

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

No. 2020-0570

State of New Hampshire

v.

Justin Parr

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APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE  
MERRIMACK COUNTY SUPERIOR COURT

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**BRIEF OF THE APPELLEE**  
**THE STATE OF NEW HAMPSHIRE**

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THE STATE OF NEW HAMPSHIRE

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*(Fifteen-minute argument requested)*

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### **ISSUES PRESENTED**

I. Whether the trial court correctly held that the defendant's possession of a replica revolver violated RSA 159:3 because it was a "firearm" for purposes of this statute.

II. Whether interpreting "firearm" to include antique and replica pistols and revolvers renders RSA 159:3, RSA 159:3-a, and RSA 159:7 unconstitutionally vague.

## STATEMENT OF THE CASE AND FACTS

### **A. Facts regarding the defendant's violation of RSA 159:3 for felon in possession of a firearm.**

In April 2018, the defendant—a convicted felon—was found guilty of possession of a controlled drug. *See* TT<sup>1</sup>28, 42-47; SA17, 26-27. On May 23, 2018, the defendant signed his conditions of probation, which, among other things, required that he would “not receive, possess, control, or transport any weapon, explosive, or firearm or simulated weapon, explosive, or firearm.” TT29.

On December 17, 2018, a court ordered the defendant to stop living at his residence in Andover, New Hampshire (the “Andover Residence”).<sup>2</sup> *See* TT29; DB7; DA71.

On April 3, 2019, the defendant left a voicemail with a probation and parole officer (“PPO”) that he was “[m]oving back” to the Andover Residence. TT30.

On April 12, 2019, Andover Police Chief Joseph Mahoney informed PPO Kelly Olsen that he had received complaints of gunshots at the Andover Residence occurring on April 9 and 11, 2019. TT30; DA71. PPO Olsen contacted the defendant and requested that he come to the probation

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<sup>1</sup> Citations to the record are as follows:

“DB\_\_” refers to the defendant’s brief and page number.

“DA\_\_” refers to the defendant’s appendix and page number.

“SA\_\_” refers to the State’s appendix and page number.

“MT\_\_” refers to the transcript of the April 29, 2020 motion hearing and page number.

“TT\_\_” refers to the transcript of the November 10, 2020 combined plea hearing, trial by offer of proof, and sentencing hearing.

<sup>2</sup> According to one of the defendant’s probation and parole officers, the Town of Andover condemned the Andover Residence because it “was in very poor condition” and “unsafe.” TT61-62.



office for an interview. *See* TT30. Later that day, the defendant arrived at the probation office in his truck. *See* TT30-31.

When PPO Olsen asked the defendant about the gunshots, the defendant initially denied having any knowledge about them. TT30. Upon further questioning, the defendant admitted that he “knew of the shots,” but suggested that a friend was responsible. *See* TT30.

Two PPOs searched the defendant’s truck parked outside the probation office. TT31. In the truck bed, a PPO located “an unlocked toolbox containing an ammo case that contained black powder and a package of shot used to load a black powder firearm.” TT31.

With the assistance of the police, PPO Olsen and a colleague searched the Andover Residence for weapons. TT31. During the search, they discovered a loaded “black powder .44 caliber handgun” (the “Handgun”) in “a mop bucket with the handle sticking out.” TT31; DA71; SA5.

Later, the police obtained and executed a search warrant for the Andover Residence. TT31. During the search, the police located a plastic bag that contained 1.64 grams of methamphetamine, prescription medications, and drug paraphernalia. TT31.

On May 16, 2019, a grand jury indicted the defendant with possession of methamphetamine (“Charge 1”). RSA 318-B:2, I; SA22. On November 14, 2019, a grand jury indicted the defendant with felon in possession of a firearm (“Charge 2”); felon in possession of a deadly

weapon (“Charge 3”); and armed career criminal (“Charge 4”).<sup>3</sup> SA17, 26-27; RSA 159:3, I; RSA 159:3-a; DA8-9. The defendant was also charged with a violation of probation (“Charge 5”). *See* TT14, 18-19.

On January 11, 2020, while at the Merrimack County House of Corrections, the defendant spoke with his mother. TT31. The conversation was recorded. TT31. During that conversation, the defendant told his mother that he intended to return to the Andover Residence, “build stone walls, put holes in it to shoot long guns and muskets from, . . . [and] use a four-wheeler to conduct perimeter checks on the property.”<sup>4</sup> TT32. The defendant also stated that, with the assistance of defense counsel, he would soon acquire “matching pistols.” TT32.

On January 27, 2020, Chief Mahoney obtained a search warrant for records at Cabela’s—a retailer of firearms and outdoor recreation equipment. TT32. Cabela’s records showed that, on October 6, 2018, the defendant had purchased the Handgun—an “1851 Navy .44 caliber revolver”—and had it shipped to him at the Andover Residence. *See* TT32.

Chief Mahoney submitted the Handgun found at the Andover Residence and the Handgun accessories found in the defendant’s truck bed for forensic testing. *See* DA192-93; TT32-33. In a February 21, 2020 report, a criminalist identified the Handgun as “one (1) .44 caliber F. Lli Pietta black powder percussion cap revolver, model 1851 Reb Nord Navy Sheriff, serial number 694208, with two (2) lead balls and two (2) powder

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<sup>3</sup> These indictments replaced a May 16, 2019 indictment for felon in possession of a firearm. *See* DA3; SA8, 10, 17, 26-27.

<sup>4</sup> The defendant’s desire to defend the Andover Residence was related to an ongoing dispute he had with the Town of Andover regarding this property. *See* TT53-54.

charges removed from the cylinder.” DA192; TT32. The criminalist tested the Handgun and found that it “function[ed] normally.” DA192; TT33.

The criminalist also identified the Handgun accessories, which consisted of “a plastic ammunition case” containing the following items:

One (1) bottle of muzzle loading propellant

One (1) empty box of .44 caliber balls

One (1) tin of #10 size percussion caps

One (1) clear plastic bag containing numerous lead balls labeled as .451” in diameter

One (1) tube of black powder lubricant

One (1) black plastic powder dispenser containing powder

DA192; TT32-33.

#### **B. Procedural history**

On December 30, 2019, the defendant filed a motion to dismiss Charge 2, Charge 3, and Charge 4.<sup>5</sup> DA10-19. The defendant argued, among other things, that the Handgun was not a “firearm” or a “deadly weapon” for purposes of RSA 159:3 or RSA 159:3-a. *See* DA10. In this motion, the defendant relied, in large part, on the federal definition of “firearm,” which exempts certain “antique firearm[s].” *See* DA12-18; 18 U.S.C. § 921(a)(3), (16).

On January 3, 2020, the State filed an objection. SA6-12. The State argued that the New Hampshire Supreme Court had already defined the

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<sup>5</sup> On November 4, 2019, the defendant filed a motion to dismiss the May 16, 2019 indictment for felon in possession of a firearm. DA4-7. The defendant’s December 30, 2019 motion to dismiss regarded the November 14, 2019 indictments that replaced the May 16, 2019 indictment. DA10; *supra* note 3.

term “firearm” as “a weapon from which a shot is discharged by gunpowder,” and that this definition encompassed the Handgun for purposes of RSA 159:3 and RSA 159:3-a. SA6-12; *see, e.g., State v. Beaudette*, 124 N.H. 579, 581 (1984) (relying on the dictionary definition of “firearm,” meaning “a weapon from which a shot is discharged by gunpowder” (quotation omitted)); *State v. Taylor*, 136 N.H. 131, 133 (1992) (defining “firearm” as a “weapon [that] is designed to, or is capable of, discharging a shot by gunpowder”).

