IN THE SUPREME COURT OF IOWA

No. 23-1475
Washington County No. FECR006963

STATE OF IOWA
Plaintiff-Appellee,

v.

MATTHEW MEISHEID
Defendant-Appellant.

Appeal from the Iowa District Court for Washington County
Honorable Joshua Schier, District Court Judge

BRIEF FOR APPELLANT

Gary Dickey
Counsel of Record
DICKEY, CAMPBELL, & SAHAG LAW FIRM, PLC
301 East Walnut St., Ste. 1
Des Moines, Iowa 50309
PHONE: (515) 288-5008 FAX: (515) 288-5010
EMAIL: gary@iowajustice.com

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II. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN CONCLUDING THAT NO MITIGATING CIRCUMSTANCES EXISTED TO REDUCE MEISHEID'S MANDATORY MINIMUM SENTENCE

ROUTING STATEMENT

Transfer to the court of appeals is appropriate.

NATURE OF THE CASE

On July 20, 2022, the State of Iowa filed a trial information charging Matthew Meisheid with two counts of assault on a peace officer while displaying a dangerous weapon in violation of Iowa Code sections 708.1 and 708.3A(2), class "D" felonies. (D0014 Trial Information (07/20/22)). The State also gave notice of its intent to seek a five-year mandatory minimum sentence on each count for displaying a dangerous weapon in a threatening manner while participating in a forcible felony. Iowa Code § 902.7. Meisheid entered pleas of not guilty to both charges. (D0016 Order for Arraignment (07/20/22)). At the conclusion of trial, a Washington County jury found Meisheid guilty as charged on both counts. (D0086 Criminal Verdict (06/28/23)). The jury also found that Meisheid displayed a dangerous weapon in a threatening manner during the commission of each offense. (D0086 Criminal Verdict (06/28/23)). The court sentenced Meisheid to serve the mandatory minimum five years in prison for each count to be served concurrently. (D0110 Order of Disposition (08/11/23)). Meisheid appealed. (D0114 Notice of Appeal (09/11/23)).

STATEMENT OF THE FACTS

On July 9, 2022, at approximately 9:15 p.m., two Washington County deputy sheriffs, Nolan Burke and Noah Schlabaugh, were dispatched to a residence in Kalona on a report that someone was shooting off fireworks. (D0001, Criminal Complaint (07/11/22), D0130 Trial Tr. at 181:15-24, 207:22 to 209:24 (06/27/23)). Upon arrival, the deputies noticed the smell of smoke lingering in the air, and they attempted to make contact with the occupants. (D0130 Trial Tr. at 182:4-14 (06/27/23)). Matthew Meisheid initially opened the main door to the residence and then subsequently slammed it shut after observing the deputies. (D0130 Trial Tr. at 183:20-25 (06/27/23)).

Deputy Burke wore a body camera video that captured the following exchange with Meisheid:

> BURKE: Hello.
>
> MEISHEID: Listen, I have a Doberman right here, and I'm grilling. I don't know what you're doing here, but you don't have a warrant, so let's go. See you.
>
> BURKE: Oh, well I was just gonna let you know that Kalona has a "no fireworks" ordinance. You can't shoot fireworks.
>
> MEISHEID: I don't fireworks. I have a dog that's

barking.

BURKE: Okay, we have to – I, I under -- I'm just telling you we, we got a call there's fireworks from here. There's smoke coming out of the back yard. I just wanted to let you know if you are shooting them, just – we can't shoot anymore, okay?

MEISHEID: I have a fire going.

BURKE: Okay. Perfect.

MEISHEID: So you're more than welcome to drive around the block.

SCHLABAUGH: And, they might have got the wrong house. They –

BURKE: That's why I said, just –

SCHLABAUGH: Just somebody in the area called.

MEISHEID: You know what I'm tired – this is just bullshit again so get the fuck off my property without a warrant.

BURKE: Okay.

MEISHEID: Right now.

BURKE: Yeah, I'm, I'm going.

MEISHEID: Do, do you have a – you both have body cameras on?

BURKE: Yes, sir.

MEISHEID: I have – I have em in my car too.

DEPUTY: Perfect. Okay.

