

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

MIDDLESEX COUNTY

2024 SITTING

Nos. DAR-29602 & DAR-29604

COMMONWEALTH OF MASSACHUSETTS,  
APPELLANT,

V.

DEAN F. DONNELL, JR., &

PHILIP MARQUIS

APPELLEES.

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COMMONWEALTH'S PETITION FOR DIRECT APPELLATE REVIEW  
AND MOTION FOR CONSOLIDATION

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REQUEST FOR DIRECT APPELLATE REVIEW AND CONSOLIDATION

Now comes the Commonwealth and requests, pursuant to Mass. R. App. P. 10 & 11, and G.L. c. 215, §20, that this Court grant direct appellate review and consolidate the cases of Commonwealth v. Dean F. Donnell, Jr. (23-P-1338) (hereinafter referred to "Donnell") and Commonwealth v. Philip Marquis (23-P-1278). These cases involve pending appeals of the allowance of the defendants' motions to dismiss by the same motion judge in the Lowell District Court, which invoke novel but erroneous applications of Second Amendment constitutional law. The motion judge erroneously ruled that out-of-state residents may not be prosecuted for unlawful possession of firearms in Massachusetts if they were legally entitled to possess those weapons in their home state. The same motion judge has already dismissed seven cases<sup>1</sup> in total under this erroneous

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<sup>1</sup> Besides these two cases, there are five other cases that are currently stayed in the Appeals Court:

- Commonwealth v. Joshua DeLeon (23-P-1217)
- Commonwealth v. Christy Kennedy (23-P-1219)
- Commonwealth v. Benjamin Rogers (23-P-1220)
- Commonwealth v. Mario Salas Lopez (23-P-1284)
- Commonwealth v. Shaunmikel Johnston (23-P-1286)

These cases were stayed at the Commonwealth's request because the motion judge's allowance of these motions to dismiss were made by margin endorsement referencing the Donnell decision without any reasoning specific to those defendants.

theory. The judge's rationale deprives the Commonwealth of its right and obligation to enforce its laws equally for all those who are within its borders. The grounds for this application are set forth below.

STATEMENT OF RELEVANT FACTS AND PRIOR PROCEEDINGS

Both Commonwealth v. Dean F. Donnell, Jr. and Commonwealth v. Philip Marquis involve defendants who were legally entitled to possess firearms in New Hampshire but were not licensed to possess those firearms in Massachusetts. Both defendants were charged with illegally possessing firearms in Massachusetts. Neither defendant had attempted to acquire a non-resident license to carry firearms within the Commonwealth of Massachusetts prior to the respective offenses at issue. All issues involved in this appeal were raised below and fully briefed.

Commonwealth v. Dean F. Donnell, Jr.

On November 8, 2021, the defendant was arraigned in the Lowell District Court (No. 2111CR004759) on one count of possession of a firearm, a violation of G. L. c. 269, § 10(h), one count of possession of ammunition, a violation of G.L. c. 269, §10(h)(1), one count of possession of a large capacity feeding device, a violation of G.L. c. 269, §10(m) and one count of operating under the influence of intoxicating liquor, a violation of G.L. c. 90, §24(1)(a)(1). (RA 3-5). On August 16, 2022, the defendant was arraigned on a sub-

sequent complaint stemming from the same incident in the Lowell District Court (No. 2211CR002835) on one count of carrying a firearm, a violation of G.L. c. 269, §10(a). (RA 9-10).

On August 16, 2022, the defendant filed a motion to dismiss. (RA 10). On March 7, 2023, the defendant supplemented his motion to dismiss. (RA 10). On August 4, 2023, Justice Coffey issued a memorandum of decision allowing the defendant's motion to dismiss. (RA 11, 17-24).

On September 1, 2023, the Commonwealth filed a motion for reconsideration. (RA 11). On October 4, 2023, Justice Coffey denied the motion for reconsideration. (RA 11). The Commonwealth filed a timely notice of appeal in the Lowell District Court and the case was docketed at the Appeals Court on November 17, 2023 (23-P-1338). (RA 11).

Commonwealth v. Philip Marquis

On October 12, 2022, a complaint issued out of the Lowell District Court (No. 2211CR003931), charging the defendant with on one count of carrying a firearm, a violation of G. L. c. 269, § 10(a) and one count of possession of ammunition, a violation of G.L. c. 269, §10(h)(1). (RA 13-14). On November 28, 2022, the defendant was arraigned. (RA 14).

On June 27, 2023, the defendant moved to dismiss the charges. (RA 15). On August 23, 2023, Justice

Coffey issued a memorandum of decision allowing the defendant's motion to dismiss, for the same reasons stated in Donnell. (RA 16, 25-27).

On September 22, 2023, the Commonwealth filed a motion for reconsideration. (RA 16). On October 4, 2023, Justice Coffey denied the motion for reconsideration. (RA 16) The Commonwealth filed a timely notice of appeal in the Lowell District Court and the case was docketed at the Appeals Court on November 6, 2023 (23-P-1278). (RA 16).

#### ISSUES OF LAW RAISED BY THE APPEAL

1. Is the Massachusetts non-resident firearm licensing regulatory scheme facially constitutional under the Second Amendment?
2. Are the constitutional rights to travel and equal protection violated by laws requiring that out-of-state residents follow Massachusetts firearm licensing laws when they carry firearms in Massachusetts irrespective of whether doing so would have been an offense within their home state?

