IN THE SUPREME COURT OF IOWA
Supreme Court No. 24-0053
Woodbury County No. FECR111571

STATE OF IOWA,
Plaintiff–Appellee,

vs.

TAYLOR CHRISTOPHER SMITH,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
THE HONORABLE STEVEN ANDREASEN, JUDGE

BRIEF FOR APPELLEE

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I. Whether the sentencing court abused its discretion.

II. Whether the firearm prohibition is constitutional under the Second Amendment of the United States Constitution.

III. Whether the firearm prohibition is constitutional under Article I, section 1A of the Iowa Constitution.

ROUTING STATEMENT

The Court should transfer this matter to the Court of Appeals for application of existing legal principles. Iowa R. App. P. 6.1101(3).

NATURE OF THE CASE

Following a bench trial presided over by the Honorable Steven Andreasen of the District Court for Woodbury County, Taylor Smith was convicted of sexual abuse in the third degree, a class "C" felony, in violation of Iowa Code section 709.4(1)(b)(2)(d). The court sentenced Smith to an indeterminate term of incarceration not to exceed ten years in prison, along with a fine of $1,370 and 15% surcharge, a civil penalty of $250, registration on the sex offender registry, a special sentence pursuant to Iowa Code section 903B.1, and a sexual abuse surcharge of $90. D0084, Order of Disposition at 1–4 (1/5/2024). Pursuant to his felony conviction, Smith was also prohibited from possessing a firearm, offensive weapon, or ammunition. D0090, Notice of Firearm Prohibition at 1 (1/9/2024). Smith appeals his conviction, judgment, and sentence.

STATEMENT OF THE FACTS

On June 2, 2020, fourteen-year-old K.S. woke up to her family friend's boyfriend, Taylor Smith, having sex with her in her bed. D0103, Trial Tr. (3/28/23) at 11:12–17, 12:18–25, 23:16–24. She told him to stop and he refused to do so. *Id.* at 25:8–14. He instead told her to be quiet. *Id.*

at 25:15–18. Smith ejaculated. *Id.* at 25:21–22. He told K.S. he would marry her once she was "at the right age." *Id.* at 26:1–4. Smith was more than four years older than K.S. *Id.* at 50:10–14.

Although Smith left K.S's bedroom, he later returned and fell asleep in her bed. *Id.* at 27:22–28:6, 30:17–20. K.S.'s brother discovered Smith there. *Id.* at 30:17–20. He told their stepfather. *Id.* at 30:21–23. Smith left the residence. *Id.* at 31:12–22.

Three weeks later, K.S. discovered she was pregnant. *Id.* at 32:4–12. She gave birth in late February 2021, approximately nine months after her encounter with Smith. *Id.* at 34:10–36:3. A DNA test established Smith was the father. *Id.* at 36:4–25; D0065, Exh. 3, DNA Lab Report at 1 (5/18/2023).

Smith was charged with sexual abuse in the third degree. D0009, Trial Information at 1 (5/26/2021). He was found guilty as charged. D0084 at 1.

ARGUMENT

I. The sentencing court did not abuse its discretion.

Preservation of Error

Generally, "errors in sentencing may be challenged on direct appeal even in the absence of an objection in the district court." *State v. Lathrop*,

781 N.W.2d 288, 293 (Iowa 2010). The State does not contest error preservation.

Standard of Review

"A sentencing court's decision to impose a specific sentence that falls within the statutory limits is cloaked with a strong presumption in its favor, and will only be overturned for an abuse of discretion or the consideration of inappropriate matters." *State v. Damme*, 944 N.W.2d 98, 105–06 (Iowa 2020) (internal marks omitted). "An abuse of discretion is found when the court exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable." *State v. Evans*, 672 N.W.2d 328, 331 (Iowa 2003). The district court "is to weigh all pertinent matters in determining a proper sentence including the nature of the offense, the attending circumstances, the defendant's age, character, and propensities or chances for reform." *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995).