MEISHEID: I'm going to get one out.

DEPUTY: So, if – if there were any fireworks just no more – you can't shoot them in Kalona, okay? Deal?

MEISHEID: What's your name and badge number? For just –

BURKE: Deputy Burke 927.

SCHLABAUGH: Deputy Schlabaugh 929.

MEISHEID: Yeah, I'm getting really fucking tired of you assholes coming to my house blaming me of shit --

BURKE: Sir, I've never met you before.

MEISHEID: I don't give a shit about you. You've been here, you know it.

BURKE: Sir, we didn't just come here. Somebody called.

MEISHEID: You stopped down the street then up the street. You have two cars here. And, I'm grilling out.

BURKE: Okay. Well, we got a report of fireworks coming from this address. And we just came to tell you you can't shoot fireworks, that's all. I don't know why you're trying to make such a big deal about it. We're, we're out of here.

(D0089 Trial Ex. 1 at 21:24:20 to 21:25:40). At that point, Meisheid looked into the sky, grabbed a holstered item from his waistband with his right hand, raised it above his head, and said, "I'll shoot a

firework, boom, boom, boom, boom." Thereafter, Meisheid put the holster back into his waistband after which time the following exchange took place:

> BURKE: Sir, put that away now. What are you doing?
>
> MEISHEID: Well, you assholes wanna fuckin always come on my property.
>
> BURKE: I'm in your driveway.
>
> MEISHEID: You're on my property without a warrant. Get the fuck out of here. I'm tired of this shit.
>
> BURKE: Sir, we got called here.
>
> MEISHEID: See ya. You don't have a warrant. You have nothing. Get out of here.

(D0089 Trial Ex. 1 at 21:25:44 to 21:26:07). The deputies left Meisheid's property and did not return that evening.

The Washington County Sheriff subsequently obtained an arrest warrant for Meisheid along with a search warrant for his residence. (D0130 Trial Tr. at 237:17 to 240:2 (06/28/23)). On July 12, 2022, Lieutenant Chad Ellis executed the warrants and arrested Meisheid. (D0130 Trial Tr. at 238:17 to 239:16 (06/28/23)). During the search, Lt. Ellis told Meisheid that they were looking for "the black gun that [he] brandished Saturday

night." (D0089 Trial Ex. 4 at 9:25:42). Meisheid responded, "It's right up on the shelf. There's two that aren't in the safe, hers and mine. Everything else is in the safe. I will be honest with you about that." (D0089 Trial Ex. 4 at 9:25:45 to 9:26:01). Officers located the guns inside the residence at the location Meisheid said they would be. (D0130 Trial Tr. at 242:7 to 244:3 (06/28/23)).

The State charged Meisheid with two counts of assault on a peace officer while displaying a dangerous weapon. (D0014 Trial Information (07/20/22)). It also sought the five-year mandatory minimum sentence on each count under section 902.7 for displaying a dangerous weapon in a threatening manner while participating in a forcible felony. (D0014 Trial Information (07/20/22)). After a two-day trial, the jury found him guilty as charged on both counts. (D0086 Criminal Verdict (06/28/23)). The jury also found that he displayed a dangerous weapon in a threatening manner during the commission of each offense. (D0086 Criminal Verdict (06/28/23)). The court sentenced Meisheid to the mandatory minimum five years in prison for each count to be served concurrently. (D0110 Order of Disposition (08/11/23)). Meisheid appealed. (D0114 Notice of Appeal (09/11/23)).

ARGUMENT

I. THE EVIDENCE WAS INSUFFICIENT TO CONVICT MEISHEID OF ASSAULT ON A PEACE OFFICER WHILE DISPLYING A DANGEROUS WEAPON

Preservation of Error

Meisheid preserved error by moving for a judgment of acquittal at the close of the State's evidence and again at the close of trial. (D0130 Trial Tr. at 301:1-9, 351:10-20 (06/28/23)).

Standard of Review

"A motion for judgment of acquittal is a means of challenging the sufficiency of the evidence, and [appellate courts] review such claims for corrections of errors at law." *State v. Serrato*, 787 N.W. 2d 462, 465 (Iowa 2010).