#### ARGUMENT

- I. THE MASSACHUSETTS NON-RESIDENT FIREARM LICENSING SCHEME IS FACIALLY CONSTITUTIONAL AND DOES NOT VIOLATE A DEFENDANT'S SECOND AMENDMENT RIGHTS.

The motion judge held that "the Commonwealth needed to show some historical analogue relating to the disparate treatment of nonresidents" and that

"[t]he Commonwealth points to no historical precedent limiting the reach of one's exercise to a federal constitutional right to only within that resident's states borders." (RA 20). The motion judge was mistaken; under the test articulated in Bruen, the Commonwealth is only required to show a historical analogue for its firearm regulation, regardless of its potential effect on non-residents. Moreover, the Supreme Court in Bruen clearly stated that licensing schemes designed to prevent the dangerous and mentally ill from possessing arms are deeply rooted in our Nation's historical tradition. If there is any doubt of this fact, the Commonwealth also submitted ample historical evidence to support it. As a result, Massachusetts has the authority to require that any individual within its territorial borders possess a valid firearms license before carrying a firearm in Massachusetts and "[t]he Commonwealth is not required to substitute its statutes for those of New Hampshire." Commonwealth v. Harris, 481 Mass. 767, 776 (2019)

In Bruen, the Supreme Court articulated a new test to determine if firearm regulations violate a law-abiding citizen's Second Amendment rights to keep and bear arms. 142 S.Ct. at 2129-2130. In evaluating any challenge to a firearm regulation on Second Amendment grounds, the court must first determine whether

"the Second Amendment's plain text covers an individual's conduct." Id. at 2126. If it does not, the analysis ends, and the government's regulation is valid. If the conduct at issue is covered by the Amendment's text, however, the government must "demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." Id. Only if a firearm regulation is consistent with historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's protections. Id.

In Bruen itself, the Supreme Court expressly held that firearm licensing schemes are deeply rooted in our Nation's historical tradition. The Bruen Court held that the firearm licensing schemes of 43 states are constitutional, so long as the licensing criteria are objective and "do not require applicants to show an atypical need for armed self-defense"; such regimes can also require applicants to undergo a background check or pass a firearms safety course. Id. at 2123. See also District of Columbia v. Heller, 128 S. Ct. 2783, 2816-2817 (2008) ("Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of fire-

arms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”) As a result, it is clear that Bruen and Second Amendment jurisprudence accept that licensing schemes are constitutional and there is a historical analogue to justify licensing with certain limitations.

Second, while unnecessary given the Supreme Court’s holding that firearms licensing schemes are deeply rooted in the nation’s history,<sup>2</sup> the Commonwealth nonetheless submitted a comprehensive historical record below to the motion judge that supported the Supreme Court’s conclusion to this effect in Bruen. See Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons From Possessing Arms*, 20 Wyo. Law Rev. 2, Article 7 (2020); Frassetto, Mark, *Firearms and Weapons Legislation up to the Early 20th Century* (2013). Available at SSRN:

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<sup>2</sup>While Bruen discusses some of the relevant historical regulations on firearms that attempted to control who and when people could carry firearms to preserve public safety, such as surety laws, United States v. Nutter, 624 F. Supp. 3d 636, 640-642 (S.D.W.V. 2022), provides a detailed summary of the longstanding historical analogues and the consistent interpretation in federal courts that legislatures have the power to prohibit dangerous people from having guns. See also United States v. Jimenez-Shilon, 34 F. 4<sup>th</sup> 1042, 1047-1048 (11<sup>th</sup> Cir. May 23, 2023) (describing history of colonial governments of restricting access to firearms by citizens unless they swear oath of allegiance to state).



<https://ssrn.com/abstract=2200991> (last accessed 12/28/23). The historical sources demonstrated a panoply of laws from the Founding Era that allowed for the disarmament of those perceived to be dangerous to state governments. These are historical analogues to the current Massachusetts licensing scheme. Because history supports the existence of a licensing scheme to prohibit dangerous individuals from having firearms, Massachusetts' firearm regulations do not offend the Second Amendment.

Finally, states have always been free to regulate who was allowed to possess arms within their territorial borders, what types of weapons were prohibited, and where arms could be carried, imposing differing standards in each sovereign. See Bruen, 142 S. Ct. at 2143-2145, 2147-2149; Greenlee article at 15-17; Frassetto article at 40-42, 88-93. Implicit in the longstanding historical tradition of states to regulate conduct differently within their respective territorial borders is the right to enforce those laws on all people, regardless of their residency status. For example, states like Alabama and Tennessee were free to prohibit anyone within their borders from carrying Bowie knives (see Frassetto article at 34) even if non-residents might have been legally entitled to carry Bowie knives within their home states. Moreover, when Alabama, Colorado, Kentucky, Louisiana and other

states prohibited the concealed carrying of pistols within their borders (see Id. at 20-24), there is no historical support for the notion that these prohibitions did not apply equally to both residents and non-residents.

The judge's reasoning would mean that no state could ever enforce its own firearm regulations on any individual who enters its borders from another state so long as individual complied with the laws of their home state while in Massachusetts. This would deprive the Commonwealth of its sovereign right to equally regulate conduct with respect to all within its borders. See Harris, 481 Mass. at 776 ("The Commonwealth is not required to substitute its statutes for those of New Hampshire."); Goodridge v. Dep't of Public Health, 440 Mass. 309, 329 (2003) ("And central to personal freedom and security is the assurance that the laws will apply equally to persons in similar situations. 'Absolute equality before the law is a fundamental principle of our Constitution.'"), quoting Opinion of the Justices, 211 Mass. 618, 619 (1912).