On April 29, 2020, the Merrimack County Superior Court (the “Superior Court”) (*Kissinger, J.*) held a hearing on the defendant’s motion to dismiss. MT1. The defense presented a slideshow which, among other things, contained images of a weapon similar to the Handgun.<sup>6</sup> *See generally* MT7-28, 37-48; SA3-4. The defense also acknowledged that it was the defendant’s burden to show that the defendant could lawfully possess the Handgun. *See* MT43; RSA 159:5-a. The prosecution expounded on the arguments raised in the State’s earlier filings, and further noted that the Handgun could be converted to a modern revolver using a kit that was available online. *See generally* MT28-37, 48-49.

On June 1, 2020, the Superior Court (*Kissinger, J.*) issued a comprehensive order denying the defendant’s motion to dismiss. *See*

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<sup>6</sup> Defense counsel presented an image that he claimed represented “the antique revolver at issue in this matter.” MT8. The image presented, however, was of a “Colt 1851 Navy, Robert E. Lee Commemorative Edition, 36 Caliber,” SA3, which is a different caliber and model than the Handgun—a replica “.44 caliber . . . model 1851 Reb Nord Navy Sheriff,” *see* DA192-93. For clarity, the State has provided a photograph of the Handgun taken during the police investigation. *See* SA5; DA192 (forensic report referencing exhibit JPM1); TT32-33 (State’s offer of proof describing the Handgun).

DA71-79. The Superior Court determined that the “umbrella term” of “other firearm” contained in RSA 159:3 and RSA 159:3-a “prohibit[ed] felons from possessing any weapon within the broad class of ‘firearms,’” including “antiques or replicas if they are weapons from which shots can be discharged by gunpowder.” DA74-75. Further, the Superior Court held that federal law did not provide a “safe harbor” for felons charged with violating RSA 159:3 and RSA 159:3-a. *See* DA75-77.

On November 10, 2020, the Superior Court (*Schulman, J.*), held a combined plea hearing, trial by offer of proof, and sentencing hearing. *See* TT1, 11. The State agreed to *nolle pros* the indictments for Charge 3 and Charge 4, *see* TT12, 36; SA24-27, and the defendant pleaded guilty to Charge 1, TT18, 39; DA194, and Charge 5, TT19-20, 39-40. Additionally, after the State provided an offer of proof,<sup>7</sup> TT28-33; *supra* section A, the Superior Court found the defendant guilty of Charge 2, TT37; DA194.<sup>8</sup>

The Superior Court then solicited input from the parties regarding the defendant’s sentence. *See* TT40. The prosecution argued that the defendant should be sentenced to prison because he “pose[d] an extreme danger and risk to the community.” *See* TT40-59. In support, the prosecution provided the defendant’s criminal history, which included:

- (1) an April 2018 conviction for felony possession of a controlled drug;

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<sup>7</sup> The defense did not object to the content of the State’s offer of proof. *See* TT33; DA194.

<sup>8</sup> The Superior Court’s order incorrectly described the Handgun as “muzzle loading.” DA194. The Handgun is not loaded through the muzzle and is instead loaded through the cylinder. *See* SA3-5. Once loaded, the Handgun can fire up to six rounds in quick succession. *See* SA3-5.

- (2) a May 2017 conviction for two counts of possession of a controlled drug;
- (3) a January 2017 plea of true for violation of probation;
- (4) a 2015 conviction in Vermont for misdemeanor assault (which was reduced from first-degree assault);
- (5) a July 2015 conviction for possession of a controlled drug;
- (6) a June 2015 plea of true for violation of probation;
- (7) a February 2015 conviction for possession of a controlled drug;
- (8) a September 2014 conviction for two violations of probation;
- (9) a December 2013 conviction for receiving stolen property and a guilty plea to two counts of felony receiving stolen property;
- (10) an October 2012 conviction for violation of probation and a guilty plea to theft;
- (11) a March 2012 conviction for criminal mischief;
- (12) a February 2012 conviction for felony possession of a controlled drug and misdemeanor resisting arrest and detention;
- (13) a 2011 conviction for violation of probation;
- (14) a November 2010 conviction for possession of a controlled drug;
- (15) a June 2008 conviction for simple assault;
- (16) a May 2008 conviction for driving under the influence;
- (17) an October 2006 conviction for simple assault;
- (18) a July 2006 conviction for simple assault; and

- (19) an October 2005 conviction for two counts of simple assault, one count of false imprisonment, and one count of criminal mischief.<sup>9</sup>

*See* TT42-47; SA27. In further support of its proposed sentence, the prosecution noted the defendant’s methamphetamine use; his unlawful possession of the Handgun—“a high caliber weapon that can cause significant damage and injury”; his statements about defending the Andover Residence with firearms; and his open admiration of Carl Drega—a New Hampshire man who, in 1997, shot and killed two police officers, a judge, and a newspaper editor. *See* TT48-59.<sup>10</sup>

PPO Olsen also spoke at the sentencing hearing. TT60. PPO Olsen explained that the defendant “actively used meth during the majority of time that he was on supervision with me.” TT60. She believed that the defendant was “obsess[ed]” with the Andover Residence, and recalled that the defendant said “he would get a gun and he’d have to be taken out of there dead.” TT61-63. PPO Olsen believed that allowing the defendant to possess the Handgun not only jeopardized the safety of the community generally, but also her safety in particular because she was required to visit the defendant’s residence to verify his compliance with the probation conditions. TT29, 63-66. PPO Olsen stated that the defendant’s behavior,

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<sup>9</sup> In May 2003, the defendant may have been convicted of simple assault, and, in 2002, may also have been convicted in New Jersey for felony drug possession and misdemeanor paraphernalia possession. *See* TT42-43, 47. The prosecution, however, could not confirm these convictions at the sentencing hearing. *See* TT42-43, 47.

<sup>10</sup> *See also* Kathy McCormack, *Somber Memories 20 Years After Colebrook Shootings*, *Fosters.com* (Aug. 13, 2017, 9:11 PM), <https://www.fosters.com/news/20170813/somber-memories-20-years-after-colebrook-shootings>

drug use, and possession of the Handgun warranted “a significant amount of concern.” TT63-66.

The Superior Court then solicited input from the defense. TT66-67. Although acknowledging that the defendant’s sentence should have a “punitive component,” TT70, the defense argued that the defendant’s behavior could be explained—at least in part—by his recent diagnoses of autism spectrum disorder and Asperger syndrome, *see* TT67-79, 83-86.