Analysis

A. Applicable legal principles

When a defendant claims that there is insufficient evidence to support a conviction, the Court will uphold the verdict if there is substantial evidence to support it. *State v. Conyers*, 506 N.W.2d 442, 444 (Iowa 1993). The court considers all the evidence presented, not just the evidence that favors the State. *State v. Kolbert*, 638 N.W.2d 653, 658 (Iowa 2001). Evidence that merely

raises a suspicion or speculation is not substantial evidence. *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997). In determining whether there was substantial evidence, this Court views the evidence in the light most favorable to the State. *State v. Torres*, 495 N.W.2d 678, 681 (Iowa 1993). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *Id.*

Meisheid was convicted of assault on a peace office under Iowa Code section 708.3A(2), which provides in relevant part:

> 2. A person who commits an assault, as defined in section 708.1, against a peace officer . . . who knows that the person against whom the assault is committed is a peace officer . . . and who uses or displays a dangerous weapon in connection with the assault, is guilty of a class "D" felony.

Iowa Code § 708.3A(2). Section 708.1, in turn provides:

> 708.1 Assault defined.
> 1. An assault as defined in this section is a general intent crime.
> 2. A person commits an assault when, without justification, the person does any of the following:
> a. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.
> b. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the

> apparent ability to execute the act.
>
> c. Intentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon toward another.
>
> d. (1) Intentionally points a laser emitting a visible light beam at another person with the intent to cause pain or injury to another. For purposes of this paragraph, "laser" means a device that emits a visible light beam amplified by the stimulated emission of radiation and any light which simulates the appearance of a laser

Id. § 708.1(1),(2). In this case, the State charged Meisheid with violating section 708.3A and 708.1(2)(c). While section 708.3A does not require a defendant to display a dangerous weapon toward the peace officer, section 708.1(2)(c) does. Thus, as charged, the State was required to prove beyond a reasonable doubt that:

> 1. On or about July 9, 2022, Meisheid displayed a dangerous weapon toward another person in a threatening manner; and
>
> 2. Meisheid knew or should have known that the other person was a peace officer.

(D0085 Jury Instr. No. 18 (06/28/23)); *State v. Filippo*, 2009 Iowa App. LEXIS 36 at *5 (Iowa Ct. App. Jan. 22, 2009). Meisheid does not dispute that he knew the deputies were peace officers.[1] Instead,

[1] At trial, Meisheid testified that the holstered held a meat thermometer rather than a handgun. (D0130 Trial Tr. at 312:12 to 317:22 (06/28/23)).

he challenges the sufficiency of the evidence as to the element that he displayed "in a *threatening manner*" a dangerous weapon "*toward another*." Iowa Code § 708.1(2)(c) (emphasis added).

B. The evidence was insufficient to establish that Meisheid displayed a dangerous weapon toward either deputy

The principles of statutory construction are well established:

> When the plain language of a statute is clear, we need not search for meaning beyond the statute's express terms. We may presume the words contained within a statute have the meaning commonly attributed to them. We can resort to rules of statutory construction, however, when a statute's meaning is ambiguous. A statute is ambiguous if reasonable persons could disagree as to its meaning.

Oyens Feed & Supply, Inc. v. Primebank, 879 N.W.2d 853, 859 (Iowa 2016)(cleaned up). Section 708.1 does not define "toward." As defined in *Black's Law Dictionary* and *Merriam-Webster Dictionary*, "toward" means "in the direction of." *See* Black's Law Dictionary at 1491 (6th ed. 1998); Toward, https://www.merriam-webster.com/dictionary/toward (last accessed 04/22/24); *see also Young v. Iowa City Cmty. Sch. Dist.*, 934 N.W.2d 595, 606 (Iowa) (expressing preference for *Black's Law Dictionary* and *Merriam Webster's Law Dictionary*). Taken together, the State must have

presented substantial evidence that he displayed the dangerous weapon *in the direction of another* to sustain Meisheid's conviction under section 708.1(2)(c).