This Court was correct in Harris. In any event, the district court motion judge had no authority to overrule binding precedent from this Court. See Commonwealth v. Runyan, 456 Mass. 230, 234 (2010), quoting Rodriguez de Oujias v. Shearson/American Express, Inc., 490 U.S. 477, 484 (1989) ("If a precedent of

this court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, [lower courts] should follow the case which directly controls, leaving to this court the prerogative of overruling its own decisions").

The motion judge's conclusion that Bruen effectively overruled Harris with respect to state firearms licensing schemes that differ from other licensing schemes was also erroneous. Nothing in Bruen affected the ability of states to regulate firearms within their respective territorial borders so long as such regulatory schemes are themselves constitutional. In fact, to eliminate any doubt whatsoever about this, the Supreme Court expressly held that states may continue to require firearms licensing even though each state had differing requirements and standards under their respective schemes. 142 S. Ct. at 2123.

Moreover, Bruen did not affect the holding in Harris that Massachusetts need not apply New Hampshire's firearm regulations to those who possess firearms within the borders of Massachusetts. New Hampshire itself does not even purport to regulate the conduct of its residents beyond its borders. The statutory scheme that authorizes licensing of pistols and constitutional carry of other firearms in New Hampshire makes no mention of giving a New Hampshire resident a right to carry firearms outside of the

state, See N.H. Rev. Stat. Ann. § 159-6. Massachusetts need not apply a New Hampshire statute within its borders that on its face does not even apply in Massachusetts.

II. THE CONSTITUTIONAL RIGHTS TO TRAVEL AND EQUAL PROTECTION ARE NOT VIOLATED BY LAWS REQUIRING THAT OUT-OF-STATE RESIDENTS FOLLOW MASSACHUSETTS FIREARM LICENSING LAWS WHEN THEY CARRY FIREARMS IN MASSACHUSETTS IRRESPECTIVE OF WHETHER DOING SO WOULD HAVE BEEN AN OFFENSE WITHIN THEIR HOME STATE

The motion judge concluded that applying Massachusetts firearm licensing laws to nonresidents within its border violates an out-of-state resident's constitutional rights to travel and equal protection. This was clearly erroneous; neither defendant had sought a Massachusetts firearms license. Therefore, the defendants were treated exactly the same as Massachusetts residents would have been who had made no efforts to avail themselves of the licensing statute. Simply put, "the defendant[s] [were] not barred from entering Massachusetts, and [they were] not subjected to any harsher regulation than any other citizen of the Commonwealth," Commonwealth v. Becker, 71 Mass. App. Ct. 81, 93 (2008). Therefore, the defendants' constitutional rights to travel were unaffected.

While the motion judge pointed out that there are certain differences in the Massachusetts firearm li-

censing scheme as applied to non-residents, such as restrictions on the carrying of firearms with a validly issued out-of-state license and the length of the time the out-of-state license is valid before renewal, see G.L. c. 140, §131F, these defendants are not charged for violating these provisions. Instead, the defendants are charged with never having attempted to obtain a license at all. As a result, the defendants are not being subjected to differential treatment under the statute, and their prosecution under the Massachusetts firearm licensing scheme is constitutionally valid. See, e.g., Commonwealth v. Johnson, 461 Mass. 44, 58-59 (2011) (defendant could not raise as-applied post-Heller & McDonald Second Amendment challenge of his convictions under § 10(a) and § 10(h), where he never attempted to obtain license to carry firearm or FID card and, consequently, could not demonstrate that he was aggrieved by denial of his application).

REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

While clearly erroneous, the motion judge's decision is causing widespread uncertainty and disruption in the Massachusetts trial courts. The Commonwealth is now facing eight pending motions to dismiss based on the same legal reasoning throughout Middlesex Coun-

ty, including in Middlesex Superior Court,<sup>3</sup> Ayer District Court,<sup>4</sup> Cambridge District Court,<sup>5</sup> Malden District Court,<sup>6</sup> Lowell District Court,<sup>7</sup> and Concord District Court.<sup>8</sup> The Commonwealth urges this Court take these two cases on direct appellate review given the constitutional issues involved and the obvious significance of the issues and their ongoing impact on state-wide criminal prosecutions.

Furthermore, direct appellate review is appropriate to allow this Court to reaffirm its holding in Commonwealth v. Harris, a determination only this Court can make.

There is also precedent for this Court providing direct guidance in the context of Second Amendment jurisprudence when compelling public interests and the administration of justice in the trial courts is at risk, which this Court should do here. For example, this Court in Guardado reexamined and ultimately reversed its previous decision in Commonwealth v. Grouse, 461 Mass. 787 (2012) regarding whether proof of lack of licensure is an element for certain firearm

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<sup>3</sup> Commonwealth v. Alan Cournoyer, 2081CR0065;  
Commonwealth v. Andrian Hughes, 2381CR0098

<sup>4</sup> Commonwealth v. Erick Splettstoesser,  
2248CR000112;

Commonwealth v. Aaron Dixon, 2348CR000121

<sup>5</sup> Commonwealth v. Lawrence Shamer, 2152CR001368

<sup>6</sup> Commonwealth v. Ryan Pratt, 2150CR001898

<sup>7</sup> Commonwealth v. Samath Oeung, 2211CR004358

<sup>8</sup> Commonwealth v. Luis Martinez, 2247CR001171

offenses, largely based on the Supreme Court's decision in Bruen. See 491 Mass. at 687-693. Notably, the record in Guardado did not raise that issue before the lower court. See Id. at 686-687. These cases are actually better suited for this Court's reexamination of the Harris decision, because the arguments have been fully briefed below and a comprehensive historical record is available for the Court.