The Superior Court concluded that “in light of the black powder weapon and the threats, there [was] a need for some degree of supervision.” TT88. Accordingly, the Superior Court sentenced the defendant to serve two-to-four years, stand committed, in state prison for the felon in possession of a firearm conviction (Charge 2) to be served concurrently with the sentence for violation of probation (Charge 5). TT90; SA13-17. For the possession of a controlled drug charge (Charge 1), the Superior Court imposed a consecutive two-and-a-half-to-five year sentence, all suspended, which was conditioned upon, among other things, the defendant not possessing “black powder or replica firearms.” TT92-93; SA18-22.

This appeal followed.



## SUMMARY OF THE ARGUMENT

This Court should affirm the Superior Court for the following reasons:

### I.

The defendant's conviction for felon in possession of a firearm should be upheld because the Handgun is a "firearm" under RSA 159:3, I. Although "firearm" is not defined in RSA chapter 159, the Handgun meets the plain and ordinary definition of that term—"a weapon from which a shot is discharged by gunpowder." *Webster's Third New International Dictionary*, 854 (unabridged ed. 2002); *Beaudette*, 124 N.H. at 581 (same).

Defining "firearm" to encompass antique and replica pistols and revolvers comports with principles of statutory construction and public policy. RSA 159:3, I forbids people convicted of certain violent crime and drug felonies from possessing a wide array of weapons, including "a pistol, revolver, or other firearm, or slungshot, metallic knuckles, billies, stiletto, switchblade knife, sword cane, pistol cane, blackjack, dagger, dirk-knife, or other deadly weapon as defined in RSA 625:11, V." Interpreting RSA 159:3 to prohibit felons from possessing antique and replica pistols and revolvers "effects the reasonable goal of preventing felons from possessing a broader range of actual or potential weapons than the general public." *State v. Beckert*, 144 N.H. 315, 318 (1999).

Further, contrary to the defendant's contentions, the last sentence of RSA 159:1 is not an exemption for the defendant and other convicted felons to possess antique and replica pistols and revolvers. First, the last sentence of RSA 159:1 expressly applies only to that "section"—not RSA

159:3 or any other section of RSA chapter 159. Second, applying the last sentence of RSA 159:1 to RSA 159:3 would lead to absurd results. Third, nothing in RSA chapter 159 indicates that the legislature intended for the last sentence of RSA 159:1 to apply to convicted felons. Finally, the defendant has not met his burden to show that he is a “museum,” an “antique or arms collector,” or a “licensed gun dealer” as required by the last sentence of RSA 159:1. *See* RSA 159:1; RSA 159:5-a.

Moreover, despite the defendant’s claims, federal firearms law does not provide a “safe haven” for convicted felons to possess antique and replica pistols and revolvers under state law for at least two reasons. First, federal firearms law is inapplicable to the defendant’s conviction because he was indicted for violating a state firearms law and was tried in state court. Second, federal firearms law does not preempt state firearms law. Express and field preemption are inapplicable because federal firearms law expressly states that it should not be construed to preempt state firearms law. *See* 18 U.S.C. § 927. Federal firearms law also does not conflict with state firearms law because: (1) the defendant may comply with both federal and state law by not possessing any firearms, and (2) both federal and state law serve similar aims—*i.e.*, promoting public safety by restricting criminals’ access to firearms.

The defendant further argues that, by defining “firearm” to include antique and replica pistols and revolvers, firearms sellers will face undue criminal liability pursuant to RSA 159:7 because they may unwittingly sell such weapons to felons. This argument fails for at least two reasons. First, the defendant cannot raise this claim in this appeal. The defendant was indicted for and convicted of violating RSA 159:3—not RSA 159:7—and

any hypothetical future violation of RSA 159:7 by a firearms seller has no basis in the record, is speculative, and is not ripe for adjudication. Second, firearms sellers do not face undue criminal exposure under RSA 159:7. RSA chapter 159 requires sellers to inquire into a buyer's identity and age for certain weapon sales under New Hampshire law, *see, e.g.*, RSA 159:8, III; RSA 159:12, I, and nothing in RSA 159:7 prohibits firearms sellers from similarly inquiring into a buyer's criminal background before selling an antique or replica pistol or revolver. Further, RSA 626:2's requirement that the State must prove a *mens rea* for all felony convictions protects firearms sellers from criminal liability on the off-chance they accidentally sell an antique or replica pistol or revolver to a convicted felon.

## II.

Defining "firearm" according to its plain and ordinary meaning does not render RSA 159:3, RSA 159:3-a, or RSA 159:7 unconstitutionally vague.

First, the phrase "other firearm" contained in RSA 159:3 and RSA 159:3-a plainly encompasses all firearms, including antique and replica pistols and revolvers. The defendant, therefore, should have known that possessing the Handgun was prohibited under these statutes.

Additionally, this Court should not consider the defendant's argument that RSA 159:7 is unconstitutionally vague because, among other reasons, a declaration as to the constitutionality of RSA 159:7 would provide the defendant with no meaningful relief. Even if this Court considers this argument, however, RSA 159:7 is not unconstitutionally vague because the absence of an express *mens rea* requirement "does not

necessitate invalidating the statute.” See *State v. Hynes*, 159 N.H. 187, 201 (2009).

## ARGUMENT

### I. THE DEFENDANT'S POSSESSION OF THE HANDGUN VIOLATED RSA 159:3.

The defendant claims that he did not violate RSA 159:3 by possessing the Handgun. *See generally* DB. This is incorrect.

The burden for establishing an “exception, excuse, proviso or exemption” under RSA chapter 159 “shall be upon the defendant.” RSA 159:5-a.

This appeal requires this Court to interpret RSA chapter 159. The interpretation of a statute is a question of law, which this Court reviews *de novo*. *State v. Dor*, 165 N.H. 198, 200 (2013). This Court is “the final arbiter of the intent of the legislature as expressed in the words of the statute.” *In re Guardianship of Williams*, 159 N.H. 318, 323 (2009). When construing a statute’s meaning, this Court “first examine[s] its language, and where possible, ascribe[s] the plain and ordinary meanings to words used.” *Id.* If the language used “is clear and unambiguous,” this Court “will not look beyond the language of the statute to discern legislative intent.” *Id.*

Further, this Court will “construe all parts of the statute together to effectuate its overall purpose and to avoid an absurd or unjust result.” *Garand v. Town of Exeter*, 159 N.H. 136, 141 (2009) (quotation omitted). The legislature “is not presumed to waste words or enact redundant provisions and whenever possible, every word of a statute should be given effect.” *Id.* (quotation omitted). This Court also “refuse[s] to consider what the legislature might have said or add language that the legislature did not see fit to include.” *In re James N.*, 157 N.H. 690, 693 (2008).

The legislature’s choice of language “is deemed to be meaningful,” and, “unless the context indicates otherwise, words or phrases in a provision that were used in a prior act pertaining to the same subject matter will be construed in the same sense.” *State Employees Assoc. of N.H. v. N.H. Div. of Personnel*, 158 N.H. 338, 345 (2009) (quotations, citations, and brackets omitted); *In re J.S.*, \_\_ N.H. \_\_, No. 2020-0502, 2021 WL 3236492, at \*4 (N.H. July 30, 2021). Additionally, “[t]he expression of one thing in a statute implies the exclusion of another.” *State v. Mayo*, 167 N.H. 443, 452 (2015) (quotation omitted). This principle “is strengthened where a thing is provided in one part of the statute and omitted in another.” *Id.* (quotation omitted).