Merits

In June 2020, at the time of Smith's offense, a class "C" felony was subject to a fine of between $1,000 and $10,000. Iowa Code § 902.9(1)(d) (2019). That fine would have been subject to a thirty-five percent surcharge. Iowa Code § 911.1(1) (2019). Violations of Chapter 709 were also then subject to a sexual abuse surcharge of $100. Iowa Code § 911.2B(1) (2019).

Shortly after Smith committed this offense, those amounts changed. *See* 2020 Iowa Acts Ch. 1074 §§ 18, 20, 45(d) (effective July 15, 2020). Correspondingly, at the time of Smith's sentencing in 2024, the range of fines for a class "C" felony was between $1,370 and $13,660; the crime services surcharge was fifteen percent of that fine; and the sexual abuse surcharge was $90. Iowa Code §§ 902.9(1)(d), 911.1(1), 911.2B(1) (2023). The sentence imposed "must be as prescribed by statute at the time of the commission of the criminal act, and not subsequently thereto." *State v. Marx*, 205 N.W. 518, 519 (Iowa 1925); *see also* Iowa Code § 4.13(1)(c). Smith argues his fines should be amended to reflect the minimum permissible fines as of the date he committed this offense. Appellant's Br. at 14–20.

The effective range of potential fines plus surcharges can be expressed as the product of the range of potential fines and the applicable criminal penalty surcharge, plus the sexual abuse surcharge. *See State v. Fisher*, 877 N.W.2d 676, 686 (Iowa 2016) (finding "no meaningful difference between a fine and a built-in surcharge on a fine"). Before July 2020, that formula would have produced a range of $1,450 to $13,600 for a class "C" felony subject to the sexual abuse surcharge. Here, Smith was fined $1,665.50. That falls within the acceptable range that existed before July 2020. The

court did not abuse its discretion by imposing a fine within the statutory range that existed at the time of the offense. *State v. Purdy*, No. 23-0563, 2024 WL 1296267, at *1–2 (Iowa Ct. App. Mar. 27, 2024).

Smith contends the district court was unaware it had discretion to order a lower fine and, by this lack of awareness, abused its discretion. Appellant's Br. at 16–19; *see also State v. Gay*, No. 19-1354, 2021 WL 4889239, at *3–4 (Iowa Ct. App. Oct. 20, 2021). The burden is on Smith to establish an abuse of discretion. *State v. Crooks*, 911 N.W.2d 153, 171 (Iowa 2018). He cannot do so.

Neither party discussed fines at the sentencing hearing. When it came time to impose sentence, the court announced it was imposing "a fine of $1,370 plus a 15 percent criminal surcharge," both of which were suspended. D0107, Sent. Tr. (1/5/2024) at 18:20–22. "A" fine and "a" surcharge are indicators the court recognized its discretion. In contrast, the Court of Appeals has found an abuse of discretion where a district court imposed "the" new minimum fine in a case with similar facts. *See State v. Boley*, No. 23-0854, 2024 WL 707460, at *2 (Iowa Ct. App. Feb. 21, 2024). Imposing "the" fine suggests what Smith alleges: a failure to recognize other options. Imposing "a" fine, as here, suggests selecting from among a range of options, which is a proper exercise of discretion.

Likewise, *State v. Wong*, No. 01-1708, 2003 WL 183332, at *1 (Iowa Ct. App. Jan. 29, 2003), is distinguishable. In that case, the court tried to impose a lower fine before both attorneys "corrected" the court into imposing a greater one. 2003 WL 183332, at *1. That record established a lack of awareness of discretion to impose the lower fine. On this record, there is no such showing.

Smith also points to the form the district court used as evidence of its failure to recognize its discretion. Appellant's Br. at 18. Unsurprisingly, in 2024 the district court used a form fitted with 2024 figures. There is no evidence the form was anything other than a starting point, and it cannot be evidence of the district court's thought process. There is no per se abuse of discretion in using a template form.

