Iowa Ct. App. Oct. 1, 2025) 62, 63

State v. Rodriguez, 636 N.W.2d 234 (Iowa 2001) 37

State v. Ross, 986 N.W.2d 581 (Iowa 2023) 54, 55

State v. Sallis, 262 N.W.2d 240 (Iowa 1978) 50

State v. Schwartz, 7 N.W.3d 756 (Iowa 2024) 10, 54, 55

State v. Shanahan, 712 N.W.2d 121 (Iowa 2006) 38

State v. Shipley, 429 N.W.2d 567 (Iowa 1988) 25, 26

State v. Sisk, 577 N.W.2d 414 (Iowa 1998) 61

State v. Slaughter, 3 N.W.3d 540 (Iowa 2024) 52

State v. Taylor, 689 N.W.2d 116 (Iowa 2004) 37

State v. Thacker, 862 N.W.2d 402 (Iowa 2015) 61

State v. Thornton, 498 N.W.2d 670 (Iowa 1993) 10, 46, 57

State v. Williams, 217 N.W.2d 573 (Iowa 1974) 10, 13, 21, 22, 23, 24

State v. Williams, 525 N.W.2d 847 (Iowa 1994) 53

State v. Wilson, 406 N.W.2d 442 (Iowa 1987) 14, 15, 19, 24, 25, 31

State v. Woody, 613 N.W.2d 215 (Iowa 2000) 10, 61

State Statutes

Iowa Code §§ 702.11(1), 902.11 62

Iowa Code § 703.1 ..... 52, 53

Iowa Code § 704.1(1) 39

Iowa Code § 704.2(2).....44
Iowa Code § 704.3 ..... 39, 43, 44
Iowa Code § 707.3 62
Iowa Code § 907.6 ..... 61, 62

State Rules

Iowa R. Crim. P. 2.19(5)(a)(4)..... 29
Iowa R. Crim. P. 2.24(2)(b)(8)..... 29
Iowa R. Evid. 5.606(b) 28

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. **Whether the district court's decision to place a security guard between the witness stand and the jury deprived Wiggins a fair trial.**

II. **Whether sufficient evidence supported the jury's verdict that Wiggins was not acting with justification when he shot his victim in the back.**

III. **Whether a reference to "aiding and abetting" should have been included in an instruction defining malice when the State alleged Wiggins had acted in concert with two others in a premediated murder.**

IV. **Whether the district court could order Wiggins to participate in a victim-offender dialogue when it ordered him to serve a prison sentence, not probation.**

ROUTING STATEMENT

Each issue can be decided based on existing legal principles. *See Holbrook v. Flynn*, 475 U.S. 560 (1986) (subdivision I); *State v. Williams*, 217 N.W.2d 573, 574 (Iowa 1974) (subdivision I); *State v. Howard*, 14 N.W.3d 763, 768 (Iowa Ct. App. 2024) (subdivision II); *State v. Davis*, 951 N.W.2d 8, 16 (Iowa 2020) (subdivision III); *State v. Schwartz*, 7 N.W.3d at 768 (subdivision III); *State v. Thornton*, 498 N.W.2d 670, 673–74 (Iowa 1993) (subdivision II and III); *State v. Woody*, 613 N.W.2d 215, 217 (Iowa 2000) (subdivision IV). Accordingly, the matter should be transferred to the Iowa Court of Appeals. Iowa R. App. P. 6.1101(3).

NATURE OF THE CASE

After a jury convicted him of second-degree murder, James Wiggins appeals. He was sentenced to serve a fifty-year sentence with a minimum thirty-five-year term of incarceration. D0225, Order of Disposition at 1 (10/14/2024).

STATEMENT OF THE FACTS

On December 10, 2022, Tyrone ("T.Y.") Hutchins was with his best friend Tori Sellers at Rico's, a bar in Des Moines. D0247, Trial Vol. II at 37:6–11; 38:7–14 (8/27/2024). The two were regulars, sometimes spending four nights a week there. D0247 at 37:14–23. He had ordered a drink and she ordered food. D0247 at 38:15–16. They posted on social media that

they were at Rico's. D0247 at 44:20–45:7. But even without that post, it would have been easy to know they would be there, given their routine. D0247 at 45:16–46:9.

As they socialized, two men—Lorenzo Reese and Marcell Wiggins—entered the bar and came directly to Hutchins. D0247 at 39:1–40:19. One of them said "We can do this anywhere"— Hutchins then brandished his pistol and fled, barreling toward the bar's exit while pushing the bystander Tiasia Herron in front of him. D0247 at 10:1–15; Exh.2, Video Rico's Interior at 02:50–03:02. Marcell kept screaming at him and bared a large gun of his own. Exh.2, Video Rico's Interior at 03:01–03:07; D0247 at 128:13–129:3.

As Lorenzo and Marcell confronted Hutchins, James Wiggins (Marcell's brother) entered the bar with his hand on a pistol inside his jacket. Exh.2, Video Rico's Interior at 02:50–03:03. When Hutchins and Herron rushed toward the door, Wiggins stepped to one side and drew his weapon. Exh.2, Video Rico's Interior at 02:55–03:05. As Hutchins ran past him, Wiggins took off the safety and shot Hutchins in the side and back. D0250, Trial Vol. III at 109:3–24; 113:9–114:4; 115:2–14; 130:1–132:12

(8/28/2024); Exh.2, Video Rico's Interior at 02:55–03:05. He fired three[1] shots at Hutchins—one struck Herron. D0247 at 25:22–26:2; 26:22–25; 32:8–34:15. For Hutchins, two of those shots were independently fatal. D0250 at 46:4–22; 48:19–49:7; 50:20–51:11. He died of his injuries. D0250 at 57:6–15.

As Hutchins lay dying on the sidewalk, Wiggins offered no assistance and did not stay to explain his use of force. He walked away and turned his back on the scene. Exh.4, Video Rico's Exterior at 03:01–03:15. He then walked back after he noticed that his brother and Lorenzo had not joined; Lorenzo and Marcell exited the bar and all three walked away together to Marcell's vehicle. *See* D0250 at 99:17–99:24; 116:6–7; 134:7–136:16; Exh.4, Video Rico's Exterior at 03:05–03:35; Exh.2, Video Rico's Interior at 03:07–03:22.

Two hours later Wiggins appeared at the Des Moines Police Department. D0247 at 105:6–106:7. He brought along his gun, but not his cell phone. D0247 at 107:4–108:4. Des Moines police released him that evening but asked him to remain available; Wiggins returned to his home in

[1] Police only found casings associated with Wiggins's weapon and there were no bullet impacts within the bar. D0245 at 159:1–20; D0247 at 62:21–65:4; 110:2–5.

Las Vegas, Nevada. D0250 at 19:23–20:23; 23:22–24. Des Moines Police later asked Wiggins to return and speak with them, he did not. D0250 at 30:19–31:9; 101:19–102:7. Wiggins was arrested and was returned to Iowa. D0250 at 102:1–7.

ARGUMENT

I. A deputy's presence behind the witness box was not inherently prejudicial to Wiggins's right to a fair trial. The district court exercised its discretion to implement this reasonable security measure.

Preservation of Error

Error is partially preserved. Wiggins objected to seating a deputy near the witness stand, preserving error on his "inherent prejudice" claim. *See* D0250 at 64:10–68:15. But he made no attempt to prove actual prejudice, made no request the court relieve him of his obligation to do so, and did not move for a mistrial. *Compare* Appellant's Br. 39–40 *with Williams*, 217 N.W.2d at 574 ("It was not shown the officer was thereafter observed by the jurors. Because no further objection was urged it is highly doubtful any error was preserved"). Without doing so, his request for this Court to employ alternatives to the established standard on appeal arrives too late. Appellant's Br. 38–40; *see generally In re Morrow*, 616 N.W.2d 544, 548 n.1 (Iowa 2000) (appellate court would not consider equal protection claim

under a different standard of review than raised and litigated in the district court).

The district court's statements on the record show that it exercised its discretion to employ the security measure, preserving error on Wiggins's abuse-of-discretion alternative. *See* D0250 at 66:24–68:1.

Standard of Review

Multiple standards of review are at issue under this heading. This Court reviews de novo Wiggins's claim the court's security measures inherently prejudiced his right to a fair trial. *See State v. Iowa Dist. Ct.*, 801 N.W.2d 513, 517 (Iowa 2011). His challenge to the district court's exercise of discretion about security measures is—unsurprisingly—reviewed for abuse of discretion. *See State v. Wilson*, 406 N.W.2d 442, 449 (Iowa 1987).

Merits

Wiggins raises multiple challenges under this heading. The State first addresses (A) whether the district court's security measure was (1) inherently prejudicial or whether (2) Wiggins has shown it actually prejudiced his defense. Next, the State addresses whether (B) the district court failed to exercise its discretion. Finally, it addresses why (C) any error—if this Court finds it—was harmless on this record.