The record is undisputed that Meisheid did not display his weapon *in the direction* of either deputy. Indeed, Deputy Burke conceded during cross-examination that Meisheid never pointed the holster toward him:

Q. The gun was never pointed towards you, correct?

A. Not directly at us, no.

(D0130 Trial Tr. at 199:15-17 (06/27/23)). If any doubt remains, Deputy Burke's body camera video ends it. The video shows Meisheid turn to the side, look away, grab the holster from his waistband, and point it to the sky:

(D0089 Trial Ex. 1 at 21:25:41 to 21:25:44). Clearly, Meisheid displayed the holster *in front of*, *near*, and *next to* the deputies. But, he never displayed it *toward* them.[2]

[2] A simple counterfactual demonstrates this point. Suppose Meisheid held a loaded handgun and discharged it into the air. No reasonable user of the English language would say that he shot the gun "toward" the deputies. *See* Frank H. Easterbrook, *The Role of Original Intent in Statutory Construction*, 11 Harv. J.L. & Pub. Pol'y, 59, 65 (1988) ("We should look at the statutory structure and hear the words as they sound in the mind of a skilled, objectively reasonable user of words").

Further support is found in the commonsense canon of *noscitur a sociis*, which counsels that the meaning of particular words is controlled by the neighboring words with which it is associated. *Peak v. Adams*, 799 N.W.2d 535, 547 (Iowa 2011). As applied to section 708.1(2)(c), this principle signals the General Assembly's intent that "toward" operates as a tourniquet to limit the statute's scope of liability. Thus, it is not unlawful *ipso facto* under section 708.1(c) to point or display a weapon. It is only unlawful to point or display a weapon in the direction of another. *See State v. Lopez*, 907 N.W.2d 112, 118 (Iowa 2018) (observing in dicta that section 708.1(2)(c) includes "features of temporal and physical presence").

One final point. If it is a close question, the rule of lenity resolves the issue in Meisheid's favor. *State v. Nall*, 894 N.W.2d 514, 519 (Iowa 2017) ("under the rule of lenity, we take a narrow approach to construing ambiguous criminal laws"). When a criminal statute can "linguistically be interpreted to be either a meat axe or a scalpel," the scalpel wins. *United States v. Sun-Diamon Growers*, 526 U.S. 398, 412 (1999). The rule gives life to the time-honored rule that courts may not make criminal law

through statutory construction. *State v. Lovell*, 23 Iowa 304, 304 (1867) ("Criminal statutes are . . . inelastic, and cannot by construction be made to embrace cases plainly without the letter though within the reason and policy of the law"). An expansive construction of section 708.1(2)(c) is inconsistent with the rule of lenity.

B. The evidence was insufficient to establish that Meisheid displayed a dangerous weapon in a threatening manner

Meisheid's conviction must be set aside for a second reason. He did not display the holster in "a threatening manner" as required under section 708.1(2)(c). The statute does not define when it means to display a dangerous weapon in a threatening manner. Contemporary dictionaries define a "threat" as "an expression of an intention to inflict evil, injury, or damage on another." *United States v. Bauer*, 2024 U.S. Dist. LEXIS 14897 at *8 (D.C. Dist. Jan. 29, 2024) (citing *Black's Law Dictionary* and *Webster's Third New International Dictionary*). "Whereas the knowing pointing of a firearm at another when done in obvious jest would not necessarily constitute threated used of a deadly weapon." *United States v. Hernandez-Rodriguez*, 467 F.3d 492, 496 (5th Cir. 2006)(quotations

omitted).

On this point, the Eighth Circuit Court of Appeals decision in *United States v. Hamilton*, 46 F.4th 864 (8th Cir. 2022), is particularly instructive. The question presented in *Hamilton* was whether section 708.1(2) was a "crime of violence" under the force clause of the career-offender guideline. *Id.* at 866. To satisfy the requirements of the force clause, the elements of the state offense must categorically include the use, attempted use, or threatened use of physical force against another person. *Id.* "Physical force" is "force cable of causing physical pain or injury to another person." *Id.* at 868. After surveying the case law, the Eighth Circuit concluded that assault on a peace officer was a crime of violence because there was no way to commit the offense "that did not involve at least the threatened use of physical force." *Id.* at 869. From *Hamilton*, if follows *a fortiori* that the elements of section 708.3A and 708.1(2)(c) necessarily require proof of the threatened use of physical force.