CONCLUSION

For these reasons, the Commonwealth respectfully requests that this Court grant direct appellate review.

Respectfully Submitted,  
For the Commonwealth,

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DISTRICT ATTORNEY

---

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Date: December 29, 2023

CERTIFICATE OF SERVICE

Re: Commonwealth v. Dean F. Donnell, Jr.,  
Commonwealth v. Philip Marquis  
Nos. DAR-29602 & DAR-29604

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I, Ryan J. Rall, hereby certify that on this day I served the Commonwealth's foregoing petition for direct appellate review and motion for consolidation and its accompanying record appendix on the defendants by:

1. causing PDF copies to be sent via Tylerhost to attorney for Dean F. Donnell, Jr.:

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Boston, MA 02110  
(617) 910-5729  
plevin@publiccounsel.net

2. causing PDF copies to be sent via e-mail to attorney for Phillip Marquis:

Attorney K. Hayne Barnwell  
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Suite 201-B  
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Signed under the pains and  
penalties of perjury:

By: \s\ Ryan J. Rall  
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CERTIFICATE OF COMPLIANCE

I, Ryan Rall, hereby certify, under Mass. R. App. P. 16(k), that this petition for direct appellate review complies with the rules of appellate procedure, including rules 11 & 20.

Compliance with the applicable length limit of Rule 20 was ascertained by use of Courier New size 12 font that produced 10 characters per inch on a total of 19 non-excluded pages.

\s\ Ryan J. Rall  
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COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

MIDDLESEX COUNTY

2024 SITTING

Nos. DAR-29602 & DAR-29604

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COMMONWEALTH OF MASSACHUSETTS,

APPELLANT,

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DEAN F. DONNELL, JR., &

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---

COMMONWEALTH'S RECORD APPENDIX

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TABLE OF CONTENTS

<u>Document</u>	<u>Page</u>
Commonwealth v. Dean Donnell Jr., 2211CR004759 MassCourts Docket	3
Commonwealth v. Dean Donnell Jr., 2211CR002835 MassCourts Docket	9
Commonwealth v. Philip Marquis, 2211CR003931 MassCourts Docket	13
Commonwealth v. Dean Donnell Jr., 2211CR002835 Memorandum of Decision on Defendant's Motion to Dismiss	17
Commonwealth v. Philip Marquis, 2211CR003931 Memorandum of Decision on Defendant's Motion to Dismiss	25

# 2111CR004759 Commonwealth vs. Donnell, Jr., Dean F

- Case Type
- Criminal
- Case Status
- Open
- File Date
- 11/08/2021
- DCM Track
- Initiating Action
- FIREARM WITHOUT FID CARD, POSSESS c269 s 10(h)
- Status Date
- 10/04/2023
- Case Judge
- Next Event
- 02/21/2024

[All Information](#)   [Party](#)   [Charge](#)   [Event](#)   [Docket](#)   [Disposition](#)

## Party Information

**Donnell, Jr., Dean F**  
- Defendant

Alias

### Party Attorney

- Attorney
- CPCS Lowell Office,
- Bar Code
- CPCSLOW
- Address
- 40-44 Church Street, 1st Floor
- Lowell, MA 01852
- Phone Number
- (978)446-3912

[More Party Information](#)

## Party Charge Information

- **Donnell, Jr., Dean F**
- - Defendant

269/10/G-2 - Misdemeanor - more than 100 days incarceration    FIREARM WITHOUT FID CARD, POSSESS c269 s 10(h)

- Original Charge
- 269/10/G-2 FIREARM WITHOUT FID CARD, POSSESS c269 s 10(h)  
(Misdemeanor - more than 100 days incarceration)
- Amended Charge

### Charge Disposition

Disposition Date  
Disposition  
10/04/2023  
Dismissed

- **Donnell, Jr., Dean F**
- - Defendant

269/10/TT - Misdemeanor - more than 100 days incarceration    AMMUNITION WITHOUT FID CARD, POSSESS c269 §10(h)(1)

- Original Charge
- 269/10/TT AMMUNITION WITHOUT FID CARD, POSSESS c269 §10(h)(1)  
(Misdemeanor - more than 100 days incarceration)
- Amended Charge

### Charge Disposition

Disposition Date  
Disposition  
10/04/2023

RA 3

Dismissed

- **Donnell, Jr., Dean F**
- - Defendant

140/131L/A-1 - Misdemeanor - more than 100 days incarceration FIREARM, STORE IMPROP c140 §131L(a)&(b)

- Original Charge
- 140/131L/A-1 FIREARM, STORE IMPROP c140 §131L(a)&(b) (Misdemeanor - more than 100 days incarceration)
- Amended Charge
- 