A. A deputy's presence near the witness stand does not inherently prejudice the right to a fair trial and Wiggins has not proven it prejudiced him here.

As an implicit part of the Sixth Amendment's fair trial guarantee, a defendant is presumed innocent until the State's evidence proves otherwise. *See Taylor v. Kentucky*, 436 U.S. 478, 485 (1978); *see also People v. Peeples*, 793 N.E.2d 641, 670 (Ill. 2002). A parallel guarantee requires the defendant's conviction is not based solely on State's accusation, his "continued custody, or other circumstances not adduced as proof at trial." *Id.* Certain security practices can offend these principles, such as compelling a defendant to appear in jail or prison garb, visible restraints, or gagging the defendant. *See, e.g.*, *Estelle v. Williams*, 425 U.S. 501, 501, 503–04 (1976). The reason why varies from the measure at issue, but all help distinguish the defendant from the community at large and tend to create prejudice in the minds of jurors, diluting "the principle that guilt is to be established by probative evidence and beyond a reasonable doubt." *See Williams*, 425 U.S. at 504–05 (jail attire is a "constant reminder of the accused's condition . . [that] may affect a juror's judgment"); *Wilson*, 406 N.W.2d at 449 (shackling may interfere with defendant's ability to contribute to defense, affronts dignity of trial, suggests "the defendant is an obviously bad and dangerous person whose

guilt is a foregone conclusion"). These measures are thus "inherently prejudicial" when there is an insufficient case-specific basis to support their imposition on the trial process. *See Wilson* 406 N.W.2d at 449; *see also Illinois v. Allen*, 397 U.S. 337, 342–344 (1970) (holding district court confronted with obstreperous defendants may "(1) bind and gag him, thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly").

But the presence of officers within the courtroom to provide security is not one of these inherently prejudicial measures. *Holbrook*, 475 U.S. at 568–69. Without inherent prejudice, Wiggins must prove actual prejudice. He failed to do so. The State addresses these matters in sequence.

1. Courts consistently hold there is no inherent prejudice from officers stationed near the defendant to maintain secure proceedings.

Almost forty years ago, the United States Supreme Court in *Holbrook* recognized that unlike physical restraints and jail garb, there are a "wider range of inferences that a juror might reasonably draw from the officers' presence":

> the presence of guards at a defendant's trial need not be interpreted as a sign that he is particularly dangerous or culpable. Jurors may just as easily believe that the officers are there to guard against disruptions emanating from outside the courtroom or to ensure that tense courtroom exchanges do not

> erupt into violence. Indeed, it is entirely possible that jurors will not infer anything at all from the presence of the guards. If they are placed at some distance from the accused, security officers may well be perceived more as elements of an impressive drama than as reminders of the defendant's special status. Our society has become inured to the presence of armed guards in most public places; they are doubtless taken for granted so long as their numbers or weaponry do not suggest particular official concern or alarm.

Id. at 569. The troopers at issue in *Holbrook* were seated behind the bar, in the front row of the spectator section. *Id.* at 570–71. The Supreme Court held this was not prejudicial: "Even had the jurors been aware that the deployment of troopers was not common practice in Rhode Island, we cannot believe that the use of the four troopers tended to brand respondent in their eyes 'with an unmistakable mark of quilt.'" *Id.* at 571 (quoting *Williams*, 425 U.S. at 518 (Brennan, J., dissenting)).

Here, Wiggins suggests that a single deputy being seated in a corner of the courtroom close to the witness stand and jury box during the presentation of defense witnesses[2] violated his right to the presumption of

[2] Throughout this subdivision, the Wiggins points to the fact that "none of the State's witnesses received the same treatment" and that the deputy was only near the stand during the defense case-in-chief having the effect of "singl[ing] out" defense testimony. Appellant's Br. 30, 32, 33, 35–36, 38, 44. This fact is unremarkable, and the Court should not be swayed by it. The reason for the discrepancy was that Wiggins did not raise the issue until after the State's case-in-chief as he was about to present his own. The

innocence and was inherently prejudicial to his right to a fair trial. Appellant's Br. 28–36. Likening this security measure to requiring the defendant to dress in jail garb or visible shackles, he alleges the "arrangement emphasized [he] was a threat who posed a risk to the safety of those in the courtroom." *See* Appellant's Br. 35, *accord* Appellant's Br. 30, 31, 32, 35–36, 38. He is mistaken.

First, a uniformed deputy's presence in the courtroom—even when near the defendant—is distinct from the concerns presented by a jury's consistent observation of the defendant in jail garb or shackled. Requiring the defendant to attend trial in jail garb creates a "constant reminder of the accused's condition implicit in such distinctive, identifiable attire may affect a juror's judgment" and it is dubious whether there is a valid state

---

record suggests this could have been a matter of strategy. Both defense attorneys were local counsel and the district court pointed out this was not a new security measure in Polk County. *See* D0250 at 2:5–11, 65:25–66:20. Had Wiggins brought the concern to the Court's attention earlier, there is every possibility it would have simply stationed a deputy in the same position—as demonstrated by its willingness to accommodate Wiggins's request that the deputy be stationed there during his sister's testimony, too. D0250 at 68:5–10. If Wiggins's attorneys were aware of this security procedure and waited to object until it was too late to ensure it was applied to the State's witnesses as well, he should not be permitted to weaponize the distinction to obtain a new trial. *See Morgan v. Aispuro*, 946 F.2d 1462, 1463, 1465 (9th Cir. 1991) ("Morgan's counsel refused the opportunity to limit the implication that the security measures were extraordinary by having all proceedings take place in the security courtroom. He cannot now use that decision to create a jury inference of Morgan's guilt.").

interest in doing so. *See Williams*, 425 U.S. at 505. Likewise, shackling the defendant creates the risk "(1) it may prevent a defendant from freely participating with counsel in the defense, (2) diminish the inherent dignity of the trial process, and (3) it creates unfair prejudice by giving an indication that the defendant is a dangerous individual." *State v. Griffin*, No. 11–0012, 2013 WL 1223689, at *3 (Iowa Ct. App. Mar. 27, 2013) (citing *Wilson*, 406 N.W.2d at 449).

But *Holbrook* instructs that officers' presence in the courtroom does not have the same prejudicial impact. Unlike indicia of incarceration there are numerous non-prejudicial inferences jurors can draw from the officers' presence. *See Holbrook*, 475 U.S. at 569. Indeed, many jurors have so little courtroom experience they infer nothing altogether from the officers' presence: "security officers may well be perceived more as elements of an impressive drama than as reminders of the defendant's special status." *Id.* Given our society's familiar relationship with armed guards in public spaces, it is hard to see how a uniformed officer's being seated feet away from the defendant would prevent him from participating in his defense or diminish the dignity of proceeding. *See People v. Stevens*, 218 P.3d 272, 278 (Cal. 2009) ("The presence of a deputy does not directly impair the

accused's mobility, nor does it create the affront to human dignity that we have lamented in the context of visible shackles.").

Second and consistently, *Holbrook* rejected Wiggins's argument an officer's presence was inherently prejudicial, opting instead for a case-by-case analysis based on the defendant's showing of actual prejudice. *See Holbrook*, 475 U.S. at 569, 572 ("Courts must first 'look at the scene presented to jurors and determine whether what they saw was so inherently prejudicial as to pose an unacceptable threat to defendant's right to a fair trial.'").

Circuits and states applying *Holbrook* have consistently rejected Wiggins's reasoning.[3] *See Ainsworth v. Calderon*, 138 F.3d 787, 797 (9th Cir. 1998) (rejecting defendant's claim that 2:1 ratio of armed deputies was "inherently prejudicial"); *Wainwright v. Lockhart*, 80 F.3d 1226, 1232–33 (8th Cir. 1996); *United States v. Elder*, 90 F.3d 1110, 1131 (6th Cir. 1996); *Porter v. Commonwealth*, 661 S.E.2d 415, 445–46 (Va. 2008); *Peeples*, 793 N.E.2d at 671–72; *Kills on Top v. State*, 901 P.2d 1368, 1384 (Mont. 1995); *Bruce v. State*, 569 A.2d 1254, 1259–61 (Md. 1990); *see also United States v. Vasquez*, 745 F.App'x, 291, 291 (9th Cir. 2018); *People v. Johnson*, No.

[3] Wiggins's offered out-of-state authorities reject his argument, too. *See* Appellant's Br. 30, 33–34, 35 (citing *Stevens*, 218 P.3d at 278–82 and *State v. Gorman-Lykken*, 446 P.3d 694, 698 (Wash. Ct. App. 2019)).