**A. The Handgun is a “firearm” for purposes of RSA 159:3.**

The defendant contends that he did not violate RSA 159:3 because the Handgun he possessed was not a “firearm” under this statute. *See, e.g.*, DB17-18; DA10; RSA 159:3. The defendant’s argument fails because it conflicts with New Hampshire decisional law and is contrary to the text, structure, and purpose of RSA chapter 159.

The salient issue for this appeal is whether the Handgun constitutes a “firearm” within the meaning of RSA 159:3. RSA 159:3 states, in relevant part:

- I. A person is guilty of a class B felony if he:
  - (a) Owns or has in his possession or under his control, a pistol, revolver, or other firearm, or slungshot, metallic knuckles, billies, stiletto, switchblade knife, sword cane, pistol cane, blackjack, dagger, dirk-knife, or other deadly weapon as defined in RSA 625:11, V . . . .

RSA 159:3, I; *see also* RSA 625:11, V (“‘Deadly weapon’ means any firearm, knife or other substance or thing which, in the manner it is used, intended to be used, or threatened to be used, is known to be capable of producing death or serious bodily injury.”).

“Firearm” is not defined in RSA chapter 159. *See generally* RSA ch. 159. Consequently, this Court “ascribe[s] the plain and ordinary meaning” to this term. *See Williams*, 159 N.H. at 323. According to *Webster’s Third New International Dictionary*, “firearm” means “a weapon from which a shot is discharged by gunpowder.” *Webster’s Third New International Dictionary*, 854. Pursuant to this definition, the Handgun constitutes a “firearm” because, even though it uses antiquated technology, it remains “a weapon from which a shot is discharged by gunpowder.” *See id.*; TT31-32; DA192; SA3-5.

Defining “firearm” according to its plain and ordinary meaning is consistent with New Hampshire decisional and statutory law. This Court has repeatedly defined “firearm” as “a weapon from which a shot is discharged by gunpowder.” *See, e.g., Beaudette*, 124 N.H. at 581; *State v. St. John*, 129 N.H. 1, 2 (1986); *State v. Smith*, 166 N.H. 40, 43-44 (2014); *see also Taylor*, 136 N.H. at 133 (defining “firearm” as a “weapon [that] is designed to, or is capable of, discharging a shot by gunpowder”). Similarly, RSA 173-B:1—the “Definitions” section of the “Protection of Persons from Domestic Violence” chapter—defines “firearm” as “any weapon, including a starter gun, which will, is designed to, or may be readily converted to

expel a projectile by the action of an explosive.” RSA 173-B:1, XI; *see In re J.S.*, \_\_ N.H. \_\_, 2021 WL 3236492, at \*4.<sup>11</sup>

An examination of RSA 159:3 and other sections of RSA chapter 159 shows that the legislature intended to prohibit felons from possessing antique and replica pistols and revolvers such as the Handgun. *See Garand*, 159 N.H. at 141. RSA 159:3 not only bars individuals convicted of certain violent crime and drug felonies from possessing a “pistol” or “revolver,” but also from possessing any “other firearm” or “other deadly weapon as defined in RSA 625:11, V.” RSA 159:3, I. If the legislature wanted felons to lawfully possess antique and replica pistols and revolvers, it would have modeled RSA 159:3 after other sections of RSA chapter 159 that include the terms “pistol” and “revolver,” but omit the umbrella terms “other firearm” or “other deadly weapon.” *See, e.g.*, RSA 159:10 (“Any person who, without being licensed as herein provided, sells, advertises or exposes for sale, or has in his possession with intent to sell, pistols or revolvers shall be guilty of a class B felony . . . .”); RSA 159:12, I; RSA 159:13; RSA 159:14; *Mayo*, 167 N.H. at 452. Instead, by including “other firearm” and “other deadly weapon” in RSA 159:3, I, the legislature plainly intended to prevent felons from possessing *all* types of firearms—including antique and

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<sup>11</sup> The legislature amended RSA 159:3, I in 2001—approximately two years after the legislature passed RSA 173-B:1. As such, this Court may consider the definition of “firearm” contained in RSA 173-B:1 when interpreting RSA 159:3. *See State Employees Assoc. of N.H.*, 158 N.H. at 345. In 2018, the legislature amended RSA 173-B:1 by changing “to expel by *force of gunpowder*” to “to expel by *the action of an explosive*.” *See* RSA 173-B:1. Pursuant to either definition, the Handgun would qualify as a “firearm.” *See supra* section I.A.



replica pistols and revolvers. *See* RSA 159:3, I; *State Employees Assoc. of N.H.*, 158 N.H. at 345.

Classifying antique and replica pistols and revolvers as “firearms” also avoids absurd results. *Garand*, 159 N.H. at 141. RSA 159:3, I not only prohibits felons from possessing deadly ranged weapons such as “a pistol, revolver, or other firearm,” but also less dangerous hand-to-hand weapons such as a “slungshot, metallic knuckles, billies, stiletto, switchblade knife, sword cane, . . . blackjack, dagger, [and] dirk-knife.” In a similar vein, RSA 159:21 bars felons from possessing “an electronic defense weapon away from the premises where he resides.” It would be absurd to interpret RSA 159:3, I to allow the defendant to possess the Handgun—a deadly ranged weapon capable of quickly firing multiple rounds—but restrict him from possessing, for example, a blackjack (*i.e.*, a “small striking weapon typically consisting . . . of a leather-enclosed piece of . . . metal and . . . a strap or springy shaft”), a slungshot (*i.e.*, a “weapon consisting of a small mass of metal or stone fixed on a flexible handle or trap”), or a non-lethal electronic defense weapon. *Webster’s Third New International Dictionary*, 226, 2148; RSA 159:21; *see also Beckert*, 144 N.H. at 317 (“If we are to effectuate the statute’s purpose, we cannot read [RSA 159:3] to permit felons to carry a cleaver or a razor, but not a stiletto, in public.”).<sup>12</sup>

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<sup>12</sup> Other absurdities would result if a “firearm” did not encompass antique and replica pistols and revolvers. For example, individuals could freely carry such weapons into courthouses, *see* RSA 159:19 (“No person shall knowingly carry a loaded or unloaded pistol, revolver, or firearm or any other deadly weapon as defined in RSA 625:11, V, . . . in a courtroom or area used by a court.”), and could provide false information when purchasing antique and replica pistols and revolvers without fear of criminal liability, *see* RSA 159:11 (prohibiting “giv[ing] false information” or “offer[ing] false evidence of . . .

The defendant contends that convicted felons should be prohibited from possessing antique and replica pistols or revolvers only if “in the manner it is used, intended to be used, or threatened to be used, [the firearm] is known to be capable of producing death or serious bodily injury.” *See* DB15-16; RSA 625:11, V; *State v. Mohamed*, 159 N.H. 559, 561 (2009). This argument fails for several reasons. First, the defendant’s contention centers not on the definition of “firearm,” but on the definition of “deadly weapon.” Although the defendant was also indicted with possession of a “deadly weapon,” he was convicted and sentenced for possession of a “firearm.”<sup>13</sup> *See* TT26-35; SA14-17, 23-27. Additionally, limiting violations of RSA 159:3 to convicted felons that use or threaten to use a firearm contravenes both: (1) the plain language of RSA 159:3, I, which separately prohibits felons from possessing a “firearm” and a “deadly weapon”; and (2) the public policy that convicted felons should not possess firearms and other dangerous weapons regardless of how the weapon is employed.<sup>14</sup> *See* RSA 159:3, I; *Beckert*, 144 N.H. at 318; *supra* section I.A.