The State acknowledges the district court imposed "the" sexual abuse surcharge of $90. D0107 at 24:18–19. But that is no abuse of discretion: the court has no discretion as to the amount of the sexual abuse surcharge. The amount would have been properly assessed at $100 under the facts of this case. But the State allows Smith may benefit from the new provision. *See Wong*, 2003 WL 183332 at *1 ("If a penalty for an offense is reduced by the amendment of a statute, a defendant will receive the benefit of the new provision." (citing *State v. Chrisman*, 514 N.W.2d 57, 61 (Iowa 1994))).

Smith cannot establish the district court's failure to understand the scope of its discretion. What remains is a fine within the range of acceptable fines as that range existed on the date of the applicable offense. Imposing such a fine is not an abuse of discretion.

II. The firearm prohibition is constitutional under the United States Constitution.

Preservation of Error

Error was not preserved. After the district court entered its judgment of conviction, in a separate filing it informed Smith that he was now subject to a firearm prohibition. D0090 at 1; *cf.* D0084 at 9 ("People who have been convicted of felonies (in state or federal court) are not permitted to possess, ship, transport, or receive a firearm, offensive weapon, or ammunition in Iowa, unless they have been pardoned or had their civil rights restored."). There was no discussion of this matter at the sentencing hearing. Error preservation requires a party to present a claim and receive a ruling on the same. *See, e.g.*, Thomas A. Mayes & Anuradha Vaitheswaran, *Error Preservation in Civil Appeals in Iowa: Perspectives on Present Practice*, 55 Drake L. Rev. 39, 52, 68–70 (2006). This did not occur.

Smith suggests that was a part of the court's sentence and therefore exempt from normal rules of error preservation. Appellant's Br. at 27–28; *see, e.g.*, *State v. Gross*, 935 N.W.2d 695, 698–99 (Iowa 2019) ("On the

other hand, restitution is part of a sentence, and when a party appeals a sentence, some issues may be raised for the first time on appeal even though they were not raised in the district court."). The State disagrees. The court's sentencing order provided what it called a "[m]iscellaneous [n]otice[]" that "[p]eople who have been convicted of felonies" may not possess a firearm. D0084 at 9. But a "miscellaneous notice" directed at "people" in general is not a sentence. *See Sentence*, Black's Law Dictionary (12th ed. 2024) ("The judgment that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer"). Rather, it alerts the sentenced person that because of their changed circumstances, they may later expect collateral consequences like those expressed in the Notice of Firearm Prohibition. *See* D0090 at 1.[1] Courts have referred to this prohibition as an "additional directive" or a "crime-related prohibition." *See State v. Grover*, No. 14-0072, 2014 WL 7343514, at *5 (Iowa Ct. App. Dec. 24, 2014) ("The sentencing court in this

[1] Iowa Code section 724.26 prohibits firearm possession by two classes of people, whom one might colloquially call "felons" (subsection 1) and "domestic abusers" (subsection 2). Subsection 3 governs notice of the prohibition, and by its terms, it only applies to the "domestic abusers." *See* Iowa Code § 724.26(3). Whatever a sentence is, it almost certainly requires notice thereof. *See* Iowa Code § 901.5 (assuming a "time fixed by the court for pronouncement of judgment and sentence"). Smith, a subsection-one felon, was not entitled to any notice of the firearm prohibition, further suggesting it was not part of his "sentence."

case imposed a firearms prohibition as an additional directive."); *State v. Shupe*, No. 47288-7-I, 2001 WL 1187158, at *1–2 (Wash. Ct. App. Oct. 8, 2001) (citing Washington statute defining "crime-related prohibition").