329134, 2017 WL 4078051, at *5–6 (Mich. Ct. App. Sept. 14, 2017) ("We simply cannot believe that the presence of one impassive deputy 10 feet away from defendant while defendant testified unmistakably marked defendant with a sign of guilt."); *State v. Mitchell*, No. 56575, 1995 WL 527599, at *7 (Ohio Ct. App. Sept. 7, 1995) (rejecting claim two guards escorting defendant to witness stand indicated he was dangerous and untrustworthy).

Iowa is among them. Even before *Holbrook*, the Iowa Supreme Court rejected the notion that the presence of an armed deputy in a courtroom "carries with it the suggestion of other suspected flight or danger or violence on the part of the defendant." *Williams*, 217 N.W.2d at 574. "Citizens commonly observe peace officers bearing side arms. We have no reason to suppose a citizen called for jury duty would make any unfair or unwarranted deductions by reason of the side arms. There is no merit in defendant's first assignment." *Id.*; *see also State v. Butler*, 243 N.W.2d 232, 234 (Iowa 1976) (finding error not preserved but rejecting on the merits). And the Iowa Court of Appeals has concluded an even more conspicuous measure of an officer "escorting" the defendant to and from individual jury questioning was not inherently prejudicial. *See State v. Bratcher*, No. 14-2058, 2016 WL 1677997, at *3–5 (Iowa Ct. App. Apr. 27, 2016). "We believe

the present situation is more analogous to the armed guards sitting near the defendant in *Holbrook* than the line of 'pure shackling' cases." *Id.* at *4. As with *Wilson* and *Bratcher*, Wiggins's jury could have understood the deputy's placement near the witness stand as a matter of court trappings, rather than an implicit suggestion he was dangerous or untrustworthy. *Cf.* Appellant's Br. 33. It was not inherently prejudicial and he is not entitled to a new trial.

A few portions of Wiggins's advocacy warrant additional discussion. First, he cites *Deck v. Missouri* for the proposition that the deputy's proximity implied he was dangerous and "put a thumb on guilt's side of the scale." Appellant's Br. 32 (paraphrasing *Deck v. Missouri*, 644 U.S. 622, 633 (2005)). *Deck* is distinguishable and cannot reasonably read to support either proposition.

The case's context shows why. In *Deck*, the United States Supreme Court granted review of a Missouri case in which the defendant was compelled to wear an unseen leg brace during his trial's guilt phase and was required to wear visible leg irons, handcuffs and a belly-chain during the penalty phase over his objections "the fact that Mr. Deck is shackled in front of the jury [will make] them think that he is . . . violent today." *See Deck*, 644 U.S. at 624–25. The penalty phase jury concluded that the death

penalty was appropriate. *Id.* at 625. The Supreme Court ultimately held in both the guilt and penalty phases of a trial, "the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial." *Id.* at 629.

> We do not underestimate the need to restrain dangerous defendants to prevent courtroom attacks, or the need to give trial courts latitude in making individualized security determinations. We are mindful of the tragedy that can result if judges are not able to protect themselves and their courtrooms. But given their prejudicial effect, due process does not permit the use of *visible restraints* if the trial court has not taken account of the circumstances of the particular case.

Id. at 632 (emphasis added). These harsh and obvious restraints "almost inevitably implies to a jury, as a matter of common sense, that court authorities consider the offender a danger to the community" and "inevitably affects adversely the jury's perception of the character of the defendant." *Deck*, 644 U.S. at 633. It was in this context that United States Supreme Court quoted *Sochor v. Florida*, 504 U.S. 527 (1992) for the conclusion "the use of shackles can be a 'thumb [on] death's side of the scale.'" *Sochor*, 644 U.S. at 633.

But already explained, an officer's presence near the defendant at trial is not analogous to shackling. It does not imply the defendant's

dangerousness, untrustworthiness, nor present the concerns these harsher security measures do. *Compare Deck*, 644 U.S. at 630–32 (outlining "the considerations that militate against the routine use of visible shackles") *with Holbrook*, 475 U.S. at 569, 571 *with Williams*, 217 N.W.2d at 574. Wiggins's reliance on *Deck* fails for the same reasons his reliance on *Estelle* does. Were his analogy correct, the Supreme Court's decision in *Holbrook* would have been starkly different.

Next, he points to the Iowa Supreme Court's endorsement in *Wilson*'s dicta that Iowa's trial courts should "employ the least prejudicial and least conspicuous security measures possible under the circumstances." Appellant's Br. 36 (quoting *Wilson*, 406 N.W.2d at 450). Context for that quotation is essential. Again, *Wilson* was a shackling case, in which concerns about unspoken prejudice in jurors' minds, interfering with the defense, and demeaning the trial process were germane. *See Wilson*, 406 N.W.2d at 449. While the defendant in the case was shackled, the district court took measures to mitigate the prejudice of it. It permitted his hands to be free and moved him into the courtroom when the jury was not present to prevent their observation of him in shackles. *Id.* at 449. So it was in this context that the Iowa Supreme Court advised:

> We encourage courts to employ the least prejudicial and least conspicuous security measures possible

> under the circumstances. This approach to the shackling of a defendant will produce the most equitable result in balancing a defendant's right to a fair trial against the competing interests of participants in the courtroom and society at large in preserving a safe and orderly trial.

Id. at 450. Said differently, when a defendant is truly shackled, Iowa courts should employ the least conspicuous security measures that are reasonable under the circumstances to reduce the potential prejudice. But *Wilson*'s dictum does not apply to any possible security measure. Taken to its logical ends, Wiggins's reading of *Wilson* would suggest that no courtroom security measure may be employed without some specific circumstances to support it. *See State v. Shipley*, 429 N.W.2d 567, 568–70 (Iowa 1988) (approving use of metal detectors outside courtroom as not inherently prejudicial). This Court should not read *Wilson* beyond its context, and require our district courts to eliminate common sense, non-prejudicial security measures.

In sum, neither the reasoning nor legal authority supports Wiggins's claim that an officer's presence near the witness stand as the defendant testifies is inherently prejudicial. Instead, he must prove actual prejudice. He failed to do so here.

2. Wiggins made no attempt to establish actual prejudice below. Without it, there is no need to repeat his trial.

As Wiggins acknowledges, our precedent requires him to prove the court's decision to seat the deputy near the witness stand prejudiced his presumption of innocence and right to fair trial. Appellant's Br. 38; *see also Holbrook*, 475 U.S. at 572 ("[I]f the challenged practice is not found inherently prejudicial and if the defendant fails to show actual prejudice, the inquiry is over."); *accord Shipley*, 429 N.W.2d at 569–70; *State v. Ellis*, 350 N.W.2d 178, 183 (Iowa 1984); *Bratcher*, 2016 WL 1677997, at *5. He has not met his burden.

In his effort, he again relies on inapposite reasoning from actual shackling cases. *See* Appellant's Br. 38–39 (quoting *Deck* and *Wilson*). He also points to generalizations of his discomfort due to the deputy's proximity with his conclusion this rendered him unable to contribute to his defense. Appellant's Br. 38. But as the district court observed, security personnel were seated at roughly the same distance through the entirety of the trial. *See* D0250 at 64:14–17; 65:25–66:20. Even so, it appeared he contributed meaningfully to his trial strategy. He provided his own account to support his justification defense. *See generally* D0250 at 82:13–107:17 (Wiggins's direct examination).

Indeed, the record on the issue is minimal. It only shows that the deputy was seated in the corner of the courtroom, before the jury entered. *See* D0250 at 64:10–65:3; 67:16–68:1. It suggests the deputy was approximately roughly five feet from the witness stand, behind a large television. *See* D0250 at 64:10–17; 65:25–66:2. There is no indication the deputy did anything other than sit silently as Wiggins and his sister testified, and there is no suggestion the jury took specific notice of the deputy. *See Elder*, 90 F.3d at 1131 ("There was no evidence that any of the security personnel displayed firearms or that any of the defendants were shackled or handcuffed in front of the jury. Also, there was no evidence that the jury was in any way aware of or influenced by the additional security personnel."); *State v. Ellis*, No. 23-1852, 2025 WL 855642, at *7 (Iowa Ct. App. Mar. 19, 2025) (insufficient proof of prejudice where individual voir dire of jurors showed those who saw defendant shackled were prepared to follow instructions, and no other evidence showed "they were prejudicially affected by the brief sight of his restraints").

What is more, the district court instructed the jury to presume Wiggins was innocent and put aside all suspicion that might arise from his "present situation" until "the evidence establishes guilt beyond a reasonable doubt." D0211, Jury Instructions at 2 (8/30/2024). Consistent with Iowa

law, this Court presumes the jury complied with the instruction unless Wiggins can show otherwise. *See Bratcher*, 2016 WL 1677997, at *5 (citing *State v. Hanes*, 790 N.W.2d 545, 552 (Iowa 2010)); *see also Johnson*, 2017 WL 4078051, at *6.

