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

APPLICATION FOR FURTHER REVIEW
(COURT OF APPEALS DECISION 01/09/25)

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QUESTIONS PRESENTED

After two Washington County deputy sheriffs advised Matthew Meisheid shooting fireworks was not allowed in the city of Kalona, he looked to the sky, grabbed a holstered item from his waistband with his right hand, raised it above his head away from the officers, and said, "I'll shoot a firework, boom, boom, boom, boom."

Meisheid was convicted of two counts of assault on a peace officer while displaying a dangerous weapon and sentenced to a mandatory minimum prison term of five years. This application presents the following questions for further review:

1. Does the "toward" element in Iowa Code section 708.1(2)(c) require proof that a defendant displayed a dangerous weapon "in the direction of another" person?

2. Is the "threatening manner" element in Iowa Code section 708.1(2)(c) satisfied by a defendant's obviously hyperbolic statements or must there be objective proof of an actual threat?

3. Whether the district court abused its discretion in applying the mandatory minimum sentence in Iowa Code section 901.10 finding "no mitigating circumstances exist" when several mitigating factors clearly existed?

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STATEMENT SUPPORTING FURTHER REVIEW

Three grounds exist to grant further review of Mathew Meisheid's convictions for assault on a peace officer while displaying a dangerous weapon. First, Iowa Code section 708.1(2)(c) requires proof that Meisheid displayed a dangerous weapon "toward" another person. Iowa Code § 708.1(2)(c). This Court has never defined what "toward" means in this context. Here, the body camera video shows that Meisheid never displayed the holstered item "in the direction" of anyone. To the contrary, the item was moving away from the deputies at times it was visible. The court of appeal's broad conception of "toward" is inconsistent with its ordinary meaning and contradicts our state's open carry firearms laws.

Second, section 708.1(2)(c), requires proof that Meisheid displayed a dangerous weapon in a "threatening manner," which is an objective standard. The court of appeals, however, relied on subjective evidence in the form of Meisheid's intent "to intimidate the deputies" and "that they felt 'threatened' and intimidated.'" The transformation of "threatening manner" to a subjective element rewrites the statute and raises serious due process concerns.

Third, Iowa Code section 901.10(1) allows a sentencing court to reduce the mandatory minimum sentence required under section 902.7 for first-time offenders "if mitigating circumstances exist and those circumstances are stated specifically in the record." Iowa Code § 901.10(1). In refusing to reduce the mandatory minimum, the district court expressly found, "no mitigating circumstances exist." Even the State concedes that several mitigating factors existed such as: (1) absence of criminal history; (2) public service; (3) success on pretrial release; and (4) his poor health. The district court's refusal to recognize these factors as mitigating circumstances is a clear abuse of discretion that warrants further review.

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 provided 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 at 2. 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). The court of appeals affirmed. *State v. Meisheid*, 2025 Iowa App. LEXIS 16 (Iowa Ct. App. Jan. 9, 2025).

STATEMENT OF 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 at 182:4-14. Matthew Meisheid initially opened the main door to the

residence and then subsequently slammed it shut after observing the deputies. D0130 at 183:20-25.

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 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 away from the deputies, 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 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 at 237:17 to 240:2. On July 12, 2022, Lieutenant Chad Ellis executed the warrants and arrested Meisheid. D0130 at 238:17 to 239:16. 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 (06/30/23). 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 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 at 1. 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 at 1. After a two-day trial, the jury found him guilty as charged on both counts. D0086 at 1. The jury also found that he displayed a dangerous weapon in a threatening manner during the commission of each offense. D0086 at 2. The court sentenced Meisheid to the mandatory minimum five years in prison for each count to be served concurrently. D0110 at 1-2. Meisheid appealed. D0114 at 1.

ARGUMENT

I. FURTHER REVIEW IS NECESSARY BECAUSE THE PLAIN LANGUAGE OF IOWA CODE SECTION 708.1(2)(C) REQUIRES PROOF THAT MEISHEID DISPLAYED A DANGEROUS WEAPON IN THE DIRECTION OF ANOTHER IN AN OBJECTIVELY THREATENING MANNER

A. Applicable legal principles

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.

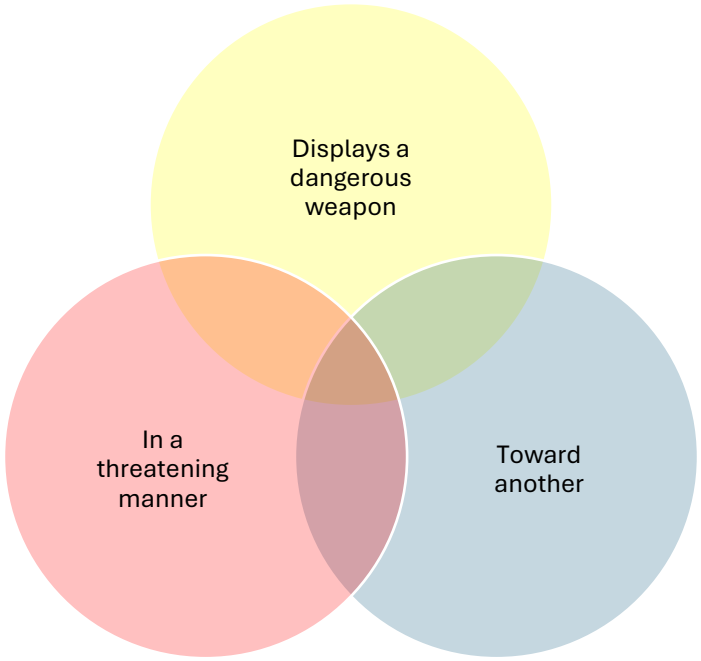
> 1. An assault as defined in this section is a general intent crime.
> 2. A person commits an assault when, without justification, the person does any of the following:
>
> * * *
>
> c. Intentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon toward another.