Although it followed as a collateral result of his convictions, the firearm prohibition was not a punishment that was part of Smith's sentence. Iowa law recognizes there are multiple consequences that follow from a conviction—that does not automatically make them a part of the judgment. *See State v. Hess*, 983 N.W.2d 279, 285–86 (Iowa 2022) (sex offender registration is a mandatory collateral consequence of conviction); *Doss v. State*, 961 N.W.2d 701, 710–11 (Iowa 2021) (although special sentence of parole was a part of the sentence, the particular rules and conditions of that parole were not); *Fisher*, 877 N.W.2d at 683–84 (Iowa Code section 901.5's requirement for district courts to order revocation of defendant's license upon conviction for controlled substance possession was "mandatory, immediate, and part of the punishment for that offense"). Iowa law already holds that a prohibition on carrying a firearm is just such a collateral consequence. *Saadiq v. State*, 387 N.W.2d 315, 325 (Iowa 1986) ("[T]he prohibition of firearm possession . . . is clearly a collateral consequence of Saadiq's third-degree theft conviction, we reject his argument the sentencing *court* had to inform him of it."). It was not part of

his sentence. As a result, normal error-preservation rules apply, and Smith has not preserved error.

Standard of Review

The Court reviews constitutional claims de novo. *State v. Gomez Medina*, 7 N.W.3d 350, 354 (Iowa 2024).

Merits

Smith challenges the firearm prohibition. The Second Amendment to the United States Constitution protects the right to "keep and bear Arms." U.S. Const. amend. II. This right extends to individuals. *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008). But the right is not unlimited, and a state may limit the right of felons to possess firearms. *Id.* at 626.

To do so, the government must show the restriction "is consistent with the Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 24 (2022). "[T]he appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *United States v. Rahimi*, No. 22-915, 2024 WL 3074728, at *6 (U.S. June 21, 2024). "A court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'applying

faithfully the balance struck by the founding generation to modern circumstances.'" *Id.* (quoting *Bruen*, 597 U.S. at 29). "Why and how the regulation burdens the right are central to this inquiry." *Id.* A modern law must be sufficiently analogous to its "historical precursors" but need not be a "dead ringer" or "historical twin." *Id.* The law is not "trapped in amber." *Id.*

In *Rahimi*, the United States Supreme Court concluded a facial challenge to a law criminalizing possessing a firearm while subject to a domestic violence restraining order failed. *See id.* at *4, *6. Surveying historical traditions, the Court found earlier laws to "confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Id.* at *9. The relevant law's "prohibition on the possession of firearms by those found by a court to present a threat to others fits neatly within" that historical tradition, the Court held. *Id.*

So it is here. Smith committed an act of physical violence against K.S. He poses a clear threat to her in much the same way a domestic abuser continues to pose a clear threat to their victim. Witness Smith's statement to K.S. that he would marry her when she was "at the right age." That statement suggests an ongoing infatuation that poses a clear threat to K.S.

Of course, Smith remains the father of K.S.'s child—an unwanted relationship that permanently binds them. Moreover, during the pendency of this action the State filed a criminal complaint against Smith for violating a no-contact order by sitting in his car "in the immediate vicinity" of K.S.'s house. D0001 (Woodbury County No. SMSM516223), Criminal Complaint at 1 (10/4/2022); *see also* D0018 (Woodbury County No. SMSM516223), Order of Disposition at 8 (1/8/2024) (dismissing case). The State concedes Smith was not convicted of that violation but maintains filing a complaint supports a finding of an ongoing threat.

Smith argued at trial that he could not be held responsible because he was under the influence of methamphetamine when he assaulted K.S. D0103 at 53:20–55:9, 56:9–18. That argument should be concerning. Smith's presentence investigation report (PSI) shows substance abuse has been a problem for him. D0075, PSI at 12–13 (12/11/2023) (listing criminal history). His continued substance abuse, which he used to attempt to escape responsibility, presents a continuing problem for K.S. and others.

Smith's incarceration does not defeat this threat. *See State v. Dains*, No. 21-0708, 2022 WL 1654063, at *3 (Iowa Ct. App. May 25, 2022). Rather, there is substantial evidence Smith continues to pose a clear threat of physical violence to K.S., and possibly to other minors. Because of that,

he may be disarmed. *Rahimi*, 2024 WL 3074728, at *9. The firearm prohibition is not unconstitutional under the United States Constitution.

