

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

STATE OF IOWA,

Plaintiff-Appellee,

v.

ADAM AARON RHODES,

Defendant-Appellant.

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

REPLY BRIEF OF THE APPELLANT

/s/ S.P. DeVolder

S.P. DeVolder AT0001876
THE DeVOLDER LAW FIRM, P.L.L.C.
1228 Sunset Drive, Suite C
Norwalk, IA 50211-2401
Tel: (515)981-5150
Fax: (515)981-5156
steven.devolder@devolderlawfirm.com

/s/ William L. Kutmus

William L. Kutmus AT0004450
/s/ Trever Hook
Trever Hook AT0003580
KUTMUS, PENNINGTON & HOOK, P.C.
5000 Westown Parkway, Suite 310
West Des Moines, IA 50266
Tel: (515)288-3333
Fax: (515)288-8269
bill@kphlawfirm.com
trever@kphlawfirm.com

ATTORNEYS FOR THE APPELLANT
ADAM AARON RHODES

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	3
Reply to the State’s Statement of the Facts	4
Reply Argument	4
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)	4
A. Reply to State’s Brief Point A.....	5
B. Reply to State’s Brief Point B	5
C. Reply to State’s Brief Point C	8
D. Reply to State’s Brief Point D	10
Conclusion	10
Certificate of Compliance	11
Certificate of Filing and Service	11

TABLE OF AUTHORITIES

Page

Cases

Garwick v. Iowa Dept. of Transp., Motor Veh. Div., 611 N.W.2d 286 (Iowa 2000) 8

Hoskinson v. City of Iowa City, 621 N.W.2d 425 (Iowa 2001) 7

State v. Hemminger, 308 N.W.2d 17 (Iowa 1981) 5

State v. Kenny, 334 N.W.2d 733 (Iowa 1983) 5

State v. Pickney, 306 N.W.2d 726 (Iowa 1981) 9

Statutes

Iowa Code § 683.1(a) 7

Iowa Code § 683.1(b) 6

Iowa Code § 683.1(2)(b) 6

Iowa Code § 724.25(1) 9

Iowa Code § 724.25(2) 9

Iowa Code § 724.26 9

Other Authorities

2021 Acts, ch. 34, §3 6

REPLY TO THE STATE’S STATEMENT OF THE FACTS

Rather than set forth a fact statement with citations to the record, the State simply excerpts the fact statement from the district court’s verdict ruling (there are no underlying record citations in that excerpt). (Verdict 09-01-2022 at pp. 3-5; App. 39-41.) But what the underlying record citations do show, and which even the State does not factually contest, is that the gun possessed by Rhodes was a Thompson/Center Impact 50 caliber muzzleloader that would be considered a “replica” of an “antique firearm”—at least under federal law and ATF regulations, as well as the Iowa Code—based on the facts set forth in Rhodes’ initial brief (and as acknowledged by the State in the last paragraph of its fact statement as well as the excerpted district court verdict ruling identifying the gun as the Thompson/Center Impact 50 caliber muzzleloader). That is, the dispute in this appeal is what Rhodes asserts it is and as the State itself does not contest—can a felon lawfully possess in Iowa a “replica” of and “antique firearm” muzzleloader (Rhodes’ position) or not (State’s position)?

REPLY 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).

The State sets forth four issues points in its brief; Rhodes responds to each of these points in the order presented by the State and using the sequential letter designations set forth in that brief.

A. Reply to State’s Brief Point A.

The State first agrees with Rhodes that the weapons chapter of the Iowa Code, chapter 724, does not formally define the word “firearm”; the State then cites some case law (some of which was cited by Rhodes in his principal brief) that defines the term to encompass two requirements: (1) that the gun be able—or at least be made able—to propel a projectile and (2) that it do so by the use of explosive force. And as discussed in Rhodes’ first brief, this is the common law definition of a “firearm” in Iowa. *See State v. Kenny*, 334 N.W.2d 733 (Iowa 1983); *State v. Hemminger*, 308 N.W.2d 17 (Iowa 1981). But that’s all the State tells us in this division of its brief; there is no statutory analysis in that division concerning the actual definitions that appear in Iowa’s weapons chapter of the Code—and specifically the statutorily defined terms of “offensive weapon,” “replica,” and “antique firearm.” Accordingly, State’s initial brief division does not even address the statutory interpretation argument set forth in Rhodes’ first brief.

B. Reply to State’s Brief Point B.

And the State does not get around to addressing Rhodes’ statutory interpretation of the weapons chapter in its second brief division; instead, it talks

about an entirely different chapter of the Iowa Code—specifically, Iowa Code chpt. 683—that was enacted in 2021. 2021 Acts, ch. 34, §3. That chapter provides protection against civil liability—both legal and equitable forms—to firearms and ammunition “manufacturer[s], importer[s], distributor[s], trade association[s], seller[s] or dealer[s]” for harm caused by the use of their products unless the liability claim is based on breach of direct warranty or defective product. Iowa Code § 683.1(2)(b) (prohibiting lawsuits against these entities or persons for “[r]ecovery of damages resulting from the criminal or unlawful use of a firearm, firearm accessory, or ammunition by a third party”).

