

IN THE SUPREME COURT OF IOWA  
No. 23-0338  
Des Moines County No. FECR009529

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STATE OF IOWA,

Plaintiff-Appellee,

v.

ADAM AARON RHODES,

Defendant-Appellant.

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ON APPEAL FROM THE IOWA DISTRICT COURT FOR DES MOINES  
COUNTY, HONORABLES JOHN M. WRIGHT (MOTION TO DISMISS) AND  
MICHAEL J. SCHILLING (VERDICT AND SENTENCING), PRESIDING

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BRIEF OF THE APPELLANT

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## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

THE DISTRICT COURT ERRED IN FAILING TO GRANT RHODES A DISMISSAL OF THE CRIMINAL CHARGE OF FELON IN POSSESSION OF A FIREARM, AND INSTEAD ENTERING A GUILTY VERDICT AND SENTENCING JUDGMENT AGAINST HIM ON THAT FELONY OFFENSE CHARGE, BECAUSE THE FELON IN POSSESSION STATUTE DOES NOT INCLUDE AN ANTIQUE FIREARM OR ITS REPLICA (THE GUN RHODES POSSESSED AT THE TIME)

### A. Error Preservation.

#### Cases

*Meier v. Senecaut*, 641 N.W.2d 532 (Iowa 2002)

*Metz v. Amoco Oil Co.*, 581 N.W.2d 597 (Iowa 1998)

*Peters v. Burlington N. R.R.*, 492 N.W.2d 399 (Iowa 1992)

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### B. The Standard of Review.

#### Cases

*State v. Moorehead*, 699 N.W.2d 667 (Iowa 2005)

*State v. Hicks*, 791 N.W.2d 89 (Iowa 2010)

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C. The District Court Erred In Overruling Rhodes' Motion To Dismiss The Charge And In Finding Rhodes Guilty Of The Charge And Sentencing Rhodes On That Charge As Rhodes Did Not Possess A Firearm Within The Meaning Of Iowa's Felon In Possession Statute

#### Cases

*Chiodo v. Section 43.23 Panel*, 846 N.W.2d 845 (Iowa 2014)

*Doe v. State*, 943 N.W.2d 608 (Iowa 2020)

*Gardin v. Long Beach Mortgage Co.*, 661 N.W.2d 193 (Iowa 2003)

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Iowa Code § 724.26

Iowa Code § 724.26(1)

## ROUTING STATEMENT

The Iowa supreme court should retain this appeal under the criteria set forth in Iowa R. App. P. 6.1101(2)(c), (d) and (f). This is a case presenting a substantial issue of first impression as well as of broad public purpose. In this case, the defendant was convicted of being a felon in possession of a firearm—but the gun in question was undisputedly a replica of an antique firearm (it was a replica of a muzzleloader of the early 1800s vintage). The federal firearm statute unquestionably does not prohibit felons from possessing such an antique gun or its replica. And prior to Rhodes’ conviction, there was (and apparently still is) no published or unpublished Iowa case on record where such a conviction was entered or affirmed against an Iowa citizen and resident under Iowa’s felon in possession statute (which in most respects mirrors the federal statute). The Iowa supreme court should retain this case.

## STATEMENT OF THE CASE

Nature of the Case. By trial information entered on November 22, 2021, Rhodes was charged with being a felon in possession of a firearm in violation of Iowa Code § 724.26(1). (Trial Information of 11-22-2021, Exh. A; App. 26-28, 63.) Rhodes did not contest that he was a felon or in possession of a gun—what he did claim was that the gun was a “replica” of an “antique firearm” within the meaning of both federal and Iowa law and as such he could lawfully possess it.



(Written Arraignment and Plea of Not Guilty of 12-06-2021; fact statement below; App. 29-30.)