This Court should reject Wiggins's conclusory assertion of actual prejudice because he only presents inapposite logic and unpersuasive conclusions with little record to support either.

Expecting this result, Wiggins makes a contingency request for this Court to relieve him of showing prejudice altogether. Appellant's Br. 39–40. This Court should decline and hold him to his burden. *See Ellis*, 2025 WL 855642, at *6–7 (rejecting claim defendant should be relieved of burden of proving actual prejudice for inadvertent observation of shackling claim). If a security measure is not inherently prejudicial, and the defendant cannot point to any actual impact on his defense, there is no cause to vacate the jury's verdict and order another trial. Wiggins is correct that a defendant would not be permitted to impeach a jury's verdict through a juror's affidavit or testimony about deliberations. Appellant's Br. 39–40; *see* Iowa R. Evid. 5.606(b). But this alone does not render a defendant incapable of establishing prejudice. The mechanism necessary to

prove prejudice is the same one Wiggins used here: contemporaneous objection and establishing a record.

This routine mechanism can establish a record of prejudice, if necessary. To provide a perhaps extreme example, assume the deputy seated behind Wiggins gestured to the jury as Wiggins testified or unnecessarily brandished her weapon in a manner that an objective observer could conclude was intended to prejudice the jury. Defense counsel could have asked for a sidebar, recounted their observations into the record, and requested the district court issue a mistrial to protect Wiggins's fair trial rights. Iowa R. Crim. P. 2.19(5)(a)(4). This same procedure was available if the deputy unremarkably sat silent, but jurors consistently appeared nervous and stared at the deputy. Counsel could again ask for a sidebar outside the jury's presence and make a contemporaneous record showing that an otherwise reasonable practice raised concerns of undue prejudice. Requiring this minimum showing has the added benefit of directly inviting and obtaining the district court's observations, the parties' deliberation over whether curative measures were necessary, as well as the court's hand in balancing whether trial could continue.

But here, Wiggins's counsel said nothing after their initial objection was overruled, suggesting nothing prejudicial occurred. Reinforcing this, defense counsel did not ask for a mistrial and did not renew the issue in their motion for new trial. *See* D0219, Motion for New Trial at 1–5 (10/7/2024); Iowa R. Crim. P. 2.24(2)(b)(8). Relieving Wiggins of showing prejudice transforms a practice that is not "inherently prejudicial" under the law into just that. Wiggins has not met his burden, so "the inquiry is over" and the claim fails. *Holbrook*, 475 U.S. at 572.

B. The district court reasonably exercised its discretion to seat a single deputy between the witness stand and the jury to maintain courtroom security.

Wiggins next alleges the district court deferred to a standing security policy rather than independently exercising its discretion to station the deputy to be seated near the witness stand. Appellant's Br. 40. The record suggests otherwise. The State specifically wanted to know whether the district court was exercising its discretion; the judge confirmed that he was and connected the exercise of discretion to the courtroom's layout and the fact Wiggins was in custody at the time of trial:

> because the Defendant is in custody, when he testifies, a deputy will be seated in the corner of the courtroom near to the witness stand. That is the Court's policy. Throughout the trial, deputies have been seated four or five feet behind the Defendant. There will be a similar situation with him on the

> witness stand. If the Court did not follow that policy, the Defendant would be approximately three feet from the closest juror, and the closest deputy would be about 50 feet away from him, so the Court will not deviate from that policy.
>
> . . . .
>
> For the reasons I stated earlier, given the layout of the courtroom, even if it is in my discretion whether or not a deputy sits there, the Court would exercise the discretion to have a deputy in the corner of the courtroom. I'll further note that there is a large TV that at least partially screens the deputy from the jury. So especially with the deputy sitting there before the testimony begins, I don't think it creates any additional prejudice than the deputy being seated near the Defendant as he has been throughout the trial.

D0250 at 64:10–21; 66:21–68:1.

This Court is ordinarily deferential to the inherent balancing act of a fair trial with security and safety. *See, e.g., State v. Bartenhagen*, No. 22-1489, 2024 WL 1295960, at *5 (Iowa Ct. App. Mar. 27, 2024) (quoting *Ellis*, 350 N.W.2d at 183). And because the district court employed a security arrangement that was not inherently prejudicial, a lesser showing is necessary to support the court's decision. *See Bruce*, 569 A.2d at 1262 ("Our inquiry is not whether less conspicuous measures might have been feasible, but whether the measures utilized were reasonable and whether, given the need, such security posed an unacceptable risk of prejudice to the defendant."); *see also Wilson*, 406 N.W.2d at 449 (providing satisfactory

circumstances to uphold discretionary decision to actually shackle the defendant).

There was a reasonable basis to require this minimal level of security. This was a first-degree murder case in which Wiggins remained in State's custody. The court considered a sensible security practice against the possibility of prejudice and concluded that because jurors had observed security seated behind Wiggins for the entirety of trial, the likelihood of undue prejudice was low. D0250 at 65:25–66:5; 67:23–68:1. It likewise found that layout of the courtroom reduced the potential prejudice because the jurors' view of the deputy would be obscured by a large television. D0250 at 67:20–68:1.

Wiggins suggests the court abused its discretion because he was a "perfect client" during trial, but this observation from his attorney came at sentencing. *See* D0249, Sentencing Tr. at 10:6–17 (10/14/2024). At the time of his objection and the court's ruling, he had yet to take the stand. *See State v. McNeal*, 897 N.W.2d 697, 707 n.2 (Iowa 2017) ("In reviewing a district court ruling for abuse of discretion, it makes sense to consider the facts and circumstances as they existed when the district court ruled."). If the Court is going to consider post-ruling record to review the lower court's decision, the State notes there were high emotional stakes for Wiggins and

the community. *See generally* D0249 at 3:15–22 (district court addressing those present for sentencing: "This is obviously a very important matter for all involved. It is a public proceeding. We have a rather full courtroom. . . . If there are any outbursts or things of that nature, you will be removed from the courtroom, so I hope everyone remains professional so that we can proceed."). Wiggins had not been admitted to bail and under the circumstances, the presence of a single deputy in the courtroom was sensible and practical. *see also Holbrook*, 475 U.S. at 569, 571 (additional security appropriate because defendant had not been released on pre-trial bail; "sufficient cause for this level of security could be found in the State's need to maintain custody over defendants who had been denied bail after an individualized determination that their presence at trial could not otherwise be ensured").

While this arrangement appears to have been "routine," the Court's statements showed that it was not surrendering its discretion to defer to a default security policy. *See* D0250 at 64:10–14; *cf. People v. Hernandez*, 247 P.3d 167, 174–75 (Cal. 2011) (record revealed district court was operating under routine practice and specifically rejected defense requests for specific justifications for placing an officer next to witness stand); *State v. Gorman-Lykken*, 446 P.3d 694, 700 (Wash. Ct. App. 2019) (record

suggested "the trial court simply deferred its decision-making authority and discretion to the corrections officer"). It altered the arrangement to grant Wiggins's request to place the deputy for the entirety of the defense case-in-chief. D0250 at 68:5–15. The court's balancing of that sensible security arrangement against the possibility of prejudice demonstrates the Court was independently exercising discretion. *See Revelo-Ramos v. State*, No. 1867, 2021 WL 6057227, at *7–8 (Md. Ct. Spec. App. Dec. 20, 2021) (finding district court did not abuse its discretion when it acted based on an existing procedure that was reasonable and not inherently prejudicial).

C. Even if this Court found that the district court erred or abused its discretion, that error was harmless in the context of this prosecution.

Finally, a new trial is unnecessary even if this Court were to find that the district court erred in allowing the deputy to sit behind Wiggins or that it failed to exercise its discretion. Any error is subject to harmless error review. *See Hernandez*, 247 P.3d at 175–77; *Gorman-Lykken*, 446 P.3d at 699; *State v. Kile*, 313 N.W.2d 558, 562–63 (Iowa 1981) (noting "the jury was aware of [the] fact and also that the victim and most of the other witnesses were reformatory inmates"). The deputy's placement in the courtroom had little effect on the outcome of Wiggins trial. The reason is four-fold.

First the State's evidence was strong. This was a case in which the jury could watch what Wiggins did in the moments before, during, and after the murder. *See* Exh.2, Video Rico's Interior at 02:55–03:15; Exh.4, Rico's Exterior 02:10–03:50; Exh.7, Video NE Parking at 13:35–17:10. The State also showed that it was highly unlikely that Hutchins had fired his weapon at anyone in the bar. *See* Exh.2, Video Rico's Interior at 02:55–03; D0247 at 25:22–27:13; 30:5–12; 36:3–6; 58:17–59:13; 62:21–65:2; 68:8–12; 72:2–8; 80:11–81:11; 92:5–16; 92:20–93:4; 109:3–11; 110:2–15; 115:2–14. Discussed in additional detail below in addressing Wiggins's sufficiency challenge, this evidence showed Wiggins had no objectively reasonable belief force was necessary and a reasonable alternative to using force, but he shot Hutchins from behind instead. The jury listened to, weighed, and rejected his testimony.