Now that’s all well and good; the legislature—so long as not constitutionally proscribed—can pass whatever civil laws its wants. But the curiosity is why the State expends its second brief division on this 2021 enacted legislation—it is true that a section of this legislation specifically defines the term “firearm,” and as follows:

As used in this chapter . . .

“Firearm” means any weapon that is capable of expelling, designed to expel, or that may be readily converted to expel ammunition.

Iowa Code § 683.1(b). And “ammunition” is defined as “any projectile capable of being expelled or propelled from any firearm by the action of a propellant . . .” *Id.*

at § 683.1(a). But none of this tells us anything about the weapons statute of Iowa Code chpt. 724, and for two reasons.

First, the State claims these statutory definitions contained in chapter 683 mirror the common law two-pronged definition of the term “firearm”; but even if so, what force does that add to the State’s argument in division A of its brief?—it says the definition of that particular term is the same (in common law and the 2021 statute); yet the State again does not show us the link of either definition (common law or statutory) to the language of the weapons statute of chapter 724, and particularly to the definitions contained in that chapter; specifically, “offensive weapon,” “replica,” and “antique firearm.”

Second, what is the point of looking at chapter 683 to interpret how the word “firearm” should be interpreted in chapter 724?—chapter 683 expressly provides that its definitions—including “ammunition” and “firearm”—are meant solely to apply “as used in this chapter”; that means these terms have no application to any other chapters of the Iowa Code including chapter 724. Consider the case of *Hoskinson v. City of Iowa City*, 621 N.W.2d 425, 427 (Iowa 2001) (en banc), where the court noted:

Iowa Code chapter 364 does not define sidewalk. Iowa Code section 321.1(72) defines sidewalk as "that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians." This definition, however, is of little help because its application is limited

to chapter 321. See Iowa Code § 321.1 ("The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them." (Emphasis added.)); *Humphries*, 566 N.W.2d at 871 (holding that definition in Iowa Code chapter 321 (1995) was expressly confined to that chapter and did not apply to Iowa Code section 364.12 (1995)).

The *Hoskinson* court accordingly held the term "sidewalk," undefined in chapter 364, had to be defined by common law instead of the statutory definition set forth in a different chapter (321) of the Iowa Code. *Id.* at 427-28. This has consistently been the interpretation of Iowa statutory law where Code chapters contain the words "this chapter" and even well before *Hoskinson*. *Garwick v. Iowa Dept. of Transp., Motor Veh. Div.*, 611 N.W.2d 286, 289-90 (Iowa 2000) (and cases cited therein).

C. Reply to State's Brief Point C.

The State has yet to advance the ball in its argument—it has provided no analysis of the relevant statute of the Iowa Code, that being chapter 724. It is singularly in this section of its brief does the State finally get to that statute, and the State's argument presented here is nothing more than avoiding the statutory interpretation argument set forth by Rhodes.

The State again starts with the common law definition of "firearm"—and this time in contrast to the statutorily defined term of "offensive weapon"; Rhodes already addressed that distinction in his first brief (even the State does not argue a

muzzleloader is an “offensive weapon” under the weapons chapter of the Iowa Code). (State’s brief, at pp. 18-21.) The State next concedes that Rhodes, under federal law (the terms of which have been set out in Rhodes’ first brief), would not be subject to the federal charge of felon in possession because he undisputedly possessed a “replica” of an “antique firearm.” (State’s brief, at pp. 21-22.) The State then singularly argues that an antique firearm replica is a “firearm” within Iowa Code § 724.26 (felon in possession) because of the holding of *State v. Pickney*, 306 N.W.2d 726 (Iowa 1981)—but the court in that case simply (and correctly) held that the terms “offensive weapon” and “firearm” in chapter 724 “are not synonymous” because they are separately defined (one by the statute, the other by common law). *Id.* at 728-29. Likewise, and as Rhodes showed in his first brief, the terms “replica” and “antique firearm” also are separately defined in the statute, and that is expressly provided in Iowa Code § 724.25(2)—the immediately preceding section to section 724.26 (and section 724.25(1) further defines the term “felony” for purposes of the felon in possession statute). Little wonder that the State makes but a *single* reference in its brief to section 724.25 (at page 21), and that is limited to the comment that Rhodes cites this section “[t]o support his claim”—but that section, as Rhodes discussed in his first brief, is central to his argument for it expressly, and for the purposes of the *entire chapter* of 724, distinguishes the term “antique firearm” “replica” from “firearm”—and it is telling that *nowhere* in its brief does the State

address that central argument; that is because there is no persuasive statutory interpretation argument to rebut Rhodes' position (if there where, the State would have presented it).

D. Reply to State's Brief Point D.

The State proffers no new argument in the final section of its brief—it simply conclusory opines that Rhodes is guilty of the felon in possession offense because the gun (antique firearm replica) he possessed is a “firearm” under the Iowa weapons statute. For the reasons stated in Rhodes' submissions, the muzzleloader in question is not.

CONCLUSION

For the reasons stated and authorities cited by Rhodes in his submissions, the court should reverse Rhodes' conviction and order that this criminal proceeding be dismissed.

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 1,632 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 Reply 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:

Timothy M. Hau, Esq.
Assistant Attorney General of Iowa
Second Floor, Hoover State Office Building
1305 East Walnut Street
Des Moines, IA 50319

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