III. The firearm prohibition is constitutional under the Iowa Constitution.

Preservation of Error

The State contests error preservation for the same reasons as those listed in the previous section.

Standard of Review

The Court reviews constitutional claims de novo. *Gomez Medina*, 7 N.W.3d at 354.

Merits

Under the Iowa Constitution, Smith seems to challenge the firearm prohibition both facially ("The State cannot show that a general prohibition on felons possessing arms is narrowly tailored," Appellant's Br. at 31) and as applied to him ("[T]he crime [Smith] committed was not violent; it does not require a showing of violence or use of force," Appellant's Br. at 30–31). *See United States v. Veasley*, 98 F.4th 906, 909 (8th Cir. 2024) (noting an as-applied challenge "requires courts to examine a statute based on a defendant's individual circumstances" while a facial challenge "is really just a claim that the law or policy at issue is unconstitutional in *all* its

applications" (emphasis in original)). This Court should hold the firearm prohibition survives both challenges.

At the heart of Smith's challenges is Iowa Constitution Article I, section 1A, which provides: "The right of the people to keep and bear arms shall not be infringed. The sovereign state of Iowa affirms and recognizes this right to be a fundamental individual right. Any and all restrictions of this right shall be subject to strict scrutiny." That amendment became effective on November 8, 2022. Of course, that date is after the offensive conduct at issue here but before Smith's conviction therefor. Smith, who earlier argued for the lowest fine available to him on June 2, 2020, now argues for the broadest gun-rights protection available to him on January 5, 2024. And although he assumes Article I, section 1A applies to this case, *see* Appellant's Br. at 28–29, that is not so clear.

Many questions arise. Is the amendment self-executing or does it require additional legislation to go into effect? Might one part be self-executing and another not so? *See State ex rel. Miller v. Bd. of Ed.*, 511 P.2d 705, 709–10 (Kan. 1973) (recognizing constitutional provisions "may be self-executing in part and not self-executing in another part"). No Iowa court has spoken on the matter and Smith does not argue a position.

Does the amendment apply retroactively? If so, in part or in whole? Did Smith enjoy a "fundamental individual right" to keep and bear arms on the date of his offense? Does it matter, or is the relevant consideration whether he enjoyed that right on the day of his conviction? Do we evaluate the statute in place on the date of the offense under strict scrutiny, or does the strict-scrutiny clause of the amendment only apply prospectively, to new laws? *Cf. State v. Draughter*, 130 So.3d 855, 864 (La. 2013). Smith does not address these questions.

Does an Iowan's "fundamental individual right" to possess a firearm apply in all situations, or is its application limited to permit applications? *See State v. Craig*, 807 N.W.2d 453, 462 n.4 (Minn. Ct. App. 2011) (finding strict scrutiny applied to permit applications but applying intermediate scrutiny to those deemed ineligible to possess a firearm). Smith does not consider this question.

In cases with that many permutations, rather than spelling out why one's position should carry the day under each specific scenario, the simplest argument is to explain why one's position prevails even under the harshest conditions. So, while not conceding the above, the State will argue that even assuming, arguendo, Smith has a fundamental right to bear arms protected by strict scrutiny, his argument still fails.

By way of reminder, Iowa has not adopted the United States Supreme Court's *Bruen*/*Rahimi* "historical tradition" test.[2] This Court need not do so. *See State v. Brown*, 930 N.W.2d 840, 847 (Iowa 2019) ("We jealously guard our right to construe a provision of our state constitution differently than its federal counterpart, though the two provisions may contain nearly identical language and have the same general scope, import, and purpose."). While the United States Supreme Court is the final arbiter of the meaning of the United States Constitution, neither side in this case urges this Court to adopt a new and unfamiliar test to apply to the Iowa Constitution. *Danforth v. Minnesota*, 552 U.S. 264, 291–92 (2008) ("State courts are the final arbiters of their own state law; this Court is the final arbiter of federal law.") (Roberts, C.J., dissenting); *cf. Bruen*, 597 U.S. at 115 ("In short, a standard that relies solely on history is unjustifiable and unworkable.") (Breyer, J., dissenting). Instead, this Court should rely on familiar "means-end" tools of construction and interpretation. *See United States v. Adams*, 914 F.3d 602, 610 (8th Cir. 2019) (Kelly, J., concurring).