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identity” when “purchasing or otherwise securing delivery of a pistol, revolver, or other firearm”).

<sup>13</sup> Nonetheless, the record establishes that the defendant possessed a “deadly weapon” because the Handgun was “capable of producing death or serious bodily injury,” and the defendant was “intend[ing]” to use firearms such as the Handgun as weapons to defend the Andover Residence. *See* DA192; TT31-32; RSA 159:3, I; RSA 625:11, V. For these reasons, even if this Court finds that the Handgun was not a “firearm,” it should affirm because the Handgun was a “deadly weapon.” RSA 159:3, I; TT31-32; DA192; *State v. Berry*, 148 N.H. 88, 91 (2002) (holding that this Court will not reverse a trial court decision “when it reaches the correct result and valid alternative grounds exist to reach that result”).

<sup>14</sup> The defendant also contends that employing this Court’s definitions of “firearm” would “lead[] to the absurd conclusion that many residential use fireworks [would be] considered ‘firearms.’” *See* DB18. The defendant, however, conflates the terms “firearm” and “deadly

Finally, the defendant argues that if “firearm” included antique and replica pistols and revolvers, RSA 159:3’s references to “pistol” and “revolver” would be rendered superfluous. DB17; *State v. Burke*, 162 N.H. 459, 461 (2011). This is incorrect.

RSA 159:3 forbids felons from possessing a “pistol, revolver, or other firearm.” According to a plain reading of this phrase, felons cannot possess a “pistol” or “revolver,” as such terms are defined in RSA 159:1, as well as any “other firearm”—*i.e.*, every type of firearm that falls outside the statutory definition of “pistol” or “revolver.” RSA 159:3, I; *Webster’s Third New International Dictionary*, 1598 (defining “other” to mean, among other things, “remaining,” “different,” or “additional”). As such, each word in the phrase “pistol, revolver, or other firearm” is essential. Although the legislature could have written RSA 159:3 more succinctly by barring felons from possessing, for example, “any firearm” or “all firearms,” it does not mean that the phrase “pistol, revolver, or other firearm” contains surplusage or is otherwise defective. *See Hynes*, 159 N.H. at 200 (“[M]athematical exactness is not required in a penal statute, nor is a law invalid merely because it could have been drafted with greater precision.”).

Further, the defendant’s interpretation of RSA 159:3 is contrary to this Court’s decision in *Beckert*. 144 N.H. 315. In *Beckert*, the defendant argued that RSA 159:3’s reference to “other dangerous weapon”<sup>15</sup> did not

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weapon.” RSA 159:3, I Although a firework could constitute a “deadly weapon” if it is used as such, *see State v. Kousounadis*, 159 N.H. 413, 425 (2009), it would not constitute a “firearm” according to the common understanding of that term, because, in part, it is not “designed . . . for use as a weapon,” *see* 18 U.S.C. § 921(a)(4) (defining “destructive device”); *Beaudette*, 124 N.H. at 581 (defining “firearm”).

<sup>15</sup> This language appeared in a prior version of RSA 159:3. *See* RSA 159:3 (1998).

include a six-inch hunting knife he possessed. *Id.* at 316-19. The defendant asserted that “other dangerous weapon” should not “be construed in [its] widest extent,” but instead “as applying only to . . . things of the same kind or class as those specifically mentioned.” *Id.* at 318. This Court disagreed. *Id.* at 319. In support of its decision, this Court explained that it does not interpret statutes “in a vacuum” or “with blinders,” and, instead, considers the “purpose underlying the statute . . . when interpreting its intended meaning” *Id.* This Court reasoned that the purpose of RSA 159:3 was “to protect the public from felons who would possess or have under their control instruments capable of causing serious injury or death.” *Id.* This Court concluded that the phrase “other dangerous weapon” should be interpreted broadly not only because it was consistent with RSA 159:3’s purpose, but also because, as a practical consideration, the legislature could not list “all potential instruments capable of causing . . . harm.” *Id.* Consequently, this Court held that the defendant’s possession of the six-inch hunting knife was a “dangerous weapon” under RSA 159:3, I.

Similar to *Beckert*, the defendant’s possession of the Handgun violated RSA 159:3. The legislature could not have listed every type of firearm in RSA 159:3, so instead they inserted the phrase “other firearm” to encompass “all potential” types of firearm—including antique and replica pistols and revolvers. *See id.* To conclude otherwise would undermine RSA 159:3’s intent “to protect the public from felons who would possess or have under their control instruments capable of causing serious injury or death.” *Beckert*, 144 N.H. at 315.

Because Handgun is a “firearm” for purposes of RSA 159:3, I, this Court should affirm the defendant’s conviction for felon in possession of a firearm.

**B. RSA 159:1 does not provide an exemption for the defendant to possess the Handgun.**

The defendant contends that the last sentence of RSA 159:1 permits him to possess the Handgun along with other antique and replica pistols and revolvers:

Pistol or revolver, as used herein, means any firearm with barrel less than 16 inches in length. It does not include antique pistols, gun canes, or revolvers. An antique pistol, gun cane, or revolver, for the purposes of this chapter, means any pistol, gun cane, or revolver utilizing an early type of ignition, including, but not limited to, flintlocks, wheel locks, matchlocks, percussions and pin-fire, but no pistol, gun cane, or revolver which utilizes readily available center fire or rim-fire cartridges which are in common, current use shall be deemed to be an antique pistol, gun cane, or revolver. *Nothing in this section shall prevent antique pistols, gun canes, or revolvers from being owned or transferred by museums, antique or arms collectors, or licensed gun dealers at auctions, gun shows, or private premises provided such ownership or transfer does not conflict with federal statutes.*

RSA 159:1 (emphasis added); DB9-10, 12-21. The defendant’s claim is unavailing.

First, as the Superior Court observed, *see* DA74, the last sentence of RSA 159:1 expressly applies only to “this section”—*i.e.*, RSA 159:1. Consequently, the last sentence of RSA 159:1 does not apply to RSA 159:3. The third sentence of RSA 159:1 reinforces this interpretation. This sentence states that the definition for “antique pistol, gun cane, or revolver”

applies to “this chapter,” meaning that, unlike the last sentence of RSA 159:1, it pertains to the entirety of RSA chapter 159. *See Burke*, 162 N.H. at 461; *State v. Czekalski*, 169 N.H. 732, 738-39 (2017), *as modified on denial of reconsideration* (May 23, 2017) (holding that a statutory provision referring to “this paragraph” applied only to that paragraph rather than the entire chapter because this Court “must presume that the legislature intended the words ‘chapter’ and ‘paragraph’ to have different meanings”). Because the defendant was found guilty of violating RSA 159:3, the last sentence of RSA 159:1 is inapplicable to his conviction.