Course of the Proceedings. Rhodes twice moved for dismissal of the offense charge on the basis that he could lawfully possess the “replica” of the “antique firearm” (Motion to Dismiss of 03-03-2022; App. 31-33); each time, the district court denied the motion in a written ruling—and in the last written ruling, the district court directly addressed Rhodes’ statutory interpretation argument he raises in this brief (that is, while the gun Rhodes possessed was a “replica” of an “antique firearm” as those terms are defined in federal (if not state) law, in Iowa (according to the district court) a felon is guilty of the possession offense even if he or she possesses such a gun). (Order Overruling Motion of Dismiss of 04-11-2022; App. 34-36, and Findings of Fact, Conclusions of Law, and Verdict of 09-01-2022; App. 37-55.) On a trial on the minutes, the district court found Rhodes guilty of the offense charge. (Verdict of 09-01-2022; App. 37-55.)

Disposition of the Case. On February 28, 2023, the district court entered its sentencing judgment on the felon in possession offense, imposing a suspended sentence and a fine. (Judgment Entry of 02-28-2023; App. 56-59.) Rhodes timely perfected his appeal on March 1, 2023. (Notice of Appeal of 03-01-2023; App. 60-62.)

## STATEMENT OF THE FACTS

As discussed in the statement of the case division of this brief, the salient facts are not materially in dispute. It is established that Rhodes had a prior felony conviction, and was in a possession of a gun at the time alleged in the trial information (Trial Info., supra, App. 26-28.) Also not in factual dispute, at least respecting the district court's second ruling on Rhodes's motion to dismiss, is that the gun Rhodes possessed was a "replica" of an "antique firearm" (at least as defined in federal law; more on state law later in this brief). (Verdict 09-01-2022; App. 37-55.)

Rhodes is a felon; the basis for the pending offense charge was his possession, on or about October 21, 2021, of a Thompson/Center Impact 50 caliber muzzleloader. (Trans. 04-11-2022, at 8:03-10:14 (Rhodes' testimony).) And expert testimony was presented that this muzzleloader would be considered a "replica" of an "antique firearm" within the meaning of federal and Iowa law, and for the following reasons:<sup>1</sup> (1) it cannot be converted into a rifle or shotgun (Trans. at 18:10-

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<sup>1</sup> The expert witness, whose credentials were not challenged, is Michael Dean Anderson II. He was a Calvary scout in the U.S. military for 20 years, and specialized in weapon systems including "everything from rifles to handguns to fully automatic machine guns, crew-served weapons, missile systems, dragons, et cetera." (Trans. at 15:01-15:10.) He is an NRA certified firearms instructor and can certify for the Iowa permit to carry course and is qualified to teach the Iowa carry course. (Id. at 15:14-16:10.) He presently is employed at JLM Shooters Supply, an Iowa located gun dealership, that sells firearms and whose employees must have knowledge of federal and state firearm sale/transfer requirements as well as those of the ATF; he has

19:13 (Anderson testimony)); (2) it cannot be converted to shoot rimfire or centerfire cartridges (id. at 19:14-19:20, 20:05-21:05, 24:09-25:03); (3) it is a replica of an “antique firearm” (id. at 19:21-20:04); (4) it is not a delineated muzzleloader on the list maintained by the Alcohol, Tabaco and Firearms federal agency (ATF) that expressly identifies those muzzleloaders that are considered to be firearms as opposed to replicas of antique firearms (id. at 21:02-21:13, 25:04-26:08); (5) the cleaning rod underneath the barrel is of the type that would have been used with muzzleloaders manufactured and used in the early 1800s, and hence is further indicia that this muzzleloader is a replica of an antique firearm of that vintage (id. at 26:09-27:08); (6) the firing mechanism likewise is of a muzzleloader that would have been manufactured at the indicated period—the early 1800s (id. at 27:17-28:02); and (7) it could fire only by using “Black Powder or an approved Black Powder substitute (Dismissal exhibit A, showing only black powder or an approved substitute could be used in the muzzleloader; App. 63). As such, it was the expert’s opinion that this muzzleloader under federal and Iowa law could lawfully be sold to, and possessed by, a felon. (Id. at 27:24-28:20.)

