ELECTRONICALLY FILED SEP 04, 2024 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

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No. 23-1475
Washington County No. FECR006963

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STATE OF IOWA
Plaintiff-Appellee,

v.

MATTHEW MEISHEID
Defendant-Appellant.

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

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# REPLY BRIEF FOR APPELLANT

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## STATEMENT OF THE ISSUES

I. WHETHER THE EVIDENCE WAS SUFFICIENT TO CONVICT MEISHEID OF ASSAULT ON A PEACE OFFICER WHILE DISPLAYING A DANGEROUS WEAPON

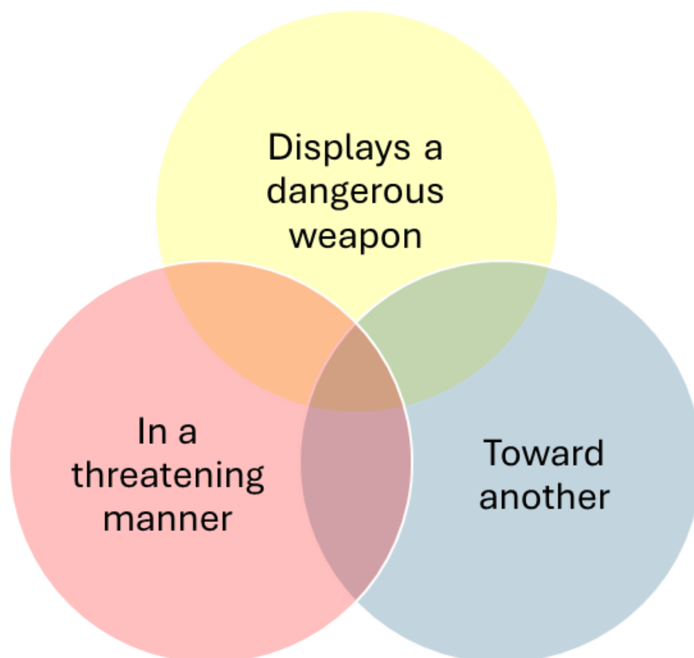
II. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN CONCLUDING THAT NO MITIGATING CIRCUMSTANCES EXISTED TO REDUCE MEISHEID'S SENTENCE

## REPLY ARGUMENT

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

Iowa Code section 708.1(2)(c) makes it a crime to display a dangerous weapon toward another in a threatening manner. Iowa Code § 708.1(2)(c). If depicted as a three-circle Venn diagram, liability attaches under section 708.1(2)(c) only where the circles overlap in the

center:




Venn diagram of the elements of Iowa Code section 708.1(2)(c). The State's case hinges on its contention section 708.1(2)(c) encompasses any display of a dangerous weapon in the presence of

another person. All tools of statutory construction confirm that section 708.1(2)(c) is far more limited in scope. And, because body camera video in the record conclusively establishes Meisheid neither displayed a dangerous weapon "toward another" nor did he do so in a "threatening manner," his conviction must be reversed.

### A. Meisheid did not display the holster toward the deputies

The State's brief is notable for what it does not do. Although the State takes issue with Meisheid's reliance on the plain meaning of "toward another," it does not offer any general definition of its own. Instead, the State defines the phrase solely in terms of a single counterfactual:

> If Defendant had held his gun behind his back, he would not have displayed it toward the deputies. But he didn't. Defendant displayed it toward the deputies because he removed it from his waistband and brandished it at the deputies making it clear he was armed.

(State's Br. at 12). But, this hypothetical illustrates the infirmity in the State's interpretation. The "display" element requires that a defendant "place or spread something for people to see." *Display*, Merriam-Webster Online Dictionary (2024).[1] Had Meisheid

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[1] Available at Display Definition & Meaning - Merriam-Webster (last

held the holster behind his back out of view from others, he would not have *displayed* it at all – let alone toward another person. While the State seeks to define "toward another" in the negative, it can only do so by extending the definition of "display" beyond all normal understanding.[2]

Meisheid's interpretation, on the other hand, follows naturally from the relevant dictionary definition of the word "toward." It also jibes with the way normal English speakers use and understand the word. *See Comcast Corp. v. Nat'l Ass'n of African American-Owned Media*, 589 U.S. 327, 333 (2020). Suppose, for example, the deputies had commanded Meisheid to move his right hand toward them. Ordinary English speakers would see Meisheid's act of raising his hand to the sky as unresponsive to the command.

Accepting the State's construction whites out the words "toward another" from section 708.1(2)(c). Our canons of statutory

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visited Sept. 1, 2024).