Second, interpreting the last sentence of RSA 159:1 as the defendant suggests would lead to absurd results. *Garand*, 159 N.H. at 141. For example, if the last sentence of RSA 159:1 applied to RSA 159:3, convicted felons could lawfully possess antique and replica pistols and revolvers, but could not possess antique or replica muzzle-loading muskets and rifles with barrels longer than sixteen inches, *see RSA 159:1*, even though such weapons typically have less ammunition capacity and are harder to conceal.

Third, nothing in RSA chapter 159 indicates that the legislature intended for the last sentence of RSA 159:1 to apply to convicted felons. *See In re James N.*, 157 N.H. at 693. If the legislature intended for convicted felons to lawfully possess antique and replica pistols and revolvers, it would have: (1) not expressly limited the last sentence of RSA 159:1 to “this section”; (2) not restricted the last sentence of RSA 159:1 to “museums, antique or arms collectors, or licensed gun dealers”; and (3) drafted RSA 159:3 to expressly allow felons to possess antique and replica pistols and revolvers. *See id.*; *supra* section II; *see also State v. Tharp*, 22 Neb. App. 454, 462-63, 854 N.W.2d 651, 657 (2014) (rejecting defendant’s

argument that he could possess black powder firearms because no “Nebraska statute includes any language which specifically indicates that the Legislature intended any circumstances under which felons are allowed to purchase firearms or handguns. Instead, the Nebraska statutes clearly and specifically prohibit felons from possession of any type of firearm.”).

Finally, even if the last sentence of RSA 159:1 functions as an exemption, the defendant has not met his burden that he is a “museum,” “antique or arms collector,” or “licensed gun dealer” as required by this statute. *See* RSA 159:1; RSA 159:5-a.

First, the defendant is not, and does not claim to be, either a “museum” or a “licensed gun dealer.” *See generally* DB.

Additionally, the defendant has not shown that he is an “antique or arms collector.” “Collector” is not defined in RSA chapter 159.<sup>16</sup> According to the plain and ordinary meaning of that word, a “collector” is “one that makes a collection,” *i.e.*, “an assembly of objects or specimens for

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<sup>16</sup> To the State’s knowledge, “collector” is not defined in relevant New Hampshire statutory or decisional law. This term is, however, defined in New Hampshire statutes that do not contain similar subject matter. In RSA chapter 287-D (“Games of Chance”) and RSA chapter 647 (“Gambling Offenses”), “collector” means “a person who for nostalgic reasons, monetary investment, or personal interest acquires antique gambling machines . . . for personal display or retention.” RSA 287-D:27, II; RSA 647:2, II(b).

Even if these statutes contain similar subject matter to RSA chapter 159 (“Pistols and Revolvers”), which they do not, the defendant did not meet his burden that he is a “collector” pursuant to these definitions. *See* RSA 159:5-a. The defendant did not acquire the Handgun for “nostalgic reasons, monetary investment, or personal interest,” but rather for use as a weapon. *See* TT31-32. Further, RSA chapter 287-D and RSA chapter 647 each require that collectors not employ antique gambling machines as originally intended, *i.e.*, “for gambling purposes.” *See* RSA 287-D:31, IV; RSA 647:2, IV. As described above, the defendant planned to use the Handgun as originally intended, *i.e.*, as a weapon. *See* TT31-32.

the purposes of education, research, or interest.” *Webster’s Third New International Dictionary*, 444-45; *Williams*, 159 N.H. at 323.

The defendant has not met his burden that he qualifies as a “collector” pursuant to this definition. *See* RSA 159:5-a. The defendant did not keep the Handgun as an “object[] . . . of education, research, or interest.” *See Webster’s Third New International Dictionary*, 444-45; TT31-32. The defendant never claimed that the Handgun—a replica he purchased from Cabela’s—had any sort of personal or historical significance to him. Rather, the defendant acquired the Handgun as a weapon to defend the Andover Residence from others. *See* TT31-32. Further, the defendant did not take care of the Handgun as a collector would. When the Handgun was seized, the defendant was storing it in a “mop bucket with the handle sticking out.” TT31. In short, aside from merely owning a replica revolver, the defendant has provided no support that he was an “antique or arms collector.” *See* RSA 159:1; RSA 159:5-a.

The defendant’s reliance on RSA 159:1 is misplaced. This Court, therefore, should affirm.

**C. Federal law does not provide a “safe haven” for the defendant to possess the Handgun.**

The defendant argues that federal law provides a “safe haven” for him—and, by extension, other convicted felons—to lawfully possess antique and replica pistols and revolvers in New Hampshire. *See* DB9-10, 12-19; DA75-76. *See generally* MT. The defendant contends that the definition of “firearm” contained in 18 U.S.C. § 921, which exempts “antique firearm[s],” is applicable to RSA 159:3 because RSA 159:1 and



RSA 159:26 each reference federal law. *See* DB9-10, 12-19; 18 U.S.C. § 921(a)(3), (16). This argument fails for several reasons.

First, the defendant cannot rest his federal “safe haven” argument on guidance from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (the “ATF”). *See, e.g.*, DA6, 13 (citing ATF website for the proposition “that felons can own antiques and black powder firearms”); MT40-43 (discussing ATF reference guide); DB21 (referencing “ATF Form 4473”). The ATF does not support the defendant’s position that federal firearms law supersedes state firearms law. Rather, the ATF explains on its website that:

[E]ven though a [convicted felon] may lawfully possess an antique firearm under Federal law, State or local law may classify such weapons as “firearms” subject to regulation. Any person considering acquiring a black powder weapon should contact his or her State Attorney General’s Office to inquire about the laws and possible State or local restrictions.

*See Most Frequently Asked Firearms Questions and Answers*, Bureau of Alcohol, Tobacco, Firearms and Explosives (last visited Sept. 10, 2021), <https://www.atf.gov/file/3871/download> [hereinafter, *ATF FAQ*].

Second, and more fundamentally, the defendant cannot rely upon federal law to justify his possession of the Handgun because he was not charged with violating a federal law or tried in federal court. Rather, the defendant was charged with violating RSA 159:3—a state law—and tried in state court. As such, the defendant’s federal law argument is categorically inapposite. *See, e.g., Tharp*, 854 N.W.2d at 657 (holding that a convicted felon could not invoke federal law to justify his possession of an antique firearm because he “was not charged in federal court with a

violation of federal law, but was charged with violations of Nebraska criminal statutes”).

Third, notwithstanding the defendant’s suggestions, *see* DB7, 9-10, 12-16, federal law does not preempt state law. In accordance with United States Supreme Court decisional law, this Court has identified three types of federal preemption: “express,” “field,” and “conflict.” *Appeal of Panaggio*, 174 N.H. 89, 2021 WL 787021, at \*2 (2021) (quotation omitted). Express preemption occurs when Congress “preempts state authority by so stating in express terms.” *Id.* (brackets and quotation omitted). Field preemption occurs “when federal law occupies a ‘field’ of regulation so comprehensively that it has left no room for supplementary state legislation.” *Id.* (quotation omitted). Finally, conflict preemption may occur either when (1) “it is impossible for a private party to comply with both state and federal requirements,” or (2) when compliance with both state and federal laws is possible, “but state law stands as an impermissible obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Id.* (quotations and citations omitted).