**Charge Disposition**  
 Disposition Date  
 Disposition  
 11/08/2021  
 Dismissed

- **Donnell, Jr., Dean F**
- - Defendant

269/10/ZZ-0 - Felony FEEDING DEVICE, POSSESS LARGE CAPACITY c269 §10(m)

- Original Charge
- 269/10/ZZ-0 FEEDING DEVICE, POSSESS LARGE CAPACITY c269 §10(m) (Felony)
- Amended Charge
- 

**Charge Disposition**  
 Disposition Date  
 Disposition  
 12/13/2021  
 Nolle Prosequi

- **Donnell, Jr., Dean F**
- - Defendant

269/10H-1 - Misdemeanor - more than 100 days incarceration FIREARM, INTOXICATED LICENSEE CARRY c269 §10H

- Original Charge
- 269/10H-1 FIREARM, INTOXICATED LICENSEE CARRY c269 §10H (Misdemeanor - more than 100 days incarceration)
- Amended Charge
- 

**Charge Disposition**  
 Disposition Date  
 Disposition  
 11/08/2021  
 Dismissed

- **Donnell, Jr., Dean F**
- - Defendant

90/24/J-6 - Misdemeanor - more than 100 days incarceration OUI-LIQUOR OR 08% c90 §24(1)(a)(1)

- Original Charge
- 90/24/J-6 OUI-LIQUOR OR 08% c90 §24(1)(a)(1) (Misdemeanor - more than 100 days incarceration)
- Amended Charge
- 

**Events**




Date	Session	Location	Type	Result
11/08/2021 09 00 AM	Arraignment Session		Arraignment	Held - Personal Recog Release
12/13/2021 09 00 AM	Administrative Session		Probable Cause Hearing	Not Held
01/14/2022 02 00 PM	Pretrial Session		Discovery Compliance & Jury Election	Reschedule of Hearing
03/15/2022 02 00 PM	Pretrial Session		Discovery Compliance & Jury Election	Reschedule of Hearing
03/29/2022 02 00 PM	Pretrial Session		Discovery Compliance & Jury Election	Held
05/24/2022 09 00 AM	Administrative Session		Motion Hearing (CR)	Held - Motion allowed
05/27/2022 09 00 AM	Administrative Session		Motion to suppress	Reschedule of Hearing
06/30/2022 09 00 AM	Administrative Session		Motion to suppress	Held - under advisement
08/16/2022 09 00 AM	Administrative Session		Hearing to Review Status	Review Completed
10/12/2022 09 00 AM	Administrative Session		Motion to Dismiss	Reschedule of Hearing








<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Result</u>
01/31/2023 09 00 AM	Administrative Session		Motion to Dismiss	Reschedule of Hearing
03/07/2023 09 00 AM	Administrative Session		Motion to Dismiss	Reschedule of Hearing
03/10/2023 09 00 AM	Administrative Session		Motion to Dismiss	Held - under advisement
05/11/2023 09 00 AM	Administrative Session		Hearing to Review Status	Reschedule of Hearing
06/29/2023 09 00 AM	Administrative Session		Hearing to Review Status	Reschedule of Hearing
08/02/2023 09 00 AM	Administrative Session		Hearing to Review Status	Reschedule of Hearing
08/04/2023 09 00 AM	Administrative Session		Hearing to Review Status	Reschedule of Hearing
08/23/2023 09 00 AM	Administrative Session		Hearing to Review Status	Reschedule of Hearing
09/29/2023 09 00 AM	Administrative Session		Hearing to Review Status	Review Completed
10/04/2023 09 00 AM	Administrative Session		Motion to Dismiss	Held - Motion allowed
11/15/2023 09 00 AM	Administrative Session		Motion Hearing (CR)	Held - Motion allowed
11/21/2023 09 00 AM	Trial Session		Jury Trial (CR)	Not Held
11/30/2023 09 00 AM	Administrative Session		Motion Hearing (CR)	Held - Motion allowed
12/05/2023 09 00 AM	Trial Session		Jury Trial (CR)	Reschedule of Hearing
02/21/2024 09 00 AM	Trial Session		Jury Trial (CR)	

### Docket Information


<u>Docket Date</u>	<u>Docket Text</u>	<i>Image Avail.</i>
11/08/2021	Criminal Complaint issued from Electronic Application Originating Court Lowell District Court Case Number 2111AC004250-AR Receiving Court Lowell District Court	
11/08/2021	Complaint issued with a summons	
11/08/2021	Event Resulted Arraignment scheduled on 11/08/2021 09 00 AM Has been Held - Personal Recog Release Hon Stephen B Geary, Presiding	
11/09/2021	Appearance filed On this date CPCS Lowell Office added as Appointed - Indigent Defendant for Defendant Dean F Donnell, Jr Appearance filed for the purpose of Case in Chief by Judge Hon Stephen B Geary	
11/09/2021	Defendant arraigned before Court, advised of right to counsel Judge Geary, Hon Stephen B	
11/09/2021	Plea of Not Guilty entered on all charges Judge Geary, Hon Stephen B	
11/09/2021	Bail revocation warning (276/58) given to the defendant Judge Geary, Hon Stephen B	
11/09/2021	Released on Personal Recognizance Judge Geary, Hon Stephen B	
12/13/2021	Event Resulted Probable Cause Hearing scheduled on 12/13/2021 09 00 AM Has been Not Held Hon John F Coffey, Presiding	
12/13/2021	Charges Disposed Charge # 4 FEEDING DEVICE, POSSESS LARGE CAPACITY c269 §10(m) On 12/13/2021 Judge Hon John F Coffey Nolle Prosequi	
12/13/2021	Document and/or notice received and filed on criminal case to wit Comm Miscellaneous correspondence Nolle Prosequi on count 4 in the interest of justice  Judge Coffey, Hon John F	
01/14/2022	Event Resulted Discovery Compliance & Jury Election scheduled on 01/14/2022 02 00 PM Has been Reschedule of Hearing For the following reason On Order of the Court Hon William T Bailey, Presiding	