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knowledge of the federal and state firearm regulations and definitions, and of the paperwork that must be completed for the transfer or sale of firearms and ammunition, as well as the types of weapons that are exempted from such requirements for being antique firearms or replicas of the same. (Id. at 17:17- 17:25, 14:10-19:05.)

The State presented no evidence to counter this testimony; the prosecutor simply asked the expert if this muzzleloader could “propel a projectile by explosive force”; to which the expert answered: “That’s what a muzzleloader does, yes, ma’am.” (Id. at 30:10-30:16.) That is simply an obvious truth—any type of firearm, including antique firearms and replicas, utilize an explosive substance (in this case, black powder or a black powder substitute) to fire the projectile. (Id.) (See also exhibits L (muzzleloader description), M (description), N (describing gun as an antique replica), O (sales receipt for muzzleloader) and P (same)—all as admitted in the second dismissal hearing and ruling; App. 67-73). (Verdict 09-01-2022; App. 37-40.)

## ARGUMENT

THE DISTRICT COURT ERRED IN FAILING TO GRANT RHODES A DISMISSAL OF THE CRIMINAL CHARGE OF FELON IN POSSESSION OF A FIREARM, AND INSTEAD ENTERING A GUILTY VERDICT AND SENTENCING JUDGMENT AGAINST HIM ON THAT FELONY OFFENSE CHARGE, BECAUSE THE FELON IN POSSESSION STATUTE DOES NOT INCLUDE AN ANTIQUE FIREARM OR ITS REPLICA (THE GUN RHODES POSSESSED AT THE TIME)

### A. Error Preservation.

Rhodes preserved error. He received an original ruling from the district court on his dismissal motion on this issue raised in this appeal, and then he received another ruling on the issue raised prior to the district court entering the guilty verdict on the minutes of testimony and ultimately the sentencing judgement. (Dismissal

Ruling of 04-11-2022; App. 31-33; Verdict 09-01-2022; App. 37-55.) That is, Rhodes received not one, but two, definitive final rulings from the district court on every point he now raises in this appeal brief—and these final rulings preserved error. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (error is preserved where the issues raised on appeal were first raised before the district court and ruled upon by that court); *see also Metz v. Amoco Oil Co.*, 581 N.W.2d 597, 600 (Iowa 1998) (“issues must be presented and passed upon by the district court” in order for appellate error to be preserved); *Peters v. Burlington N. R.R.*, 492 N.W.2d 399, 401 (Iowa 1992) (same).

In addition, rather than plead guilty to the offense charged, Rhodes instead was adjudicated guilty by the district court and following a trial on the minutes; accordingly, he did not waive or otherwise forfeit his right to appeal the adverse dismissal rulings. *See, e.g., State v. Freeman*, 705 N.W.2d 293, 296 (Iowa 2005) (criminal defendant preserves error when, after his pretrial motions are overruled, he is adjudicated guilty by the district court on a trial on the minutes). (Verdict 09-01-2022; App. 37-55.)

#### B. The Standard of Review.

The standard of review for a district court’s interpretation of Iowa Code § 724.26(1) (felon in possession) is for the correction of errors at law. *State v. Moorehead*, 699 N.W.2d 667, 671 (Iowa 2005). If the district court correctly applied

the law, then the appellate court determines whether there is substantial evidence to support the district court's findings of fact. *Id.*; see also *State v. Hicks*, 791 N.W.2d 89, 93 (Iowa 2010); *State v. Davis*, 922 N.W.2d 326, 330 (Iowa 2019). That said, the latter part of this review standard is not at issue in this appeal—as the district court made clear, particularly in its second ruling on the dismissal motion, Rhodes lost his motion not on a factual basis (that the muzzleloader he possessed was not a replica of an antique firearm; it was) but on an issue of pure law (that even if so, Iowa law prohibits a felon from possessing such an antique firearm, even a replica of one).