Here, Deputy Burke's body camera video dispels any notion that Meisheid displayed the holster in a threatening manner. For starters, Meisheid never verbally threatened the deputies at any

point during the two-minute encounter. When he pulled the holster from his belt, he turned to the side and looked away from the deputies. He did not point the holster in their direction. To the contrary, he moved the holster away from the deputies, pointed it to the sky, and said, "I'll shoot a firework, boom, boom, boom, boom." Clearly, he was referencing the caller's complaint of fireworks rather than the intent to use physical force against the deputies. To the extent the jury found beyond a reasonable doubt the item was a gun, it remained holstered the entire time, which was less than three seconds after which time Meisheid immediately returned it to his waistband.

In its closing argument, the prosecutor argued that all that sections 708.3A and 708.1(2)(c) require is that a gun was displayed in such a manner as to intimidate the officers:

> If two people are having an argument and one of them pulls a gun out, that's displaying a dangerous weapon so as to intimidate the other person. That's what happened in this case.
>
> But it doesn't even need to be that egregious, members of the jury. All that's required for somebody to be guilty of displaying a dangerous weapon in a threatening manner would be to lift up their coat to show the person that they're packing. If they've got it holstered on their belt

> and they show it to the other person to intimidate them, they're guilty.
>
> * * *
>
> Both deputies testified they felt threatened, and rightly so. Any reasonable person would be threatened when faced with actions of what the Defendant did.

(D0130 Trial Tr. at 375:20 to 378:2 (06/28/23)). The prosecutor's interpretation of sections 708.3A and 708.1(2)(c) creates significant due process problems. A law may be unconstitutionally vague if it criminalizes conduct based on the unpredictable reactions of third parties. For example, in *Coates v. City of Cincinnati*, 402 U.S. 611 (1971), the United States Supreme Court struck down as unconstitutionally vague a city ordinance that made it criminal for "three or more persons to assemble . . . on any of the sidewalks . . . and there conduct themselves in a manner annoying to persons passing by." *Id.* Because a violation of the statute hinged on the reaction of third parties, it failed to specify an ascertainable standard, leaving potential violators to guess at its meaning. *Id.* at 614. The prosecutor's interpretation suffers from the same defects as the ordinance in *Coates*. Criminalizing conduct that depends on the knowable reactions of third parties leaves ordinary citizens to

guess what conduct violates the statute. For this reason, sections 708.3A and 708.1(2)(c) must be narrowly construed to avoid unnecessary constitutional issues. *See State v. Dahl*, 874 N.W.2d 348, 351 (Iowa 2016)("The doctrine of constitutional avoidance counsels us to construe statutes to avoid constitutional issues when possible").

II. THE DISTRICT COURT ABUSED ITS DISCRETION IN CONCLUDING THAT NO MITIGATING CIRCUMSTANCES EXISTED TO REDUCE MEISHEID'S MANDATORY MINIMUM SENTENCE

Preservation of Error

Meisheid's preserved error by asking the court to impose a sentence less than the mandatory minimum because of his first-time offender status. (D0128 Sentencing Tr. at 13:16-19 (08/11/23)).

Standard of Review

The district court's sentence is reviewed for abuse of discretion. *State v. Moore*, 936 N.W.2d 436, 439 (Iowa 2019).

Analysis

Iowa Code section 901.10 provides in pertinent part:

> A court sentencing a person for the person's first conviction under section 124.406, 124.413, or 902.7

> may, at its discretion, sentence the person to a term less than provided by the statute if mitigating circumstances exist and those circumstances are stated specifically in the record.

Iowa Code § 901.10(1). It is undisputed that this was Meisheid's first conviction under section 902.7. Accordingly, Meisheid was eligible for a reduction in his sentence as a first-time offender if mitigating circumstances existed.