[2] The State's suggestion that Meisheid "brandished [the weapon] at the deputies" is disproved by the body camera video. As the still images in his opening brief illustrated, Meisheid displayed the "*in front of, near,* and *next to* the deputies." (Meisheid Br. at 18). Specifically, he pulled the weapon from his waistband and raised it to the sky. He never displayed it *toward* or *at* the deputies.

construction, however, "require that every word and every provision in a statute is to be given effective, if possible, and not deemed mere surplusage." *Mid Am. Constr., LLC v. Sandlin*, 2 N.W.2d 838, 850 (Iowa 2024). And, "toward another" is not merely an afterthought, it actually "does work" in section 708.1(2)(c). *Id.* Look no further than the State's charging decision in this case. There is no doubt that Meisheid pointed the holster in front of the officers. But, he pointed the holster in the direction of the sky, not the deputies. If "toward another" served no purpose, surely the State would have prosecuted Meisheid under the "points" alternative. *See* Iowa Code § 708.1(2)(c) ("Intentionally points any firearm toward another").

The State's interpretation frustrates the statute's evident purpose, which is to distinguish between the mere display of a dangerous weapon and the display of a dangerous weapon in a threatening manner toward another. The State's reading threatens to criminalize the mere display of a dangerous weapon, which another person finds intimidating. On this point, the State gives away the game with its citation to *McLaughlin v. United States*, 476 U.S. 16, 17 (1986), for the proposition that "the display of a gun instills fear in the average citizen; as a consequence, it creates an

immediate danger that a violent response will ensue." (State's Br. at 12). Synthesizing the State's arguments means that section 708.1(2) is violated anytime a gun is visible to another person. But, this expansive view cannot be squared with Iowa's legislative shift to open carry. *State v. Price-Williams*, 973 N.W.2d 556, 589 (Iowa 2022) (Appel, J., dissenting) ("Iowa has significantly liberalized its gun laws to permit open carry"). Nor is it consistent with the duty to construe criminal statutes narrowly. *State v. Romer*, 832 N.W.2d 169, 176 (Iowa 2013) ("we strictly construe criminal statute and resolve doubts in favor of the accused").

The Iowa General Assembly knows how to criminalize the mere display of a dangerous weapon. In Iowa Code section 719.1, for example, the legislature has provided increased penalties for the mere display of a dangerous weapon while committing interference with official acts:

> If a person commits interference with official acts, as defined in this subsection, and in so doing . . . displays a dangerous weapon, as defined in section 702.7 . . . that person commits a class "D" felony.

Iowa Code § 719.1(1)(f). The sharp contrast between sections 708.1(2)(c) and 719.1(1)(f) confirms the legislature's desire to

substantially limit the former statute's actus reus.

Contrary to the State's suggestion, no decision from any Iowa appellate courts supports its construction of section 708.1(2)(c). The State points to the decision in *State v. Downs*, 2016 Iowa App. LEXIS 1164 (Iowa Ct App. Nov. 9, 2016). But, *Downs* illustrates why Meisheid's conviction must be reversed. The statute at issue in *Downs*, Iowa Code section 708.2A(2)(c), provides that a person commits "[a]n aggravated misdemeanor, if the domestic abuse assault is committed with the intent to inflict a serious injury upon another, or if the person uses or displays a dangerous weapon in connection with the assault." *Id.* at *7 (quoting Iowa Code section 708.2A(2)(c)). The defendant in *Downs* told his wife that "he was going to kill her . . . while brandishing a loaded shotgun [and] . . . then began shooting the gun near the house while [she] was standing just outside the front door." *Id.* at *7-8. Clearly, the threat to kill his wife followed by firing "three shots at random around the house" is undoubtedly an assault under Iowa Code section 708.1(2)(b). *Id.* at *3, 7 ("Travis did not merely threaten Diana during the January 6, 2012 incident"). Likewise, there is no question that Downs "use[d] or display[d] a dangerous weapon in

connection with the assault." Iowa Code § 708.2A(2)(c). Thus, any discussion about displaying the gun toward his wife in a threatening manner is classic orbiter dicta. Indeed, the court noted that "[n]othing in section 708.2A(2)(c) requires the weapon to be pointed directly at the victim." *Downs*, 2016 Iowa App. LEXIS 1164 at *8. In all these respects, *Downs* offers no guidance.

More importantly, Meisheid's conduct is several standard deviations away from the defendant's in *Downs*. Had he discharged a gun around his house while the deputies stood outside the front door, the State's argument would have some currency. But, Meisheid made no threats. He did not discharge any weapon. Nor did he commit an assault under any other alternative in section 708.1. These material differences nonetheless are important. They illustrate why Meisheid's conviction cannot be upheld under section 708.1(2)(c).