Second and already discussed above, the jury instructions required the jury to presume Wiggins innocent and put aside all suspicion that might arise from his "present situation." D0211 at 2, 6. This Court presumes the jury complied with that directive. *See Bratcher*, 2016 WL 1677997, at *5 (citing *Hanes*, 790 N.W.2d at 552); *see also Johnson*, 2017 WL 4078051, at *6.

Next, to the extent a lone deputy could suggest dangerousness, it pales when compared against jail attire or shackling. And if Wiggins was so worried about introducing the jury to the idea he was "a dangerous man and we've got to watch him," then his introductory questioning after he took the stand is eyebrow-raising:

> Defense Counsel: State your full name, please.
>
> Wiggins: James Mikale Wiggins.
>
> Defense Counsel: How old are you, James?
>
> Wiggins: I'm 35.
>
> Defense Counsel: And where do you currently live? *Right now you're in jail, but where would you live if you weren't in jail?*
>
> Wiggins: Las Vegas, Nevada.

D0250 at 82:13–20. Then, Wiggins introduced his custodial status again.

> Defense Counsel: When did you first see the video of Rico's, Mr. Wiggins?
>
> Wiggins: I actually never seen the video until—when I was meeting with you guys.
>
> Defense Counsel: At the jail?
>
> Wiggins: Correct.
>
> Defense Counsel: The first time you saw the video that's been talked about here for the last couple days is when we showed it to you at the jail?
>
> Wiggins: Correct.

D0250 at 97:22–98:6; *see also* D0250 at 102:1–7 ("Defense Counsel: When did you realize there was a warrant out for you? Wiggins: When I got locked up in Las Vegas at the casino."). Independent of the security measures he challenges, Wiggins told his jury he was in State custody during the pendency of trial. While the State does not believe this was prejudicial, as in past cases, this Court should find it cuts against any claim of harmful error. *See Ellis*, 350 N.W.2d at 183 (witness revealed during questioning she met with defendant in jail).

Finally, the jury's verdict reveals it was not prejudiced against him out of fear. *Cf.* Appellant's Br. 37–38. If the jury believed Wiggins was "dangerous" and biased against accepting his testimony, then it stands to reason it would have convicted him of first-degree murder. *See State v. Taylor*, 689 N.W.2d 116, 130 (Iowa 2004) (acquittal on one charge showed the factfinder did not "categorically rule against the defendant"); *State v. Rodriguez*, 636 N.W.2d 234, 243 n.4 (Iowa 2001) (jury would have convicted of highest count, rather than acquit, had were it motivated by prejudice). It did not. D0213, Verdict at 1 (8/30/2024).

Taken independently or together, the States's strong evidence, the jury instructions, Wiggins self-introduction of being in custody, or the

jury's resulting verdict all show that the error of a reasonable security measure was harmless.

D. Conclusion: Wiggins received a fair trial.

On this record, the placement of a deputy behind the witness stand at the same distance they have been behind the defendant during trial was not inherently or actually prejudicial to Wiggins's right to a fair trial with the presumption of innocence. The district court's statements show it was independently exercising its discretion to employ this security arrangement. Even if this Court were to disagree, the error was harmless. Under any of these rationales, this Court should affirm.

II. Strong evidence supported the jury's verdict finding Wiggins shot Hutchins in the back without justification.

Preservation of Error

The State cannot contest error preservation. *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 indulges every legitimate and reasonable inference that might be deduced. *State v. Petithory*, 702 N.W.2d 854, 856 (Iowa 2005). Circumstantial evidence is as probative as direct. *State v. Meyers*, 799 N.W.2d 132, 138

(Iowa 2011). This Court does not reweigh the credibility of witnesses or conflicts in the evidence, that was the jury's role. *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006); *see also Howard*, 14 N.W.3d at 768 ("How to interpret the surveillance footage and sort out witness testimony about the events leading up to the homicide was for the jury to decide—not for us to second-guess on appeal.").

Merits

Wiggins attacks the jury's conclusion he acted without justification. Appellant's Br. 51–54. Under the applicable standard, the instructions, and the trial record, this Court should reject that claim and affirm.

Under Iowa law a person can use "reasonable force" to defend oneself or another "when the person reasonably believes that such force is necessary to defend oneself . . . from any actual or imminent use of unlawful force" by another. Iowa Code § 704.3. It includes the use of deadly force where such force "is necessary to avoid injury or risk to one's life or safety or the life or safety of another." Iowa Code § 704.1(1). If established, this is a complete defense to the crime. *See State v. Ellison*, 985 N.W.2d 473, 477 (Iowa 2023). And once a defendant invokes a justification defense and presents sufficient evidence to support it, the burden falls to the State to disprove it beyond a reasonable doubt. *Id.* at 479.

Consistent with this law, the marshaling instruction for second-degree murder required the State to prove Wiggins was not acting with justification. D0211 at 13; *see also Ellison*, 985 N.W.2d at 479. Instructions 22, 23, 24, and 25 provided the jury with the relevant law describing justification and the State's burden to disprove it:

Instruction No. 22

> The defendant claims he was justified in using reasonable force to prevent injury to himself or others.
>
> The defendant was justified in using reasonable force if he reasonably believed that such force was necessary to defend himself or another from any actual or imminent use of unlawful force.
>
> Reasonable force is only the amount of force a reasonable person would find necessary to use under the circumstances to prevent death or injury. If in the defendant's mind the danger was actual, real, imminent, or unavoidable, even if the defendant was wrong in estimating it or the force necessary to repel it, the force was justified if the defendant had a reasonable basis for his belief and responded reasonably to that belief.
>
> It is not necessary that there was actual danger, but the defendant must have acted in an honest and sincere belief that the danger actually existed.
>
> Apparent danger with the defendant's knowledge that no real danger existed is no excuse for using force.

> Reasonable force can include deadly force if it is reasonable to believe that such force is necessary to resist a like force or threat.
>
> The State must prove beyond a reasonable doubt that the defendant's use of force was not justified.

Instruction No. 23

> A person who is not engaged in illegal activity from any place where the person is lawfully present described in these instructions.

D0211 at 11.

Instruction No. 24

> If any of the following is true, the defendant's use of force was not justified:
>
> 1. The defendant did not have a reasonable belief that it was necessary to use force to prevent an injury or loss.
>
> 2. The defendant used unreasonable force under the circumstances.
>
> If the State has proved any of these beyond a reasonable doubt, the defendant's use of force was not justified.

D0211 at 12.

Applying these instructions to the record, the jury concluded Wiggins had no reasonable belief it was necessary to use force and that the force he did use was unreasonable. Substantial evidence only needed to support one of these conclusions for Wiggins's challenge to fail. *See* D0211 at 12; *see also*

State v. Evans, No. 23-0688, 2024 WL 4222597, at *7 (Iowa Ct. App. Sept. 18, 2024). A strong basis supported each.

A. Wiggins lacked a reasonable belief force was necessary.

Wiggins's defense hinged on two portions of his testimony. That he heard a gunshot before he entered the bar and that Hutchins pointed a gun at him.

Without the former, his instantaneous decision to draw the pistol from his pocket as he entered the bar became incriminating. D0247 at 129:4–17. Wiggins claimed he did not normally go armed, yet he armed himself and racked the weapon with a round ready to fire before going to Rico's. D0250 at 86:21–87:7; 88:3–10; 89:2–12; 110:1–111:2; 112:4–113:20; 114:7–19. As he ran towards the bar to catch up with Marcell and Lorenzo, he already had his hand on the pistol inside his jacket pocket. D0250 at 106:6–12; 108:19–109:6; 121:5–12; Exh.4, Video Rico's Exterior at 02:45–03:01. Simultaneously with his entry, he withdrew it. Exh.2, Video Rico's Interior at 02:55–03:00. He then stepped to one side, took off the safety, and then waited to shoot Hutchins in the side and back as the man fled. D0250 at 109:3–24; 113:9–114:4; 130:1–132:12; Exh.2, Video Rico's Interior at 02:55–03:05.