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). If depicted as a three-circle Venn diagram, liability attaches under section 708.1(2)(c)

only where the circles overlap in the center:



Meisheid does not dispute that he knew the deputies were peace officers.[1] Instead, 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).

[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.

B. The court of appeals refused to interpret "toward" according to its ordinary meaning, which is "in the direction of"

"In interpreting a law, the words of the text are of paramount importance." *State v. Wade*, 7 N.W.2d 511, 514 (Iowa 2024). "Words in a statute bear their ordinary meanings unless the context indicates that a technical meaning applies." *Id.* Here, the legislature provided no definition for "toward" or "threatening manner." *Black's Law Dictionary* and *Merriam-Webster Dictionary* define "toward" to mean "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*). Applying this ordinary meaning, section 708.1(2)(c) does not prohibit all forms of displaying a dangerous weapon. It prohibits one thing only – the display of a dangerous weapon *in the direction of another*.

Despite this straightforward reading, the court of appeals affirmed Meishied's conviction because "Meisheid removed the gun from his waistband in a manner that [the deputies] could see it and

pointed it into the air." *Meisheid*, 2025 Iowa App. LEXIS 16 at *11-12. According to the court of appeals, that was "enough for a rational trier of fact to conclude that he displayed the gun toward the deputies." *Id.* at *12. But, the record is undisputed that Meisheid did not display his weapon *in the direction* of either deputy. 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 holstered item *in front of*, *near*, and *next to* the deputies. But, he never displayed it *toward* them.[2] Instead, he displayed the holstered item *away from* the officers – which is the opposite of toward.

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*

[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").

v. Adams, 799 N.W.2d 535, 547 (Iowa 2011). As applied to section 708.1(2)(c), this principle signals the legislature'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").

The court of appeals' two hypotheticals serve only to highlight the flaw with its statutory construction. The court suggested that if Meisheid "had pulled the gun with his back to the deputies and in a manner that they could not see it, he would not have been displaying it 'toward' the deputies." *Meishied*, 2025 Iowa App. LEXIS 16 at *11. Similarly, the court indicated that if "he had been standing alone in his house when he pointed it up in the air – he would not have been displaying it 'toward another.'" *Id.* The problem with both hypotheticals is that the "display" element in section 708.1(2)(c) requires proof that the defendant "place or spread *something for people to see*." *Display*, https://www.merriam-webster.com/dictionary/display (last accessed 01/24/25) (emphasis

added). In either of the court of appeals' scenarios, Meisheid would not have *displayed* the dangerous weapon at all – let alone toward another.

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.

C. The court of appeals improperly relied upon subjective evidence to conclude that Meisheid displayed the dangerous weapon in a "threatening manner"

Meisheid's conviction must be set aside for a second reason. He did not display the holstered item in "a threatening manner" as required under section 708.1(2)(c). The statute does not define what 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).

Rather than apply the ordinary meaning of "threatening," the court of appeals limited itself to Jury Instruction 21, which defined "Displayed a dangerous weapon in a threatening manner" to mean when a person shows or makes "apparent to another person that a dangerous weapon existed so as to intimidate the other person."

D0085 at Jury Instr. No. 21. While an unobjected jury instruction becomes law of the case on appeal, the district court still has an obligation to evaluate the sufficiency of the evidence under a correct statement of the law at the time the defendant moves for a judgment of acquittal. *State v. Ellis*, 578 N.W.2d 655, 658-59 (Iowa 1998). In any event, the definition in Jury Instr. No. 21 is an objective one. *See Myers v. City of Cedar Falls*, 8 N.W.3d 171, 185 (Iowa 2024) ("We generally require objective standards in criminal statutes to give individuals sufficient notice that their conduct will subject them to criminal liability"). The court of appeals, however, relied on wholly subjective evidence to sustain Meisheid's conviction:

> A rational trier of fact could view the body camera footage and conclude that Meisheid was attempting to intimidate the deputies, especially by pulling out the gun and stating, "I'll shoot a firework, boom, boom, boom, boom." And after he brandished the gun he said, "Well you assholes want to fucking always come on my property." The deputies backed off as Meisheid continued to yell at them. And both deputies testified that they felt "threatened" and "intimidated" by Meisheid.