### B. Meisheid did not display the holster in a threatening manner

The State argues that sufficient evidence exists to prove that Meisheid displayed the holster in a threatening manner because he "showed or made apparent to Deputies Burke and Schlabaugh his

firearm existed and that he did so to intimidate them." (State's Br. at 10). That cannot be correct. The phrase "threatening manner" modifies the way in which the dangerous weapon is "displayed." In this way, it is an objective standard that focuses on the actus reus rather than Meisheid's mens rea. In other words, Meisheid must be acquitted if he did not display the holster in a threatening manner even if he subjectively intended to intimidate the deputies. For this reason, the State's focus on Meisheid's contemporaneous statements and state of mind is irrelevant.

Implicitly recognizing the hole in the evidence, the State emphasizes that Deputy Burk "felt threatened" and Deputy Schlabaugh felt "intimidated." (State's Br. at 10-11). From this testimony, the State argues that the "evidence overwhelmingly shows Defendant showed his gun to the deputies to intimidate them." (State's Br. at 11). But, the deputies' state of mind is as irrelevant to the analysis as Meisheid's. The sine qua non is the manner in which Meisheid displayed the holster. Thus, while the officers subjectively may have felt intimidated, that does not change the analysis of whether the dangerous weapon was displayed in a

threatening manner.[3]

The State's interpretation presents a host of other problems. For one thing, statutes must be construed to avoid constitutional problems, not to create them. Construing "threatening" to depend on how the view subjectively perceives the manner in which the dangerous weapon is displayed cannot be squared with due process principles. *See Stahl v. City of St. Louis*, 687 F.3d 1038, 1041-42 (8th Cir. 2012) (finding due process violation where ordinance criminalizes activity based primarily on often unpredictable reactions of third parties rather than directly on a person's own actions). On top of that, criminalizing the mere display of a firearm on the basis that it is inherently threatening runs headlong into Iowa's open carry statute and basic Second Amendment principles. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597U.S. 1, 76 (2022) ("the Second Amendment protects the right of law-abiding people to carry a gun outside the home for self-defense"). Common sense and

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[3] The Court need only play the body camera video without sound to see that Meisheid did not display it in a "threatening manner." Viewing "the facts in light depicted by the videotape," Meisheid's conviction cannot stand. *Scott v. Harris*, 550 U.S. 372, 380-81 (2007) ("The Court of Appeals should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape").

constitutional avoidance further counsel against the State's staggeringly broad construction.

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

"An abuse of discretion occurs when the court exercises its discretion on grounds or for reasons that are clearly untenable or unreasonable." *State v. Covel*, 925 N.W.2d 183, 187 (Iowa 2019). The Court "may find grounds untenable when based on an erroneous application of law." *Id.* This is a case in point.

Iowa Code section 901.10 allows a sentencing court to reduce a first-time offender's sentence "if mitigating circumstances exist and those circumstances are stated specifically in the record." Iowa Code § 901.10(1). The State does not dispute that several mitigating factors exist in Meisheid's circumstance – i.e. lack of criminal history, public service, good conduct on pretrial release, and poor health. Instead, the State claims the "record shows the district court specifically mentioned several instances of mitigating circumstances and contemplated whether Defendant should get the benefit of section 901.10(1)." (State's Br. at 15). The State's

characterization of the record is demonstrably false.

The court below acknowledged the information contained in Meisheid's "presentence investigation report, the arguments of counsel . . ., and the evidence presented." D0128 Sentencing Tr. at 22:13-17 (08/11/23). Despite being armed with this information, the court below found that no mitigating circumstances existed. This was not some slip of the tongue. The court declared not once, but twice that no mitigating circumstances exist:

> 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. . . . Again, *the Court finds no mitigating circumstances exist.*

D0128 Sentencing Tr. at 23:13-24 (emphasis added). The court either misinterpreted the term "mitigating circumstances"[4] or disregarded the evidence. Either way, it abused its discretion. The Court should remand for resentencing before a different judge. *See State v. Lovell*, 857 N.W.2d 241, 243 (Iowa 2014) (providing that

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[4] Mitigating circumstances are facts, which "in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability." Mitigating Circumstances, Black's Law Dictionary 1002 (6th ed. 1990).

resentencing on remand be before a different judge to "protect the integrity of our judicial system from the appearance of impropriety").

## CONCLUSION

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

**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:

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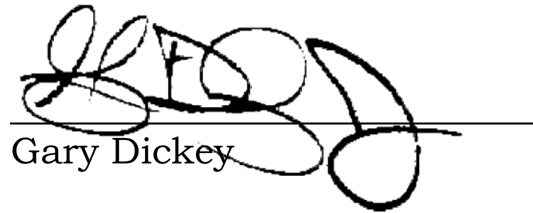

Gary Dickey

9/04/2024
Date