The difficulty for his account was that there was no forensic evidence to support it. Hutchins only raised his gun briefly toward Marcell and Lorenzo, and there was no indication within the video exhibits showing he fired the weapon when he did. *Compare* Exh.2, Video Rico's Interior 02:55–03:02 with 03:03. There were no shell casings found associated with Hutchins's weapon, nor bullet impacts. D0247 at 58:17–59:13; 62:21–65:2; 68:8–12; 72:2–8; 80:11–81:11; 92:5–16; 92:20–93:4; 109:3–11; 110:2–15; 115:2–14. There were no other gunshot victims from Rico's that night other than Hutchins and Herron. D0247 at 25:22–27:13; 30:5–12; 36:3–6. An individual with his back turned to the initial conflict did not take cover *until* Wiggins began shooting. *See* Exh.2, Video Rico's Interior 02:55–03:06. This was a strong basis for the jury to conclude Hutchins had not fired and reject Wiggins's claim—meaning Wiggins drew his weapon because he anticipated shooting the man.

Second and similarly, when taken in the light most favorable to the verdict, it appears the jury rejected Wiggins's testimony Hutchins aimed his gun at him. *See* D0250 at 132:1–12 ("Prosecutor: Even at this point in the video, as you're shooting him, it's your testimony that his gun is still pointed at you like this (indicating)? Wiggins: It was pointed at the direction of my heart."). The video evidence did not support Wiggins's

claim—Hutchins looked to the door with his gun-carrying hand obscured beneath him and not visibly towards Wiggins. Exh.2, Rico's Interior at 03:01–03:05. The jury did not credit Wiggins's testimony and could conclude his use of force was both objectively and subjectively unreasonable.

It could also find Wiggins's belief unreasonable because he was not defending himself from unlawful force. *See* D0211 at 11; Iowa Code § 704.3. Hutchins's actions were lawful; he was retreating after Lorenzo and Marcel threatened him. *See* Exh.2, Video Rico's Interior 02:55–03:01; D0247 at 10:1–15; *see also Evans*, 2024 WL 4222597, at *7 (sufficient evidence defendant was not justified in shooting victim where "the jury could also have reasonably concluded that Evans was not justified in his use of force because he knew Canady provoked Harrison with the intent to use the provocation as an excuse to injure Harrison"). Because Hutchins was not using unlawful or deadly force, Wiggins's decision to do so was an unreasonable escalation. Iowa Code §§ 704.3; 704.2(2) (excluding display or brandishing of firearm "as long as the actions of the person are limited to creating an expectation that the person may use deadly force to defend oneself"); *State v. Howard*, 14 N.W.3d 763, 767–68 (Iowa Ct. App. 2024)

(concluding defendant's act of shooting victim in the back was an unreasonable escalation of a victim's decision to start a fistfight).

B. The force Wiggins used was unnecessary and disproportionate. It was not reasonable.

Having concluded Wiggins had no reasonable belief Hutchins fired his weapon and did not present a risk of unlawful force, the jury could reasonably conclude Wiggins actions showed he was the aggressor. Before Hutchins even finished descending the ramp to front door, Wiggins had entered and drawn his pistol. *See* Exh.2, Video Rico's Interior 02:59–03:02. He then stepped to his right, clearing space for Hutchins to exit through the door. *See* Exh.2, Video Rico's Interior 02:59–03:03. It was only as Hutchins passed him that Wiggins shot the man multiple times as he was turned away; he pursued as Hutchins collapsed onto the sidewalk. *See* Exh.2 Video Rico's Interior at 03:03–03:06.

After watching this, the jury could determine Wiggins did not believe force was necessary but used it anyway. Wiggins's own acts showed how he could have exercised no force it all. He could have simply stepped aside to permit the man to escape. *See Howard*, 14 N.W.3d at 765–66, 768. Even Lorenzo—who seemingly traveled to the bar just to confront Hutchins—simply stepped back once Hutchins bared his pistol. Exh.2, Video Rico's Interior at 02:55–03:02. Wiggins's claim he shot Hutchins because he

feared he would be taken hostage was implausible and unreasonable. D0250 at 103:9–104:9; 130:7–131:16; 132:13–133:7.

Likewise, the amount of force Wiggins used was disproportionate. The shell casings, Hutchins's injuries, and testimony all suggest that Wiggins fired three times, with two of his shots into Hutchins's chest being independently fatal. D0250 at 10:20–41:5; 46:4–22; 48:49:7; 50:20–51:11; 52:7–53:10; 54:23–55:12; 57:6–15. If it concluded Hutchins had not pointed a gun at Wiggins, the jury could also have found shooting Hutchins in his upper torso multiple times was an unreasonable amount of force.

Wiggins's conduct after the shooting supported each conclusion—his indifference to Hutchins's injuries by not calling 911, his decision not to render any medical assistance, and his casual departure from the scene all cast his claims of justification and fear of injury in a poor light. *Compare* Exh. 4, Video Rico's Exterior at 03:00–03:40 *with Thornton*, 498 N.W.2d at 673–74 (concluding "the jury could rationally believe these were not the actions of someone who honestly believed he acted in self-defense" when the defendant fled the scene, didn't call police or ambulance, and didn't explain to his friends what happened). He also specifically did not bring his cell phone with him to meet with police, suggesting he was withholding information. *Compare* D0247 at 107:4–108:10 *with* D0250 at 30:13–31:2.

Then he left Iowa and declined to return to assist the investigation. D0250 at 20:11–23. This was inconsistent with an honest self-defense claim. *See Thornton*, 498 N.W.2d at 673–74.

And there was reason to believe the men's relationship was poor. Wiggins renounced any knowledge of his brother or Lorenzo's "dealings with Mr. Hutchins," but the two had once been friends and were not at the time of the shooting. D0250 at 107:3–17; 116:22–117:6; 132:11–12. Wiggins nebulously stated that his "group of friends and [Hutchins'] group of friends just didn't get along," which suggested animus. D0250 at 117:7–10.

Finally, Wiggins damaged his own credibility by insisting he did not see his brother with a gun that night. D0250 at 99:1–16; 114:20–116:4. Video evidence showed the gun was large and Wiggins sat next to his brother as Marcell drove the car they traveled together to and from the shooting. D0250 at 89:13–20; 91:9–17; 105:25–106:3; 115:8–116:4. This made it unlikely he did not observe it. Even so, Wiggins continued to deny his brother had a gun even after viewing footage depicting it at trial: "I can tell it looked like something. I don't know exactly what it is." D0250 at 114:20–115:7; Exh.2, Video Rico's Interior at 03:03–03:10; Exh.4, Video Rico's Exterior at 02:40–02:50. Lying about his brother's conduct was

inconsistent with his claim he was acting out of justification—it was consistent with an anticipated confrontation.

C. Wiggins's disagreement with the jury's conclusions is not grounds to vacate its verdict.

Wiggins's argument under this heading asks this Court to reject the jury's credibility conclusions and accept his self-serving testimony as fact. *See* Appellant's Br. 52–54. The State did not need to refute every portion of Wiggins's narrative about his activities before and after the shooting for the jury to reject it. *Compare* Appellant's Br. 53–54 *with* D0211 at 5 ("You may believe all, part or none of any witness's testimony."). And while it was possible a reasonable jury could have chosen to accept Wiggins's testimony, a "criminal defendant is not entitled to acquittal merely because he wishes the jury had believed him" instead of the other evidence in the record. *State v. Hernandez*, No. 23-0630, 2025 WL 52424, at *3 (Iowa Ct. App. Jan. 9, 2025) (en banc).

Under the standard of review, this Court must view the evidence in the light most favorable to the State, meaning it should defer to the jury's conclusion Wiggins shot Hutchins multiple times out of malice. Wiggins's wish the jury believed him is not grounds to disturb the jury's verdict. *See State v. Keeton*, 710 N.W.2d 531, 535 (Iowa 2006) (rejecting claim evidence of defendant's intent was insufficient to support conviction, "The success of

Keeton's claim at trial hinged on the facts as viewed by the fact-finder, and it is not for us to interfere with the finding made when supported by substantial evidence, even though the evidence may have also supported a finding favorable to the defendant"); *see also Hernandez*, 2025 WL 52424, at *3. This Court should affirm.

III. A reference to "aiding and abetting" within the instruction defining malice was legally correct, relevant in the case, and ultimately harmless.

Preservation of Error

The State contests error preservation. *Cf.* Appellant's Br. 55. Wiggins objected to the State's suggestion to add a definition of "aiding and abetting" for the jury. *See* D0250 at 5:6–23; 7:2–8:4. The district court granted Wiggins's objection and did not include it. D0250 at 7:25–8:5. Wiggins attacks a different instruction altogether. On appeal, he attacks a portion of the "malice" definition in instruction 18. *See* D0211 at 9. The parties did not discuss this instruction during the initial instructions conference. *See* D0250 at 5:2–11:1. Even after objecting to the State's proposed additional "aiding and abetting" instruction, Wiggins did not identify a defect in instruction 18. D0250 at 8:8–10:4. Later, the district court furnished the parties updated copies of the instructions again

including the final version of instruction 18. Wiggins again stated he had no objections and did not request to change instruction 18. D0250 at 73:10–22. Having never raised a challenge to the instruction and twice renouncing the opportunity to do so, Wiggins failed preserve error. *See Davis*, 951 N.W.2d at 16 ("Davis failed to preserve error because his trial counsel did not object to the final draft of Instruction No. 22."); *see also State v. Sallis*, 262 N.W.2d 240, 248 (Iowa 1978).