RA 5

<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail</u>
03/15/2022	Event Resulted Discovery Compliance & Jury Election scheduled on 03/15/2022 02 00 PM Has been Reschedule of Hearing For the following reason On Order of the Court Hon Stacey J Fortes, Presiding	
03/29/2022	Event Resulted Discovery Compliance & Jury Election scheduled on 03/29/2022 02 00 PM Has been Held Hon John F Coffey, Presiding	
03/29/2022	Defendant's motion to compel discovery filed and ALLOWED  Judge Coffey, Hon John F	 <a href="#">Image</a>
05/20/2022	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus Motion to suppress scheduled on 05/27/2022 09 00 AM Has been Rescheduled-Covid-19 emergency For the following reason On Order of the Court Hon Stacey J Fortes, Presiding	
05/24/2022	Event Resulted Motion Hearing (CR) scheduled on 05/24/2022 09 00 AM Has been Held - Motion allowed Hon John F Coffey, Presiding	
05/25/2022	Motion to reschedule or continue scheduled court hearing ALLOWED	 <a href="#">Image</a>
06/30/2022	Event Resulted Motion to suppress scheduled on 06/30/2022 09 00 AM Has been Held - under advisement Hon William T Bailey, Presiding	
06/30/2022	Taken under advisement Judge Bailey, Hon William T	
08/16/2022	Event Resulted Hearing to Review Status scheduled on 08/16/2022 09 00 AM Has been Review Completed Hon John F Coffey, Presiding	
10/12/2022	Event Resulted Motion to Dismiss scheduled on 10/12/2022 09 00 AM Has been Reschedule of Hearing For the following reason On Order of the Court Hon John F Coffey, Presiding	
01/31/2023	Event Resulted Motion to Dismiss scheduled on 01/31/2023 09 00 AM Has been Reschedule of Hearing For the following reason On Order of the Court Hon John F Coffey, Presiding	
01/31/2023	Defendant's motion for discovery & incorporated affidavit as it relates to vindictive prosecution claim filed with the following, if any, supporting documents	 <a href="#">Image</a>
03/07/2023	Event Resulted Motion to Dismiss scheduled on 03/07/2023 09 00 AM Has been Reschedule of Hearing For the following reason On Order of the Court Hon John F Coffey, Presiding	
03/10/2023	Event Resulted Motion to Dismiss scheduled on 03/10/2023 09 00 AM Has been Held - under advisement Hon John F Coffey, Presiding	
05/11/2023	Event Resulted Hearing to Review Status scheduled on 05/11/2023 09 00 AM Has been Reschedule of Hearing For the following reason On Order of the Court Hon John F Coffey, Presiding	
06/29/2023	Event Resulted Hearing to Review Status scheduled on 06/29/2023 09 00 AM Has been Reschedule of Hearing For the following reason On Order of the Court Hon John F Coffey, Presiding	
08/02/2023	Event Resulted Hearing to Review Status scheduled on 08/02/2023 09 00 AM Has been Reschedule of Hearing For the following reason On Order of the Court Hon John F Coffey, Presiding	
08/04/2023	Event Resulted Hearing to Review Status scheduled on 08/04/2023 09 00 AM	

<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail.</u>
	Has been Reschedule of Hearing For the following reason On Order of the Court Hon John F Coffey, Presiding	
08/17/2023	Certified copy of docket issued to Kang Lu	
08/23/2023	Event Resulted Hearing to Review Status scheduled on 08/23/2023 09 00 AM Has been Reschedule of Hearing For the following reason On Order of the Court Hon John F Coffey, Presiding	
09/22/2023	Defendant's motion to DISMISS COUNTS 1, 2, 3 & 5 filed with the following, if any, supporting documents	
09/29/2023	Event Resulted Hearing to Review Status scheduled on 09/29/2023 09 00 AM Has been Review Completed Hon John F Coffey, Presiding	
10/04/2023	Event Resulted Motion to Dismiss scheduled on 10/04/2023 09 00 AM Has been Held - Motion allowed Hon John F Coffey, Presiding	
10/04/2023	Motion to Dismiss Allowed as to counts 1 and 2 ALLOWED	
10/04/2023	Charges Disposed Charge # 1 FIREARM WITHOUT FID CARD, POSSESS c269 s 10(h) On 10/04/2023 Judge Hon John F Coffey Dismissed  Charge # 2 AMMUNITION WITHOUT FID CARD, POSSESS c269 §10(h)(1) On 10/04/2023 Judge Hon John F Coffey Dismissed	
10/04/2023	Charges Disposed Charge # 3 FIREARM, STORE IMPROP c140 §131L(a)&(b) On 11/08/2021 Judge Hon Stephen B Geary Dismissed  Charge # 5 FIREARM, INTOXICATED LICENSEE CARRY c269 §10H On 11/08/2021 Judge Hon Stephen B Geary Dismissed	
10/04/2023	Event Scheduled Event Jury Trial (CR) Date 12/05/2023 Time 09 00 AM Result Reschedule of Hearing	
11/15/2023	Event Resulted Jury Trial (CR) scheduled on 12/05/2023 09 00 AM Has been Reschedule of Hearing For the following reason Defendant's request without objection Hon Mary E Heffernan, Presiding	
11/15/2023	Event Scheduled Event Jury Trial (CR) Date 11/21/2023 Time 09 00 AM Result Not Held	
11/15/2023	Event Resulted Motion Hearing (CR) scheduled on 11/15/2023 09 00 AM Has been Held - Motion allowed Hon Mary E Heffernan, Presiding	
11/15/2023	Defendant's motion to CONTINUE JURY TRIAL filed and ALLOWED	
11/21/2023	Event Resulted Jury Trial (CR) scheduled on 11/21/2023 09 00 AM Has been Not Held Hon Jason Chan, Presiding	
11/21/2023	Defendant's motion to continue Jury Trial filed with the following, if any, supporting documents  Judge Chan, Hon Jason	
11/30/2023	Event Resulted Motion Hearing (CR) scheduled on 11/30/2023 09 00 AM Has been Held - Motion allowed Hon John F Coffey, Presiding	