C. The District Court Erred In Overruling Rhodes' Motion To Dismiss The Charge And In Finding Rhodes Guilty Of The Charge And Sentencing Rhodes On That Charge As Rhodes Did Not Possess A Firearm Within The Meaning Of Iowa's Felon In Possession Statute.

For reasons that will become apparent, to analyze the Iowa statute it is first necessary to consider relevant terms of its precursor (the federal statute). The federal firearms and ammunition possession statute criminalizes the act of a felon's being in possession of a firearm (18 U.S.C. § 922(g)); but there is, among others, an important exception—an “antique firearm” or its “replica” is exempted from the definition of a firearm and accordingly a “felon” as defined in federal law (*id.* at

§921(a)(20)<sup>2</sup>) can lawfully own, possess and use such an “antique weapon” or “replica”—and this historically has been the case since the enactment of the federal unlawful possession of firearms and ammunition act. *Id.* at 921(a)(3) (defining the term “firearm,” and specifically providing: “Such term does not include an antique firearm.”).

An “antique firearm” is defined in 18 U.S.C. § 921(a)(16) to mean:

(A) any firearm (including a firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or

(B) any replica of any firearm described in subparagraph (A) if such replica—

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or

(C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term antique firearm shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any

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<sup>2</sup> Defining for “felon” purposes one convicted of a “crime punishable by imprisonment for a term exceeding one year” or a state misdemeanor exceeding two years. *Id.*

muzzle loading weapon which can be readily converted to fire fix ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

Thus, it has been long recognized under federal law that a felon (as defined in the federal statute) can lawfully own, possess and use an antique firearm or its replica. *United States v. Collins*, 321 F.3d 691, 693 (8<sup>th</sup> Cir. 2002) (“A firearm manufactured in or before 1898 is deemed an antique and is not subject to federal firearm laws.”); *United States v. Dotson*, 570 F.3d 1067, 1069 (8<sup>th</sup> Cir. 2009) (same).

In the instant case, the defendant-applicant Rhodes is charged under Iowa law with being a felon in possession of a firearm (Trial Information of 11-22-2021; App. 26-28), and specifically in violation of Code § 724.26(1), which provides:

**724.26 Possession, receipt, transportation, or dominion and control of firearms, offensive weapons, and ammunition by felons and others.**

1. A person who is convicted of a felony in a state or federal court, or who is adjudicated delinquent on the basis of conduct that would constitute a felony if committed by an adult, and who knowingly has under the person’s dominion and control or possession, receives, or transports or causes to be transported a firearm or offensive weapon is guilty of a class “D” felony.

\* \* \*

And the immediately preceding section of the statute expressly defines the terms “felon” and “antique firearm”; specifically, Code § 724.25 provides in its entirety:



**724.25 Felony and antique firearm defined.**

1. As used in section 724.26, the word “*felony*” means any offense punishable in the jurisdiction where it occurred by imprisonment for a term exceeding one year, but does not include any offense, other than an offense involving a firearm or explosive, classified as a misdemeanor under the laws of the state and punishable by a term of imprisonment of two years or less.

2. As used in this chapter, an “*antique firearm*” means any firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898. An antique firearm also means a replica of a firearm so described if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or if the replica uses rimfire or conventional centerfire fixed ammunition, which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

The State in the information stated that Rhodes had been convicted of a felony burglary offense (in the third degree—a D class felony; Iowa Code §713.6A(1)) in 2004 and that he knowingly “possessed a muzzleloader rifle” “on or about October 21, 2021 in the County of Des Moines, State of Iowa.” (Exh. A; App. 63.) Rhodes filed a resisted motion to dismiss, and on the basis that Iowa law, like federal law, does not criminalize a felon’s possession of an antique firearm or its replica, and that the muzzleloader in his purported possession was just such a replica of an antique firearm. (Motion to Dismiss of 03-03-2022; App. 31-33; *see also* Dismissal Hearing, of 04-1-2022, *supra*.) The district court on April 11, 2022 overruled the motion, ruling that the muzzleloader was a “firearm”—and singularly because it “is capable