The traditional question posed in strict-scrutiny analysis is whether "the government action infringing the fundamental right is narrowly

[2] Both parties also request routing this case to the Iowa Court of Appeals to apply existing laws.

tailored to serve a compelling government interest." *Hensler v. City of Davenport*, 790 N.W.2d 569, 580 (Iowa 2010). Iowa has "a *legitimate* interest in minimizing the felonious use of firearms." *State v. Rupp*, 282 N.W.2d 125, 130 (Iowa 1979) (emphasis added); *see State v. Buchanan*, 604 N.W.2d 667, 669 (Iowa 2000) (noting felons "have an elevated tendency to commit crimes of violence"). One new question posed by the 2022 amendment is whether that legitimate interest may also be understood as a *compelling* interest. The State answers in the affirmative. In so doing, the State addresses Smith's facial challenge.

Compelling government interests are "only those interests of the highest order." *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). They often "address a perceived problem, protect a group from harm, or cure some ill in society." *In re Warner*, 21 So.3d 218, 250 (La. 2009). "[I]n the fundamental privacy rights context, the compelling interest must be important enough to justify infringing on a right." *Planned Parenthood of The Great Northwest v. State*, 375 P.3d 1122, 1138 n.88 (Alaska 2016).

Iowa has a compelling state interest in protecting the public. *In re Det. of Garren*, 620 N.W.2d 275, 286 (Iowa 2000); *see also State v. Musser*, 721 N.W.2d 734, 744 (Iowa 2006). That interest includes protecting society at large from increased gun violence. *See Heller*, 554 U.S.

at 626 ("[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons . . . ."); *United States v. Mesa-Rodriguez*, 798 F.3d 664, 673 (7th Cir. 2015) ("[T]he government has [a] strong interest in preventing people who have already disrespected the law (including . . . felons . . .) from possessing guns."); *United States v. Skoien*, 614 F.3d 638, 642 (7th Cir. 2010) ("[N]o one doubts that the goal of [18 U.S.C. section 922(g)(9)], preventing armed mayhem, is an important governmental objective."); *State v. Curtiss*, No. 102,604, 2010 WL 4977222, at *3 (Kan. Ct. App. Nov. 24, 2010); *Craig*, 807 N.W.2d at 462 ("Protecting the public from offenders who use guns is certainly an important governmental objective, if not a compelling state interest."); *State v. McCoy*, 468 S.W.3d 892, 897 (Mo. 2015) ("The State has a compelling interest in ensuring public safety and reducing firearm-related crime."). Relevant here, protecting the welfare of children is also a compelling state interest. *In re Marriage of Howard*, 661 N.W.2d 183, 190 (Iowa 2003) ("[A] *compelling* state interest arises when substantial harm or potential harm is visited upon children." (emphasis in original)); *see also Blattert v. State*, 190 N.E.3d 417, 422 (Ind. Ct. App. 2022).

In addition to addressing a compelling state interest, the relevant government regulation must also be narrowly tailored to serve that interest.

Hensler, 790 N.W.2d at 580. Here, Smith's prohibition stems from Iowa Code section 724.26(1) and 18 U.S.C. section 922(g)(1).[3] D0090 at 1. Each of those prohibits felons from possessing firearms. *See* 18 U.S.C. § 922(g)(1); Iowa Code § 724.26(1).

