

State of New Hampshire  
Supreme Court

NO. 2023-0030

2023 TERM  
OCTOBER SESSION

State of New Hampshire

v.

Derrick T. Moyer

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RULE 7 APPEAL OF FINAL DECISION OF THE  
ROCKINGHAM COUNTY SUPERIOR COURT

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REPLY BRIEF

October 27, 2023

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## ARGUMENT

### I. Comparison to *McCabe* Shows Moyer's Lack of Recklessness

In its brief, the State compares the situation here, where Moyer took reasonable precautions, to *State v. McCabe*, 145 N.H. 686 (2001), and asserts that Moyer's actions were like those in *McCabe*. STATE'S BRF. at 15. While a comparison is appropriate, it works the opposite from the State's assertion.

In *McCabe*, the defendant fired two gunshots into the floor of an apartment building. He did that while laying on the couch in the living room, at 2:00am. "All of the bedrooms were within twenty to twenty-five feet of the living room couch, and one of the children's beds was located on a common wall with the living room." *Id.* at 687. The bullet went through the floor, into the basement below, *id.* at 688, where people could have been.

There is a vast difference between firing guns in a crowded apartment building in the middle of the night, and shooting in a rural field on a summer morning with the nearest people in that direction 2,000 to 3,000 feet away.

The comparison to *McCabe* shows Moyer's *lack* of recklessness.

## **II. Factual Inaccuracies**

In its brief, the State says the bullet “came to rest at the base of the window.” STATE’S BRF. at 8. It did not. It came to rest in the middle of the window, between panes of glass. *See* CLOSEUP PHOTO OF BULLET ON MUNTIN BETWEEN PANES FROM INSIDE, Exh. 7 (May 24, 2020), *Appx.* at 18.

The State says that Moyer gave the Detective “an empty box of the ammo he was using.” STATE’S BRF. at 8. While Moyer gave the Detective an empty box from ammunition, he never asserted the box represented the ammunition he had been shooting that weekend. *Day-1* at 78-79.

The State in its brief says that Moyer “was shooting his SKS towards the berm on Sunday.” STATE’S BRF. at 10. While that is not wrong, it is not fully accurate. Moyer’s son testified that he and his father were shooting. On the court’s own questioning, the son’s testimony was not that they were merely shooting into the berm, but that they were shooting into a barrel on the berm, which contained logs for the purpose of avoiding ricochet. *Day-2* at 201.

**III. Impact of Decision**

Although the State disputes it, STATE’S BRF. at 15, as Moyer suggested in his brief, MOYER’S BRF. at 19, the decision in this matter will have an impact on rural gun practice in New Hampshire. If Moyer’s conviction is upheld, it will deter those who enjoy shooting, even when they have long distances between them and others, and even when they take the ordinary precautions associated with responsible firearms handling.

For this reason, the court should give this matter its thorough attention, including a full oral argument.

Respectfully submitted,

Derrick Moyer  
By his Attorney,  
Law Office of Joshua L. Gordon

Dated: October 27, 2023

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**CERTIFICATIONS**

I hereby that this brief contains no more than 3,000 words, exclusive of those portions which are exempted.

I further certify that on October 27, 2023, copies of the foregoing will be forwarded to Sam M. Gonyea, Assistant Attorney General, via this court’s e-filing system.

Dated: October 27, 2023

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Joshua L. Gordon, Esq.