of firing a projectile through the use of explosive force as a propellant.” (Order of 04-11-2022 Overruling Motion to Dismiss; App. 34-36.) And the district court confirmed that ruling in its Verdict order—concluding that while the gun Rhodes possessed was (or for purposes of the ruling was taken to be) an antique firearm replica, it nonetheless fell within the definition of a “firearm” under the Iowa felon in possession statute. (Verdict of 09-01-2022; App. 37-55.) And the district court again noted this is how a “firearm” is defined in Iowa case law (that particular term itself is not separately defined in Iowa Code chpt. 724)—citing *State v. Kenny*, 334 N.W.2d 733 (Iowa 1983) and *State v. Hemminger*, 308 N.W.2d 17 (Iowa 1981). And the district court elaborated on this ruling in its Verdict ruling. (Verdict, 09-01-2022; App. 37-55.)

In entering these rulings, the district court rejected Rhodes’ argument that the muzzleloader was an antique firearm replica and hence Rhodes could lawfully possess it—the district court instead, and directly in its second ruling, rejected that argument by holding any antique firearm or replica must be a “firearm” under Iowa law given that it fires a projectile through the use of explosive force as a propellant and is not exempted by the offense statute language. (Verdict; App. 37-55.) But not so—the relevant Iowa Code chapter specifically defines an “antique firearm” and its “replica,” and those terms are separate from the general and statutorily undefined term “firearm”; a felon can own and possess an antique firearm or replica under the

Iowa weapons statute in the same manner that such a felon can lawfully possess such an antique firearm or replica under the federal firearms statute. This is because the state felon in possession criminal statute, Iowa Code § 724.26(1), proscribes a felon from possessing “a firearm or offensive weapon”; the statute poignantly does not proscribe such a felon from possessing an “antique firearm” or its “replica” and as those terms are expressly defined in the immediately preceding section of the statute, Code § 724.25(2). And it further must importantly be noted that, to Rhodes’ knowledge and legal research, no Iowa appellate court decision ever has held that a felon cannot lawfully own, possess and use an antique firearm or its replica, and further no Iowa appellate court has ever held that gun dealers cannot lawfully sell such antique firearms or replicas to felons who reside in this State.

Accordingly, the issue presented on appeal—and which issue is completely dispositive of the offense charged raised in the trial information—is the following:

Whether a felon under Iowa law can lawfully own, possess and use a replica of an antique firearm, and as such a felon unquestionably can so own, possess and use such a replica of an antique firearm under the federal firearm and ammunition statute?

Rhodes is a felon; the basis for the pending offense charge was his possession, on or about October 21, 2021, of a Thompson/Center Impact 50 caliber muzzleloader. (Trans., at 8:03-10:14 (Rhodes’ testimony).) And as stated in the statement of facts division of this brief uncontested expert testimony was presented

that this muzzleloader would be considered a “replica” of an “antique firearm” within the meaning of federal and Iowa law; indeed, it is worth repeating that the State presented no evidence to counter this testimony; the prosecutor simply asked the expert if this muzzleloader could “propel a projectile by explosive force”; to which the expert answered: “That’s what a muzzleloader does, yes, ma’am.” (Id. at 30:10-30:16.) That is simply an obvious truth—any type of firearm, including antique firearms and replicas, utilize an explosive substance (in this case, black powder or a black powder substitute) to fire the projectile. (Id.) And we have seen the district court in its second ruling on the dismissal motion also did not contest from a fact-finding standpoint this characterization of the gun—it singularly concluded that such a gun (antique replica) fell within the term “firearm” of the Iowa felon in possession criminal statute. (Verdict; App. 37-55.)