That tailoring is Savile-Row exacting. Felons' prior conduct demonstrates their unsuitability to possess firearms. *See Kanter v. Barr*, 919 F.3d 437, 448 (7th Cir. 2019), *abrogated on other grounds by Bruen*, 597 U.S. at 18–19; *United States v. Williams*, 616 F.3d 685, 693 (7th Cir. 2010). "The public interest in a prohibition on firearms possession is at its apex in circumstances, as here, where a statute disarms persons who have proven unable to control violent criminal impulses." *People v. Delacy*, 122 Cal. Rptr. 3d 216, 224 (Cal. Ct. App. 2011). Congress has even limited funding to process restoration applications because "too many of these felons whose gun ownership rights were restored went on to commit violent crimes with firearms." H.R. Rep. 104-183, at 15.

[3] Smith does not cite a statute that runs afoul of the Iowa Constitution. Appellant's Br. at 28–31. These two statutes are the likely targets, and the State is not alleging it was confused by the lack of citation. But, as a technical matter, a party should not be able to assert a law is not narrowly tailored to a compelling state interest without naming *which* law. Iowa R. App. P. 6.903(2)(a)(8)(3).

This is not a new proposition. Felons, historically, "did not fall within the benefits of the common law right to possess arms." Don B. Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment,* 82 Mich. L. Rev. 204, 266 (1983); *see also United States v. Carpio-Leon*, 701 F.3d 974, 979 (4th Cir. 2012) (collecting cases holding Second Amendment protected only "law-abiding" citizens). There is no call to depart from that understanding here.

As of 2019, "every federal court of appeals to address the issue [had] held that [18 U.S.C. section 922(g)(1)] [did] not violate the Second Amendment on its face." *Kanter*, 919 F.3d at 442. *Bruen* and *Rahimi* change the test, but not the substance. In Iowa, where the test has not changed, the substance should also not change. To keep the public safe, those who have seriously flaunted the law before are kept from possessing firearms. That idea marries a compelling state interest with a narrowly tailored regulation. It is not invalid on its face.

Smith's as-applied challenge amounts to an assertion that his crime, a violation of Iowa Code section 709.4(1)(b)(2)(d), was not violent, and therefore he, at least, should not be prohibited from possessing firearms. Appellant's Br. at 30–31. Smith confuses a legal issue with a factual issue. It is true that force was not an element of the crime with which he was

charged. *See State v. Butler*, 138 N.W. 383, 383 (Iowa 1912). That does not mean his crime was non-violent. He snuck into a fourteen-year-old's bedroom, moved her underwear to the side, "touched" her, and sexually assaulted her. D0103 at 24:8–23. When she told him to stop, he refused. *Id.* at 25:10–11. He told her to be quiet. *Id.* at 25:10–18. And he ejaculated on her. *Id.* at 25:21–25. The crime was charged under the simplest alternative to prove, which did not require proving force. But it was horribly violent.

Smith does not offer a test that limits a firearm prohibition to those convicted of crimes for which force or "violence" was an element. Nor should this Court adopt such a test. The underlying rationale for the felon dispossession law is certain individuals have shown themselves a danger to society. Violence does not factor in that consideration, but to the extent any violence informs the analysis, it is the factual violence enacted on those felons' victims, not a legal finding of violence. *See Rahimi*, 2024 WL 3074728, at *5 ("Since the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms."). The "violent criminal impulses" matter, not the elements charged or pled to. *Delacy*, 122 Cal. Rptr. 3d at 224.

Violence, in any form, need not be an element of the test. A felony conviction suffices. "[W]hile felon-in-possession laws could be criticized as

'wildly overinclusive' for encompassing nonviolent offenders, every state court in the modern era to consider the propriety of disarming felons under analogous state constitutional provisions has concluded that step to be permissible." *United States v. Yancey*, 621 F.3d 681, 685 (7th Cir. 2010). Even if Smith's crime were not violent, or even if this Court were to limit the scope of "violence" to the elements of the conviction, Smith remains a felon. He has thereby demonstrated his lack of fitness to possess a firearm. The prohibition remains permissible.

CONCLUSION

This Court should affirm.

REQUEST FOR NONORAL SUBMISSION

The State requests nonoral submission.

Respectfully submitted,

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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:

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