Standard of Review

Iowa's appellate courts review instructional error for correction of errors at law. *See State v. Kraai*, 969 N.W.2d 487, 490 (Iowa 2022). It reviews the instructions as a whole and "in context with other instructions relating to the criminal charge, not in isolation." *Id.* (quoting *State v. Liggins*, 557 N.W.2d 263, 267 (Iowa 1996)).

Merits

Next, Wiggins attacks the instruction defining "malice" for the jury. Appellant's Br. 58–59. This instruction told the jury what the term "malice" in the marshalling instructions meant, and what they could look to in the evidence to determine whether it existed:

> "Malice" is a state of mind which leads one to intentionally do a wrongful act to the injury of another out of actual hatred, or with an evil or unlawful purpose. It may be established by evidence

> of actual hatred, or by proof of a deliberate or fixed intent to do injury. It may be found from the acts and conduct of the defendant, *or someone he aided and abetted*, and the means used in doing the wrongful and injurious act. Malice requires only such deliberation as would make a person appreciate and understand the nature of the act and its consequences, as distinguished from an act done in the heat of passion.
>
> "Malice aforethought" is a fixed purpose or design to do some physical harm to another which exists before the act is committed. Malice aforethought need not exist for any particular length of time.

D0211 at 9 (emphasis added). Wiggins challenges the district court's inclusion of the emphasized portion of the instruction referring the jury to the acts and conduct "of someone [Wiggins] aided and abetted" because "the State didn't pursue an aiding and abetting theory because Wiggins was the principal." Appellant's Br. 59; D0211 at 9. This Court should reject his challenge for two reasons: the instruction was correct and there was no prejudice if it was not.

A. This was a first-degree murder trial. The jury could use Wiggins's accomplices acts to determine his intent.

First, the instruction was unobjectionable. While Wiggins disagrees with it in hindsight after the jury convicted him of second-degree murder, it was a correct statement of the law based on the State's first-degree murder theory and had a substantial basis in the evidence.

It was a correct statement of the law because the State accused Wiggins of first-degree murder—it alleged he had premeditatedly murdered Hutchins. *See* D0019, Trial Information at 1 (3/25/2024); D0211 at 9. As a part of the theory, it argued he, Marcell, and Lorenzo received information from Keevon Washington that Hutchins was at Rico's and then went together while armed to confront him. *See generally* D0246 at 5:10–16:13; 18:15–23:23; 26:23–28:25 (prosecutor's closing argument laying out theory of the case). Even though they were not being tried together, the jury could look to Marcell and Lorenzo's actions to ascertain Wiggins's intent. *See State v. Black*, 282 N.W.2d 733, 734–35 (Iowa 1979). Intent is markedly difficult to prove with direct evidence, thus, acts and circumstances surrounding those acts can show the intent behind it. *See, e.g.*, *State v. Slaughter*, 3 N.W.3d 540, 549 (Iowa 2024) ("[W]e look to whether the defendant actively encouraged, participated, or assented to the crime."); *see also State v. Green*, 896 N.W.2d 770, 779–81 (Iowa 2017) (discussing malice aforethought). And when "two or more persons combine to accomplish an unlawful purpose, each is responsible for the act of another which is a probable consequence of carrying out the unlawful design. . . ."[4]

[4] Each is equally responsible because there is no liability distinction between a principal and an aider and abettor—they are punished the same. *See* Iowa Code § 703.1.

State v. Kneedy, 3 N.W.2d 611, 615–16 (Iowa 1942); *see also State v. Jefferson*, 574 N.W.2d 268, 277 (Iowa 1997) (examining codefendant's acts alongside Caroll's to determine intent as aider and abettor); *see also* D0211 at 8, 10. Mere presence or knowledge of another's crime will not always establish aiding and abetting; the defendant's guilt must be based upon facts showing his part in the crime. *Id.*; *see also State v. Lewis*, 514 N.W.2d 63, 66 (Iowa 1994). But once the State proves the defendant through his own conduct has aided and abetted another, it is fair for the jury to attribute to the defendant an accomplice's conduct, including the inferences of intent that arise from it. *See* Iowa Code § 703.1; *see State v. Crawford*, 974 N.W.2d 510, 519 (Iowa 2022) (discussing *State v. Hearn*, 797 N.W.2d 577, 580–81 (Iowa 2011) and *Jefferson*, 574 N.W.2d at 277).

Read together, the other marshalling instructions and instruction 18 were consistent with Iowa law and the State's theory of the case. The marshalling instruction for first- and second-degree murder each told the jury the State needed to prove beyond a reasonable doubt that Wiggins had "acted with malice aforethought." D0211 at 9, 13. It told the jury that when determining whether Wiggins so acted it could look to *his* acts or the acts of his co-conspirators if it concluded *he* aided and abetted them. D0211 at 9; *cf. State v. Williams*, 525 N.W.2d 847, 851 (Iowa 1994) ("Our cases have

consistently held that an aider and abettor must personally act with malice in order to be guilty of murder and the malice attributable to the principal perpetrator is not automatically imputed to an accomplice."). In either instance, the court correctly instructed Wiggins's jury to examine his conduct first. Once the jury accepted either of these facts, they could determine Wiggins had the requisite malice. *See State v. Hustead*, 538 N.W.2d 867, 870 (Iowa Ct. App. 1995).

Second, taken in the light most favorable to the State at the time of the instructions conference, there was a substantial basis to submit the premeditation theory to the jury. *See* D0250 at 70:22–73:2; *see also* D0247 at 39:1–41:21; 44:20–45:23; 110:18–114:24; 120:4–122:10; 123:11–124:23; 125:24–128:12; 129:15–17; *see generally Ludman v. Davenport Assumption High Sch.*, 895 N.W.2d 919–20 (Iowa 2017) ("If substantial evidence in the record supports a party's legal theory, it is entitled to submit that theory to the jury.").

The instruction met both requirements, so the district court did not err in giving it.

B. Any error in the malice instruction was non-prejudicial: the jury watched as Wiggins shot Hutchins with a dangerous weapon.

Second, even if this Court disagrees, "jury instructions need not be perfect." *State v. Ross*, 986 N.W.2d 581, 586 (Iowa 2023). "When [an instructional] error is not of constitutional magnitude, the test of prejudice is whether it sufficiently appears that the rights of the complaining party have been injuriously affected or that the party has suffered a miscarriage of justice." *Schwartz*, 7 N.W.3d at 768 (quoting *Ross*, 986 N.W.2d at 589). When determining whether a miscarriage of justice occurred due to the error, this court "looks . . . to the basis on which 'the jury actually rested its verdict.'" *Ross*, 986 N.W.2d at 589 (omission in original); *see also Rivera v. Woodward Res. Ctr.*, 865 N.W.2d 887, 902 (Iowa 2015) ("[I]f a review of the instructions 'leads to the inevitable conclusion that the jury could not have misapprehended the issue,' then the challenge is without merit."). And when assessing the basis for the jury's verdict, this Court does not impute to jurors the linguistic analytical skill of an attorney: "[j]urors do not sit in solitary isolation booths parsing instructions for subtle shades of meaning in the same way that lawyers might." *Schwartz*, 7 N.W.3d at 768 (quoting *Boyde v. California*, 494 U.S. 370, 380–81 (1990)). Rather, it assumes jurors "bring to bear upon the consideration of the case the sound common

sense which is supposed to characterize their ordinary daily transactions." *Id.* (quoting *Dunlop v. United States*, 165 U.S. 486, 499 (1897)).

Applying that standard to this record shows any error in instruction 18 was harmless and rebuts any presumption of prejudice. Wiggins was only charged under a principal theory. D0211 at 9, 13. As the malice definition generally instructed, the jurors in this case examined Wiggins's actions before he entered Rico's, as he shot Hutchins, and after he left. D0211 at 9. Those actions —and the jury's credibility determinations— showed that he shot the man with malice.

There was no dispute in this trial that Wiggins intentionally shot Hutchins. The jury watched it happen via video exhibits and Wiggins admitted on the stand that he intended to shoot Hutchins to neutralize the threat he claimed the man presented. D0250 at 132:13–133:3. And he did so multiple times—his second and third shots support a conclusion he acted with a fixed intent to harm Hutchins. *See State v. Poyner*, 306 N.W.2d 716, 718 (Iowa 1981) ("The multiple wounds refute any suggestion of inadvertence or mistake and supply strong evidence of malice and intent to kill.").