Now is the appropriate time to transition from the federal firearms statute to the state statute. The answer to the issue presented in this appeal comes down to how the “weapons” statute of the Iowa Code should be read. And as it pertains to this particular statute, the following tools of construction and interpretation directly apply. First, the court must read the “weapons” statute as a whole, according the statute’s words and terms their plain meaning (unless otherwise specifically defined in the statute), and those words or terms must be examined in the overall statutory context in which they are used. *Gardin v. Long Beach Mortgage Co.*, 661 N.W.2d

193, 197 (Iowa 2003) (and cases cited therein). Second, and particularly important to the instant case, different words contained in a statute—such as, in the present case, “offensive weapons,” “antique firearm,” “replica,” and “firearm”—are generally presumed to have different meanings. *Chiodo v. Section 43.23 Panel*, 846 N.W.2d 845, 853 (Iowa 2014); *see also Doe v. State*, 943 N.W.2d 608, 613 (Iowa 2020). Third, and equally important as the second point of statutory construction and interpretation, we should not interpret a criminal statute in a manner that places a defined term in a section where that term does not appear—such as, in this case, placing the terms “antique firearm” and “replica” in the provision that criminalizes the act of a felon being in possession of a firearm or offensive weapon. *Sanson v. City of Pella*, 865 N.W.2d 506, 521 (Iowa 2015) (“When the legislature selectively places language in one section and avoids it in another, we presume it did so intentionally.”). Fourth, when different terms contained within a criminal statute are ambiguous and the ambiguity cannot be resolved by application of the ordinary rules of interpretation and construction, then the statute must be interpreted with leniency—that is, narrowly—and in favor of the criminal defendant; otherwise, the statute would be subject to constitutional attack on vagueness and overinclusive grounds. *State v. Nall*, 894 N.W.2d 514, 519 (Iowa 2017).

The Iowa Code chapter governing “weapons,” Code chpt. 724, starts out by defining the term “offensive weapons.” Iowa Code § 724.1. Pertinent to the issue

raised in this appeal is that subsection (b) of this statutory provision excludes from the definition the type of weapon at issue in this case; this subsection provides that an “offensive weapon” includes (emphasis added):

Any weapon *other than a shotgun or muzzle loading rifle, cannon, pistol, revolver or musket*, which fires or can be made to fire a projectile by the explosion of a propellant charge, which has a barrel or tube with the bore of more than six-tenths of an inch in diameter, or the ammunition or projectile therefore, but not including antique weapons kept for display or lawful shooting.

The “offensive weapons” statute, at § 724.1(2)(a), then goes on to define an “antique firearm,” including its “replica,” as follows:

An antique firearm. An antique firearm is any firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898 or any firearm which is a replica of such a firearm if such replica is not designed or redesigned for using conventional rimfire or centerfire fixed ammunition or which uses only rimfire or centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

This definition tracks verbatim the federal definition of an “antique firearm” that appears in 18 U.S.C. § 921(a)(16)(A), (B) and as excerpted above. This tells us that the drafters of the Iowa weapons statute were well aware of the federal firearm and ammunition statute, and that statute’s exception from the definition of “firearm” such weapons that were “antique firearms” or their “replicas.”

Now from the exception set forth in section 724.1(b) of the Iowa statute, we know that shotguns, muzzleloading rifles, pistols, revolvers and muskets are not “offensive weapons” to begin with—and irrespective of whether these weapons would fall within the federal statutory definition of a “firearm” but for the “antique firearm” and “replica” exception. So from the basic statutory interpretation and construction standpoint—reading the statute as it is written—we know that the muzzleloader that Rhodes is accused of possessing does not fall within the term “offensive weapon” as that defined term appears in the state felon in possession statute. Iowa Code § 724.26 (prohibiting a felon from possessing “a firearm or offensive weapon”).