In conducting the federal preemption analysis, this Court “assum[es] that the historic police powers of the States were not to be superseded by the [f]ederal [a]ct unless that was the clear and manifest purpose of Congress.” *Disabilities Rts. Ctr., Inc. v. Comm’r, New Hampshire Dep’t of Corr.*, 143 N.H. 674, 676 (1999) (quotation omitted); *Pelkey v. Dan’s City Used Cars, Inc.*, 163 N.H. 483, 488 (2012), *aff’d*, 569 U.S. 251 (2013). Accordingly, “preemption language in a federal statute should be read in context and interpreted narrowly.” *Disabilities Rts. Ctr.*, 143 N.H. at 676-77. And, regardless of the type of federal preemption claimed, the

defendant “must point specifically to a constitutional text or a federal statute that does the displacing or conflicts with state law.” *See Panaggio*, 2021 WL 787021, at \*2 (quotation omitted).

Express and field preemption are inapplicable in this context. Rather, the federal firearms law upon which the defendant relies—18 U.S.C. chapter 44 (“Firearms”)—expressly states that, unless an actual conflict exists, it should not be construed to preempt state firearms law:

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

18 U.S.C. § 927. When faced with a similar claim to this appeal, the Court of Appeals of New Mexico explained that 18 U.S.C. § 927:

. . . demonstrates that Congress did not intend to exclude states from the field of regulating firearms. The congressional findings indicate, instead, that state regulation of firearms alone was, and would continue to be, ineffective without supplementary federal legislation. The aim of the federal legislation was to make possible “effective State and local regulation[.]” Thus, Congress explicitly recognized the existence of state regulation, and under these circumstances, no preemption question is raised.

*State v. Haddenham*, 1990-NMCA-048, ¶¶ 38-39, 110 N.M. 149, 156-57, 793 P.2d 279, 286-87 (citations omitted). The defendant, therefore, cannot claim that a federal “safe haven” exists via express or field preemption.

Additionally, contrary to the defendant’s arguments, *see, e.g.*, DB9-10, 16, he does not and cannot establish that 18 U.S.C. chapter 44 conflicts with RSA 159:3. *Panaggio*, 2021 WL 787021, at \*2; *State v. Bickford*, 167

N.H. 669, 675 (2015). First, the defendant can readily satisfy both 18 U.S.C. chapter 44 and RSA 159:3 by not owning *any* firearms—including antique and replica pistols and revolvers. *Accord Bickford*, 167 N.H. at 676 (“Because the defendants have not shown that they cannot comply with the requirements of both federal law and the City Ordinances, they have failed to demonstrate that state and federal law actually conflict.”). Second, 18 U.S.C. chapter 44 and RSA chapter 159 serve similar aims. *Panaggio*, 2021 WL 787021, at \*3; *Bickford*, 167 N.H. at 675. Congress passed 18 U.S.C. chapter 44 in part because

the ease with which any person can acquire firearms other than a rifle or shotgun (including criminals . . . and others whose possession of such weapon is similarly contrary to the public interest) is a significant factor in the prevalence of lawlessness and violent crime in the United States . . . .

Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 901, 82 Stat. 197, 225; 18 U.S.C. § 922(g). RSA 159:3 furthers the purpose of 18 U.S.C. chapter 44 because it, too, helps prevent “lawlessness and violent crime” by prohibiting convicted felons from possessing firearms and other dangerous weapons. *See* § 901, 82 Stat. at 225; *Beckert*, 144 N.H. at 318; *Disabilities Rts. Ctr.*, 143 N.H. at 678; *Haddenham*, 793 P.2d at 287 (“The fact that the state and federal firearms laws may be different is not a sufficient basis upon which to find a conflict so as to nullify state law.” (citation omitted)); *see also* RSA ch. 159; *ATF FAQ*; *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 132 (1978) (“[I]t would be particularly inappropriate to [apply federal preemption] in this case because the basic purposes of [the federal and state statutes] are similar.”).

The text of RSA 159:1 and RSA 159:26 does not alter this conclusion. *See* DB9-10. These statutes merely state that New Hampshire firearms laws should be consistent with federal firearms laws. *See* RSA 159:1; RSA 159:26, I (“*To the extent consistent with federal law*, the state of New Hampshire shall have authority and jurisdiction over . . . matter[s] pertaining to firearms, firearms components, ammunition, [and] firearms supplies . . . in the state. . . .” (emphasis added)); DA75. As explained above, RSA 159:3 is consistent with 18 U.S.C. chapter 44 because: (1) the defendant can readily comply with RSA 159:3 and 18 U.S.C. chapter 44 by not possessing any firearms, and (2) both RSA 159:3 and 18 U.S.C. chapter 44 serve the same purpose of restricting criminals from possessing dangerous weapons. *Beckert*, 144 N.H. at 318; *see also ATF FAQ; Armstrong v. Commonwealth*, 263 Va. 573, 582, 562 S.E.2d 139, 144 (2002) (finding that a Virginia firearms law similar to RSA chapter 159 “focuse[d] on the General Assembly’s determination that certain individuals—felons—are unfit to possess firearms, even for lawful purposes”); *Wenners v. Great State Beverages, Inc.*, 140 N.H. 100, 104 (1995) (“[S]tate causes of action are not pre-empted solely because they impose liability over and above that authorized by federal law.” (quotation omitted)). As the Superior Court correctly stated, there is no “safe harbor under state law for convicted felons in [New Hampshire] to possess weapons that they may otherwise be permitted to own under federal law.” DA75.

This Court should affirm.

**D. The defendant’s claim that classifying antique and replica pistols and revolvers as “firearms” would unduly expose firearms sellers to criminal liability fails because: (1) it is not properly before this Court, and (2) even if it were, firearms sellers are adequately protected by existing law.**

The defendant further argues that, by defining “firearm” to include antique and replica pistols and revolvers, firearms sellers will face undue criminal liability under RSA 159:7 should they unwittingly sell such firearms to felons. *See* DB20-23; RSA 159:7 (“No person shall sell, deliver, or otherwise transfer a pistol, revolver or any other firearm, to a person who has been convicted, in any jurisdiction, of a felony.”). This argument is not properly before this Court and is without merit.

First, the defendant cannot raise this claim in this appeal. The defendant was found guilty of violating RSA 159:3 for possessing a firearm as a convicted felon—not of violating RSA 159:7 for selling a firearm to a convicted felon. A firearms seller’s hypothetical future violation of RSA 159:7 falls outside the scope of this appeal because it has no basis in the record, is speculative, and is not ripe for adjudication. *See Avery v. Comm’r, N.H. Dep’t of Corr.*, 173 N.H. 726, 737 (2020) (“Standing . . . requires parties to have personal legal or equitable rights that are adverse to one another, with regard to an actual, not hypothetical, dispute, which is capable of judicial redress. . . . Neither an abstract interest . . . nor an injury indistinguishable from a generalized wrong allegedly suffered by the public at large, is sufficient to constitute a personal, concrete interest. Rather, the party must show that its own rights have been or will be directly affected.” (citations omitted)); *Univ. Sys. of N.H. Bd. of Trustees v. Dorfsman*, 168 N.H. 450, 455 (2015) (stating that “the ripeness test requires that the

contested action impose an impact on the parties sufficiently direct and immediate as to render the issue appropriate for judicial review at this stage”); *Silver Bros. Co. v. Wallin*, 122 N.H. 1138, 1140 (1982) (“A party will not be heard to question the validity of a law, or of any part of it, unless he shows that *some right of his* is impaired or prejudiced thereby.” (emphasis in original) (quotation omitted)).