Discussed in part in subdivision II, there were reasons for the jury to find Wiggins's explanations unpersuasive. The two had once been friends,

but were not at the time of the shooting. D0250 at 116:22–117:10; 132:11–12. He claimed he heard gunshots within the bar before he entered, yet there was no video, no bullet impacts, and no shell casings to support his claim. *Compare* D0250 at 91:18–92:3; 93:9–94:10, 103:9–24; 121:20–124:11 *with* D0250 at 127:15–128:9.

After shooting Hutchins, Wiggins did not seek medical attention for him or stay to explain the situation. D0250 at 119:6–15; Exh.4, Video Rico's Exterior at 03:02–03:45. He hid his weapon and left with Marcel and Lorenzo. Exh.4, Video Rico's Exterior at 03:02–03:45; *see also Thornton*, 498 N.W.2d at 673–74 (jury could conclude defendant's actions were inconsistent with justification based on defendant's acts of not seeking medical assistance and immediately leaving scene); *accord State v. Cruz*, No. 24-0168, 2025 WL 707158, at *4 (Iowa Ct. App. Mar. 5, 2025) (jury could reject defendant's claim of justification after evidence in the record showed "his callous demeanor at the house and his failure to call 911, render medical assistance, or otherwise express concern for his dead friend and dying cousin—all of which are inconsistent with an honest self-defense claim").

While Wiggins claimed he fled the scene out of fear of retaliation, it was in tension with his decisions to casually turn his back on the bar, walk

away, and then return for Lorenzo and Marcell. D0250 at 99:17–99:24; 134:7–136:16. He then left with them, again turning his back to the bar. Exh.4, Video Rico's Exterior at 03:05–03:35. He waited two hours to speak with police. He declined to return despite detective Harden's requests he remain available and return "to speak further." D0250 at 19:23–20:23; 23:22–24; 30:19–31:9; 101:15–102:7; *see State v. Mong*, 988 N.W.2d 305, 314 (Iowa 2023) ("After the shooting, Mong left for Las Vegas with no notice and no apparent intent to return despite having a full-time job and dependents in Iowa" and collecting cases on flight).

Between Wiggins's actions, his testimony, and the inconsistencies between the two, there was strong evidence in the record the jury could conclude he—independent of Lorenzo or Marcell—acted with malice.

Indeed, Wiggins points not to the evidence, but to the State's questioning and its opening and rebuttal arguments connecting the three men's conduct to support his claim of prejudice. Appellant's Br. 61–64. This is not persuasive. As already discussed, the State's argument was permissible based on the State's accusations and the evidence. The State could point to the "coordination between the Defendant, Marcell, Keevon, and Lorenzo" to explain its interpretation the encounter at Rico's bar and shooting Hutchins was not happenstance but a planned confrontation.

Compare D0211 at 9 *with* Appellant's Br. 64. Regardless, the jury was always instructed that Wiggins was the principal and that all considerations of Marcell and Lorenzo's conduct had would necessarily be based on *his* acts of aiding and abetting them. *See* D0211 at 9. It examined those acts and then rejected his assertions he was justified when he shot Hutchins in the back as the man ran past him.

Wiggins also points to the fact that the lesser-included counts did not "cure" the error by referencing or correcting the definition of malice. Appellant's Br. 65–66. This too is unremarkable. As he points out, malice is not an element of those crimes. *See* D0211 at 14–17, 19–21; Appellant's Br. 66. But other instructions independently permitted the jury to find malice here. In addition to instruction 18, instruction 19 told the jurors they could look to Wiggins's ability to deliberate and then use his firearm against Hutchins to infer he acted with malice. D0211 at 10. His testimony made it easy for the jury to accept that inference. He told the jury he had deliberated on the threat he thought Hutchins posed and shot him:

> Prosecutor: And as [Hutchins] approaches, you raise your gun and you shoot him?
>
> Wiggins: Correct.
>
> Prosecutor: After he's even with you, at the very least, right?
>
> Wiggins: Correct.

Prosecutor: And you shot three times?

Wiggins: I remember boom, boom. It could have been three. I thought it was two.

Prosecutor: Two or three, but there were three shell casings found. You knew that, right?

Wiggins: Correct.

Prosecutor: So you shot boom, boom, boom, real fast?

Wiggins: Correct.

Prosecutor: One of them hit [Hutchins] in the back.

Wiggins: Could have, yeah. Correct.

Prosecutor: And it's your testimony that, based on what we see here in the video, [Hutchins] was pointing a gun at you and that it was reasonable for you to shoot him in self-defense?

Wiggins: Correct.

Prosecutor: That was your only option?

Wiggins: Correct.

Prosecutor: That's what you want this jury to believe?

Wiggins: I didn't want to get shot again. I didn't want to die.

Prosecutor: You could have just let him run right out the front door, right?

Wiggins: I didn't want him to turn around and shoot me and hold me as hostage. In my view there was only one way out.

> Prosecutor: So you thought he would get outside and shoot back at the bar?
>
> Wiggins: He could have turned around and shot at me as we was coming out.

D0250 at 130:21–131:16. So Wiggins shot him three times.

In sum, Wiggins's challenge to instruction 18 was not preserved, not legally meritorious, and even if correct, had no impact on his trial. He is not entitled to another. This Court should affirm.

IV. Although a reasonable term of probation, the Iowa Code does not allow a district court to order participation in a Victim Offender Dialogue program for defendants like Wiggins who are only sentenced to carceral sentences.

Preservation of Error

The State cannot contest error preservation. *See*, *e.g.*, *State v. Lathrop*, 781 N.W.2d 288, 292–94 (Iowa 2010).

Standard of Review

This Court reviews challenges to the legality of a sentence for errors at law. *See State v. Sisk*, 577 N.W.2d 414, 416 (Iowa 1998).

Merits

Last, Wiggins argues that a portion of his sentence ordering his participation in the Victim Offender Dialogue (VOD) is illegal because there is no statute authorizing it. Appellant's Br. at 28–29; *see Woody*, 613

N.W.2d at 217 ("An illegal sentence is one that is not permitted by statute."). As he recognizes, this could be a permissible term of probation, had the court suspended his sentence. *See* Iowa Code § 907.6; Appellant's Br. 68–69 (citing *State v. Thacker*, 862 N.W.2d 402, 404 (Iowa 2015)). Pursuant to this code section, our sentencing courts can generally require conditions for individuals on probation or parole:

> Probationers are subject to the conditions established by the judicial district department of correctional services subject to the approval of the court, *and any additional reasonable conditions which the court* or district department *may impose to promote rehabilitation of the defendant or protection of the community*. Conditions may include but are not limited to adherence to regulations generally applicable to persons released on parole and including requiring unpaid community service as allowed pursuant to section 907.13.

Iowa Code § 907.6 (emphasis added); *see also Lathrop*, 781 N.W.2d at 298–301.

Here, Wiggins was convicted of second-degree murder and sentenced to an indeterminate fifty-year prison term. D0225 at 1; Iowa Code § 707.3. Because the crime was a forcible felony, the court had no ability to suspend his sentence and order probation. *See* Iowa Code §§ 702.11(1); 902.11. From the State's review, nothing in Iowa Code chapters 901 and 902, which outlines the authorized sentences for felonies, permits the court to sentence

a defendant to programs like VOD. Without the authority to order Wiggins's participation in the program, it is an illegal portion of the sentence and is void. *State v. Reed*, No. 24-0256, 2025 WL 2793578, at *6–7 (Iowa Ct. App. Oct. 1, 2025); *see State v. Manser*, 626 N.W.2d 872, 875 (Iowa Ct. App. 2001) ("As the Iowa Code does not contain a provision authorizing the imposition of a batterer's treatment program under the facts in this case, the sentencing term was outside of the statutory limits, and the sentence is void."); *see also State v. Miller*, No. 09-0249, 2009 WL 3775145, at *2 (Iowa Ct. App. Nov. 12, 2009) ("However, the State concedes, and we agree, that the district court lacked authority to impose a batterer's education program on Miller as part of his *sentence* (rather than as a condition of probation). Because Miller was not placed on probation, this portion of the sentence was not authorized by statute.") (emphasis in original).

This sentence should be remanded with instructions for the district court to excise the VOD portion, while affirming his conviction and the rest of his sentence. *Reed*, 2025 WL 2793578, at *7.

CONCLUSION

None of Wiggins's challenges entitle him to a new trial. This Court should affirm his conviction and remand with instructions to vacate the VOD portion of the judgment.

REQUEST FOR NONORAL SUBMISSION

The State does not request oral submission.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa

TIMOTHY M. HAU
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
Tim.Hau@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 **12,062** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

Dated: October 10, 2025

TIMOTHY M. HAU
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
Tim.Hau@ag.iowa.gov