For Rhodes to even be successfully prosecuted of the felon in possession offense, he accordingly must have had possession a “firearm” at the time alleged in the trial information and as that term is used in the felon in possession statute. As previously discussed, the Iowa weapons statute does not expressly define what a “firearm” is; however, the statute does define *for purposes of the entire weapons chapter*, and including specifically for the felon in possession statute, what an “antique firearm” or its “replica” is—and as we have seen that statute appears immediately prior to the statute that criminalizes a felon being in possession of a firearm (and it further defines who a “felon” is for the specific purpose of that

statute)—that section is Iowa Code § 724.25(2). This section is fully excerpted above, but is worth repeating here; this subsection provides:

As used in this chapter, an “*antique firearm*” means any firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898. An antique firearm also means a replica of a firearm so described if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or if the replica uses rimfire or conventional centerfire fixed ammunition, which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

The first matter of note is that these definitions of “antique firearm” and “replica” (and like the definitions of the same terms contained in the “offensive weapons” provision of section 724.1) are adopted from the corresponding federal definitions—and specifically in these particulars: (1) the subsection’s language of “any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system manufactured in or before 1898” is a verbatim repeat (with the exception of parenthesis) of 18 U.S.C. § 921(1)16(A); and (2) the subsection’s language of “using rimfire or conventional centerfire fixed ammunition or if the replica uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels or commercial trade” is again adopted essentially verbatim from 18 U.S.C. §



921(a)(16)(B)(i), (ii) (with the exception of the verb tense, “using” as opposed to “uses”).

And this leads to the federal definition of an “antique firearm” or “replica” that is not set forth in the Iowa statute’s definition of the same—those weapons comprising muzzle loading rifles or shotguns or pistols, which use black powder or black powder substitutes and cannot be readily converted to fixed firearm ammunition use by barrel, bolt or breechblock substitution. 18 U.S.C. § 921(a)(16)(C). The Iowa weapons statute handles this distinction by removing such weapons from the definition of “offensive weapons” in Iowa Code § 724.1(b) and, unlike the federal statute that starts with the definition of “firearms” (whereas the Iowa statute starts with the definition of “offensive weapons”), then specifically defines “antique firearm” and “replica”—involving muzzleloaders, muskets, shotguns, pistols and revolvers—as a separately defined term of art (again, being an “antique firearm” or “replica”) as opposed to otherwise falling within the general, and statutorily undefined category, of “firearms.” And again, the terms “antique firearms” and “replicas” are conspicuously absent from the felon in possession statute of section 724.25(1) (covering only “a firearm or offensive weapon”—not including “an antique firearm” or “replica”).

That should be enough—but two additional observations. First, the district court in its second ruling concluded that the antique firearm replica exception only

applied to an offensive weapon; but that is a tough conclusion to swallow (the exception then would apply to only very large bore weapons—and not to the common small-bore guns such as muzzleloaders and shotguns; what possibly could the legislature have been thinking on making such a determination?). Second, the immediately preceding section of the statute, Iowa Code § 724.25(2), gives a unique meaning to the terms “antique firearm” and “replica” that is to apply throughout the *entire chapter* of the Iowa weapons code; and it is the very next section of the statute, section 724.26(1), that sets forth the felon in possession offense—and nowhere in that section do the terms “antique firearm” and “replica” appear. It is little wonder that there apparently is no case in the Iowa reports where a person has ever been charged, let alone successfully convicted, with the felon in possession offense for possessing and/or using an antique firearm or replica as those terms are defined in both the federal and Iowa firearms statutes.

### CONCLUSION

For the reasons stated and authorities cited in this brief, the court should reverse Rhodes’ conviction and dismiss this criminal proceeding.

### REQUEST FOR ORAL ARGUMENT

The appellant, through counsel, requests to be heard in oral argument upon the submission of this cause.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION, TYPE REQUIREMENTS, AND TYPE-STYLE  
REQUIREMENTS

1. This brief complies with the type-volume limitations of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 4,768 words, excluding parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word format 2010 in Times New Roman 14-point style.

/s/ S.P. DeVolder  
S.P. DeVolder

September 29, 2023  
Date

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on September 29, 2023, a copy of this Brief of the Appellant was filed electronically with the Clerk of the Iowa Supreme Court through the EDMS system, and which system further will provide access to and service of the Brief on that same date to:

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