It is widely accepted in Iowa that a lack of criminal history is a mitigating factor. *See State v. Lacey*, 968 N.W.2d 792, 810 (Iowa 2021) ("The court also considered Lacey's lack of criminal history as a mitigating factor"); *State v. Castro*, 2023 Iowa App. LEXIS 451 at *7-8 (Iowa Ct. App. June 7, 2023) ("the court noted its consideration of . . . Castro's lack of a criminal history, which indicates the court viewed these factors as mitigating"); *State v. Williams*, 2023 Iowa App. LEXIS 287 at *5 (Iowa Ct. App. Mar. 29, 2023) ("the court viewed Williams's lack of a criminal history as a mitigating factor justifying concurrent rather than consecutive sentences"); *State v. Wright*, 2014 Iowa App. LEXIS 1188 at *12 (Iowa Ct. App. Dec. 10, 2014) (observing that lack of criminal history is not a sufficient mitigating factor to overcome legislative deference for cruel and

unusual punishment purposes); *see also United States v. Beiermann*, 599 F.Supp.2d 1087, 1110 (N.D. Iowa 2009) ("I find Biermann's lack of any significant criminal history . . . to be substantially mitigating"). Likewise, a history of public service is a mitigating factor. *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Bergmann*, 938 N.W.2d 16, 23 (Iowa 2020) (noting public service as a mitigating factor); *United States v. Burns*, 834 F.3d 887, 890-91 (8th Cir. 2016) (noting the court "considered the mitigating factors urged by Burns," which were his "public service . . . and lack of criminal history"). As is success on pretrial release. *United States v. Ross*, 2024 U.S. App. LEXIS 5234 at *5 (8th Cir. Mar. 5, 2024) ("The court found Ross's success on pretrial release, his work history, and his lack of criminal record mitigating"). The same is true for a defendant's poor health. *Moore*, 936 N.W.2d at 440 ("combat-related PTSD and other mental health issues").

Here, the record established that Meisheid's conviction in this offense was his only criminal history. (D0096 PSIR at 4). The district court granted Meisheid pretrial release upon posting a bond, and he had no violations and always stayed in contact. (0096 PSIR at 3-4). In addition, Meisheid previously served on the city

council, including as mayor. (D0102 Helms Ltr, D0104 Mary Ltr, D0105 McKinley Ltr, D0107 Krob Ltr). He volunteered as a firefighter. (D0107 Krob Ltr). He regularly attended church. (D0103 Roush Ltr). On top of that, he has several serious medical problems:

> He takes fifteen medications for his various medical problems. He suffers from high blood pressure, anxiety/depression, has an autoimmune disorder, a problem with the function of his thyroid gland, and must take testosterone due to the removal of a cancerous testicle. He also suffers from elbow and shoulder pain from a work-related incident several years ago. He is supposed to use a C-PAP machine to aid his breathing during sleep. His major problem is pain from a near fatal fall he suffered at work a little more than a year ago. He broke most of his ribs on one side of his body. He has had several surgeries to repair the damage. At present, the surgeries have not improved his ability to do physical activities or reduced his pain.

(D0101 James Ltr).

At sentencing, the district court declined to go below the mandatory minimum sentence and state its reasoning:

> The Court is very aware of the Code. The Court is aware that 901.10 allows for the Court to sentence a first-time offender to less than the minimum if the Court finds mitigating circumstances. *The Court does not believe there are mitigating circumstances in this instance.*

(D0128 Sentencing Tr. at 23:13-7 (08/11/23)) (emphasis added).

It is one thing to say that Meisheid's circumstances do not warrant a sentencing reduction in the court's discretion. It is another to say that no mitigating factors exist. The district court's conclusion is a clear abuse of discretion. *Moore*, 936 N.W.2d at 439 ("An abuse of discretion occurs . . . when it is not supported by substantial evidence"). Accordingly, remand for resentencing is required. *Id.* at 440.

CONCLUSION

For the reasons articulated herein, Meisheid asks this Court to reverse his conviction. Alternatively, he requests a remand for resentencing.

REQUEST FOR ORAL ARUGMENT

Counsel requests to be heard in oral argument.

CERTIFICATE OF COMPLIANCE

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

> This brief has been prepared in a proportionally spaced typeface using Bookman Old Style in 14 pt and contains 4,056 words, excluding parts of the brief exempted by Iowa R. App. P 6.903(1)(*g*)(1).

Gary Dickey

5/16/2024
Date