Second, even if the defendant’s RSA 159:7 claim is properly before this Court, it is without merit. RSA chapter 159 requires sellers to inquire into the buyer’s identity and age for various weapons sales. *See, e.g.*, RSA 159:8, III (“No pistol, revolver, or other firearm shall be delivered to a purchaser not personally known to the seller or who does not present clear evidence of his identity . . . .”); RSA 159:12, I (“Any person who shall sell, barter, hire, lend or give to any minor any pistol or revolver shall be guilty of a misdemeanor.”); RSA 159:22 (“Any person who knowingly sells an electronic defense weapon to a person under 18 years of age shall be guilty of a violation.”); RSA 159:24, II (“Any person who shall sell, deliver, or otherwise transfer any martial arts weapon to a person under the age of 18 without first obtaining the written consent of such person’s parent or guardian shall be guilty of a misdemeanor.”). Sellers of antique and replica pistols and revolvers could employ similar tools when inquiring into whether a buyer is a convicted felon.<sup>17</sup> Further, RSA 626:2’s requirement that the State must prove a *mens rea* for all felony convictions protects a firearms seller from criminal liability in case a firearm is accidentally sold

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<sup>17</sup> Additionally, individuals are discouraged from providing false information when purchasing firearms because doing so is a crime under New Hampshire law. *See* RSA 159:3, I-a; RSA 159:11.

to a convicted felon. *See* RSA 626:2 (“A person is guilty of murder, a felony, or a misdemeanor only if he acts purposely, knowingly, recklessly or negligently, as the law may require . . .”); *State v. Ayer*, 136 N.H. 191, 193 (1992). As the Superior Court aptly observed: “There is simply no basis to conclude that the legislature would have intended to criminalize the sale of an antique or replica handgun by an authorized dealer . . . who is unaware that the purchaser is a convicted felon.” DA77.

This Court should affirm.



**II. DEFINING “FIREARM” TO INCLUDE ANTIQUE AND REPLICIA PISTOLS AND REVOLVERS DOES NOT RENDER RSA 159:3, RSA 159:3-a,<sup>18</sup> OR RSA 159:7 UNCONSTITUTIONALLY VAGUE.**

Finally, the defendant argues that if “firearms” includes antique and replica pistols and revolvers, it would render RSA 159:3, RSA 159:3-a, and RSA 159:7 unconstitutionally vague. *See* DB19-24.

A criminal statute is void for vagueness “when it forbids or requires the doing of an act in terms so vague that [individuals] of ordinary intelligence must necessarily guess at its meaning and differ as to its application.” *Dor*, 165 N.H. at 202-03. A party challenging a statute as void for vagueness “bears a heavy burden of proof in view of the strong presumption favoring a statute’s constitutionality.” *Hynes*, 159 N.H. at 200.

RSA 159:3 and RSA 159:3-a are not unconstitutionally vague if the term “firearm” includes antique and replica pistols and revolvers. Even though an antique or replica pistol or revolver is excluded from the statutory definition of “pistol” or “revolver,” *see* RSA 159:1, such a weapon would still qualify as a “firearm” because it is a “a weapon from which a shot is discharged by gunpowder,” *see supra* section I.A. A fair reading of RSA 159:3 and RSA 159:3-a, which prohibit felons from not only possessing a “pistol” or “revolver,” but also any “other firearm,” placed the defendant and others on clear notice that certain convicted felons cannot possess *any* firearm—including an antique or replica pistol or

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<sup>18</sup> The defendant was not convicted of violating RSA 159:3-a. *See, e.g.*, SA27. Nonetheless, RSA 159:3-a is examined here because the language contained in this statute is substantially similar to the language contained in RSA 159:3.

revolver—in New Hampshire.<sup>19</sup> *See Beckert*, 144 N.H. at 319-20; *supra* section I. Accordingly, because RSA 159:3 and RSA 159:3-a “do[] not require persons of ordinary intelligence to guess either about [their] meaning or about [their] application,” they are not unconstitutionally vague. *See State v. Wong*, 125 N.H. 610, 621 (1984); *Beckert*, 144 N.H. at 319-20; *State v. Piper*, 117 N.H. 64, 66 (1977) (holding that phrase “dangerous weapons” was not unconstitutionally vague when applied to a defendant who was arrested in possession of a four-inch dirk knife).

Additionally, this Court should not consider the defendant’s argument that RSA 159:7 is unconstitutionally vague because, among other reasons, a declaration as to the constitutionality of RSA 159:7 would provide the defendant with no meaningful relief. *See supra* section I.D; DB21-23; *Cathcart v. Meyer*, 88 P.3d 1050, 1064 (Wyo. 2004) (“[A] party cannot assert that a statute is unconstitutional as to other persons or classes of persons.”). However, even if this Court considers this argument, RSA 159:7 is not unconstitutionally vague because “the failure of the legislature to provide for the specific culpable mental state required for a crime does not mean that the statute is necessarily unenforceable.” *State v. Stratton*, 132 N.H. 451, 457 (1989). “Where a specific mental state is not provided for the offense,” this Court reads the statute “as requiring proof of a culpable mental state which is appropriate in light of the nature of the offense and the policy considerations for punishing the conduct in

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<sup>19</sup> Further, the defendant should have known that possession of the Handgun would violate the terms of his probation. *See* TT29 (the defendant agreeing, as part of his probation conditions, that he would “not receive, possess, control, or transport any weapon, explosive, or firearm or simulated weapon, explosive, or firearm”).

question.” *State v. Haines*, 142 N.H. 692, 700 (1998) (quotations omitted); *see also Hynes*, 159 N.H. at 201 (“[A]lthough a scienter requirement in a statute ameliorates a vagueness concern, the lack of such a requirement does not necessitate invalidating the statute as unconstitutionally vague.” (quotation omitted)).

This Court should affirm.

**CONCLUSION**

For the foregoing reasons, the State respectfully requests that this Honorable Court deny the defendant's claims and affirm the Superior Court.

The State requests a fifteen-minute oral argument.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

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October 6, 2021

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**CERTIFICATE OF COMPLIANCE**

I, Weston R. Sager, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 9,494 words, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

October 6, 2021

/s/ Weston R. Sager  
Weston R. Sager

**CERTIFICATE OF SERVICE**

I, Weston R. Sager, hereby certify that a copy of the foregoing has been sent to Sean R. List, Esquire, and Michael J. Zaino, Esquire, counsel for the defendant, through the New Hampshire Supreme Court's electronic filing system.

October 6, 2021

/s/ Weston R. Sager  
Weston R. Sager