Meisheid, 2024 Iowa App. LEXIS 16 at *8.[3] But, section 708.1(2)(c) is not a specific intent crime. Accordingly, whether Meisheid

[3] The court of appeals' analysis would be correct if section 708.1(2)(c) criminalized the "display of dangerous weapon with the

intended to intimidate the deputies is not an element of the offense. Nor is whether they actually felt threatened or intimidated. Instead, the inquiry should have been focused on the actus reus – i.e. the manner in which Meisheid displayed the weapon. 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").

D. The proper construction of section 708.1(2)(c) important issue that should be resolved by this Court

Criminal statutes must be construed to avoid constitutional problems, not to create them. *State v. Iowa Dist. Ct.*, 843 N.W.2d 76, 85 (Iowa 2014) ("The doctrine of constitutional avoidance suggests the proper course in the construction of a statute may be to steer clear of 'constitutional shoals' when possible"). If allowed to stand,

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intent to intimidate another" or the "display of a dangerous weapon causing another feel threatened or intimidating." But, Iowa courts "do not rewrite statutes." *Albaugh v. Reserve*, 930 N.W.2d 676, 694 (Iowa 2019).

however, the court of appeals' analysis presents several constitutional problems. First, construing 708.1(2)(c) such that the "toward" element has no teeth threatens to undermine Iowans' Second Amendment rights. Suppose Meisheid talked to the deputies while carrying a rifle in a front-sling position across his torso – as Iowa's open carry laws allow. *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").

(Photo of a "front sling" position)

Under the court of appeals' interpretation, Meisheid's otherwise lawful conduct could be prosecuted if the officers do not like his

demeanor. *See Meisheid*, 2025 Iowa App. LEXIS 16 at *8 ("[Meisheid's] demeanor starkly contrasts with the demeanor of the deputies. Meisheid is angry and using profanity").

Second, the court of appeals' construction cannot be squared with due process principles. A "penal statute must define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *State v. Baker*, 688 N.W.2d 250, 255 (Iowa 2004). 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.* The court of appeals' reliance on the deputies' subjective feelings of intimidation likely renders the statute unconstitutionally vague. *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).

II. FURTHER REVIEW IS REQUIRED BECAUSE THE DISTRICT COURT REFUSED TO REDUCE MEISHEID'S STATUTORY MANDATORY MINIMUM SENTENCE UNDER SECTION 901.10 BASED ON A CLEARLY ERRONEOUS FINDING THAT "NO MITIGATING FACTORS EXIST"

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. At sentencing, Meisheid asked the court to reduce the mandatory minimum, to which it responded:

> 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*.
>
> It is the order and judgment of this Court that you be and are hereby committed to the custody of the Director of the Iowa Department of Corrections for a term not to exceed five years on Count I and five years on Count II, with credit

> for time served on each charge. Pursuant to 902.7, the Defendant shall serve a minimum of five years. *Again, the Court finds no mitigating circumstances exist.*

D0128, Sentencing Tr. at 23:13-24 (08/11/23) (emphasis added).

The district court's finding that "no mitigating circumstances exist[ed]" was a clear abuse of discretion. 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. *State v. Moore*, 936 N.W.2d 436, 440 (Iowa 2019) ("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 (08/07/23). The district court granted Meisheid pretrial release upon posting a bond, and he had no violations and always stayed in contact. D0096 at 3-4. In addition, Meisheid previously served on the city council, including as mayor. D0102, Helms Ltr (08/11/23), D0104, Mary Ltr, (08/11/23), D0105, McKinley Ltr, (08/11/23), D0107 Krob Ltr. at (08/11/23). He volunteered as a firefighter. D0107 at 1. He

regularly attended church. D0103 at 1. 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 (08/11/23).

The court of appeals found no error because the "court understood that it had discretion to reduce the mandatory minimum sentence." *Meisheid*, 2024 Iowa App. LEXIS at *13. The district court's error lies in its understanding of "mitigating circumstance"; not with its awareness of its sentencing authority. 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 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 resentencing on remand be before a different judge to "protect the integrity of our judicial system from the appearance of impropriety").

CONCLUSION

The reasons set forth above, Matthew Meisheid asks this Court to grant further review, reverse his conviction, and remand with instructions.

REQUEST FOR ORAL ARGUMENT

Meisheid requests to be heard in oral argument.

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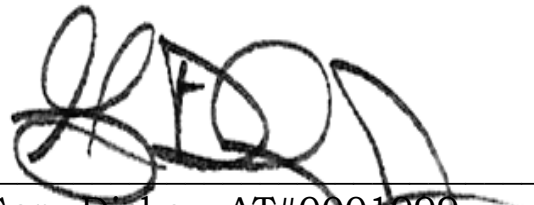
[4] Mitigating circumstances are facts, which "in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability." Mitigating Circumstances, Black's Law Dictionary 1002 (6th ed. 1990).

CERTIFICATE OF COMPLIANCE

This application complies with the typeface requirements and the type-volume limitation of Iowa R. App. P. 6.1103(4) because:

[x] this application has been prepared in a proportionally spaced typeface using Bookman Old Style in 14 point and contains 4,685 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.1103(4)(a).



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