<u>Docket Date</u>	<u>Docket Text</u>	<i>Image Avail</i>
11/30/2023	Defendant's motion to continue jury trial filed and ALLOWED	 <a href="#">Image</a>
11/30/2023	Event Scheduled Event Jury Trial (CR) Date 02/21/2024 Time 09 00 AM	

**Case Disposition**

<u>Disposition</u>	<u>Date</u>
Pending	11/09/2021

# 2211CR002835 Commonwealth vs. Donnell, Jr., Dean F

- Case Type
- Criminal
- Case Status
- Closed
- File Date
- 07/25/2022
- DCM Track
- Initiating Action
- FIREARM, CARRY WITHOUT LICENSE c269 §10(a)
- Status Date
- 08/23/2023
- Case Judge
- Next Event

All Information Party Charge Event Docket Disposition

### Party Information

Donnell, Jr., Dean F  
- Defendant

Alias

#### Party Attorney

- Attorney
- CPCS Lowell Office,
- Bar Code
- CPCSLOW
- Address
- 40-44 Church Street, 1st Floor
- Lowell, MA 01852
- Phone Number
- (978)446-3912

[More Party Information](#)

### Party Charge Information

- Donnell, Jr., Dean F
- - Defendant
- 269/10/J-1 - Felony FIREARM, CARRY WITHOUT LICENSE c269 §10(a)
- Original Charge
- 269/10/J-1 FIREARM, CARRY WITHOUT LICENSE c269 §10(a) (Felony)
- Amended Charge
- 

#### Charge Disposition

Disposition Date  
Disposition  
08/23/2023  
Dismissed







### Events







Date	Session	Location	Type	Result
08/16/2022 09 30 AM	Arraignment Session		Arraignment	Held - Personal Recog Release
10/12/2022 09 00 AM	Administrative Session		Motion to Dismiss	Reschedule of Hearing
12/02/2022 09 00 AM	Administrative Session		Motion to Dismiss	Reschedule of Hearing
01/31/2023 09 00 AM	Administrative Session		Motion to Dismiss	Reschedule of Hearing
03/07/2023 09 00 AM	Administrative Session		Motion to Dismiss	Event Cancelled


RA 9

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Result</u>
03/10/2023 09 00 AM	Administrative Session		Motion to Dismiss	Held - under advisement
05/11/2023 09 00 AM	Administrative Session		Hearing to Review Status	Reschedule of Hearing
06/29/2023 09 00 AM	Administrative Session		Hearing to Review Status	Reschedule of Hearing
08/02/2023 09 00 AM	Administrative Session		Hearing to Review Status	Reschedule of Hearing
08/04/2023 09 00 AM	Administrative Session		Hearing to Review Status	Reschedule of Hearing
08/23/2023 09 00 AM	Administrative Session		Hearing to Review Status	Held - Dismiss or to be Dismiss All Charges
09/29/2023 09 00 AM	Administrative Session		Motion Hearing (CR)	Held as scheduled
10/04/2023 09 00 AM	Administrative Session		Hearing to Review Status	Review Completed

### Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail</u>
07/25/2022	Complaint issued with a summons	
08/16/2022	Appearance filed On this date CPCS Lowell Office added as Appointed - Indigent Defendant for Defendant Dean F Donnell, Jr Appearance filed for the purpose of Case in Chief by Judge Hon John F Coffey	
08/16/2022	Event Resulted Arraignment scheduled on 08/16/2022 09 30 AM Has been Held - Personal Recog Release Hon John F Coffey, Presiding	
08/16/2022	Defendant's motion to dismiss 10(a) charge filed with the following, if any, supporting documents	 <a href="#">Image</a>
08/17/2022	Legal Counsel Fee Waived Judge Coffey, Hon John F	
08/17/2022	Defendant arraigned before Court, advised of right to counsel Judge Coffey, Hon John F	
08/17/2022	Plea of Not Guilty entered on all charges Judge Coffey, Hon John F	
08/17/2022	Bail revocation warning (276/58) given to the defendant Judge Coffey, Hon John F	
08/17/2022	Released on Personal Recognizance Judge Coffey, Hon John F	
08/17/2022	Defendant's motion for exparte approval of funds filed and ALLOWED  Judge Coffey, Hon John F	 <a href="#">Image</a>
10/12/2022	Event Resulted Motion to Dismiss scheduled on 10/12/2022 09 00 AM Has been Reschedule of Hearing For the following reason On Order of the Court Hon John F Coffey, Presiding	
12/01/2022	Event Resulted Motion to Dismiss scheduled on 12/02/2022 09 00 AM Has been Reschedule of Hearing For the following reason On Order of the Court Hon John F Coffey, Presiding	
12/01/2022	Defendant's motion to reschedule or continue scheduled court hearing filed and ALLOWED  Judge Moroney, Hon Glorann	 <a href="#">Image</a>
01/31/2023	Event Resulted Motion to Dismiss scheduled on 01/31/2023 09 00 AM Has been Reschedule of Hearing For the following reason On Order of the Court Hon John F Coffey, Presiding	
02/01/2023	Defendant's motion for discovery & incorporated affidavit as it relates to vindictive prosecution claim filed with the following, if any, supporting documents	 <a href="#">Image</a>
02/27/2023	Event Resulted Motion to Dismiss scheduled on 03/07/2023 09 00 AM Has been Event Cancelled For the following reason Brought forward Hon John F Coffey, Presiding	
02/27/2023	Commonwealth's motion to reschedule or continue scheduled court hearing filed and ALLOWED	 <a href="#">Image</a>
03/07/2023	Defendant's addendum to motion to dismiss pursuant to Bruen RA 10	 <a href="#">Image</a>

<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail.</u>
03/10/2023	Event Resulted Motion to Dismiss scheduled on 03/10/2023 09 00 AM Has been Held - under advisement Hon William T Bailey, Presiding	
03/10/2023	Commonwealth's memorandum in opposition to defendant's motion to dismiss	
03/10/2023	Commonwealth's motion for opposition to defendant's motion to dismiss filed with the following, if any, supporting documents  Judge Coffey, Hon John F	 <a href="#">Image</a>
05/11/2023	Event Resulted Hearing to Review Status scheduled on 05/11/2023 09 00 AM Has been Reschedule of Hearing For the following reason On Order of the Court Zachary Hillman, Presiding	
06/29/2023	Event Resulted Hearing to Review Status scheduled on 06/29/2023 09 00 AM Has been Reschedule of Hearing For the following reason On Order of the Court Hon John F Coffey, Presiding	
08/02/2023	Event Resulted Hearing to Review Status scheduled on 08/02/2023 09 00 AM Has been Reschedule of Hearing For the following reason On Order of the Court Hon John F Coffey, Presiding	
08/04/2023	Event Resulted Hearing to Review Status scheduled on 08/04/2023 09:00 AM Has been Reschedule of Hearing For the following reason On Order of the Court Hon John F Coffey, Presiding	
08/04/2023	Misc Entry Memorandum of decision on defendant's motion to dismiss  Judge Coffey, Hon John F	
08/17/2023	Certified copy of docket issued to Kang Lu	
08/23/2023	Event Resulted Hearing to Review Status scheduled on 08/23/2023 09 00 AM Has been Held - Dismiss or to be Dismiss All Charges Hon John F Coffey, Presiding	
08/23/2023	Charges Disposed Charge # 1 FIREARM, CARRY WITHOUT LICENSE c269 §10(a) On 08/23/2023 Judge Hon John F Coffey Dismissed	
08/23/2023	Court orders all charges to be dismissed forthwith, upon order of court	
08/23/2023	Docket report of court proceedings to date Judge Coffey, Hon John F	 <a href="#">Image</a>
08/23/2023	Certified copy of docket issued to Atty Charles Keefe	
08/30/2023	Certified copy of docket issued to Bruce Madolt	
09/01/2023	Commonwealth's motion for reconsideration of allowance of defendant's motion to dismiss filed with the following, if any, supporting documents memorandum of law	 <a href="#">Image</a>
09/11/2023	Certified copy of docket issued to Atty Penny Dean	
09/22/2023	Defendant's motion to MEMORADNDUM IN OPPOSITION TO COMMONWEALTH'S MOTION TO RECONSIDER filed with the following, if any, supporting documents	 <a href="#">Image</a>
09/29/2023	Event update Motion Hearing (CR) scheduled on 09/29/2023 09 00 AM Has been Held as scheduled Hon John F Coffey, Presiding	
10/04/2023	Event Resulted Hearing to Review Status scheduled on 10/04/2023 09 00 AM Has been Review Completed Hon John F Coffey, Presiding	
10/04/2023	Motion to reconsider prior ruling of allowance of defendant's motion to dismiss DENIED  Judge Coffey, Hon John F	 <a href="#">Image</a>
10/04/2023	Docket report of court proceedings to date  Judge Coffey, Hon John F	 <a href="#">Image</a>

<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail</u>
10/06/2023	Notice of Appeal to the Appeals Court filed by the Commonwealth Judge Coffey, Hon John F	 <a href="#">Image</a>
11/03/2023	Misc Entry Emailed Assembled record to parties Judge Coffey, Hon John F	

**Case Disposition**

<u>Disposition</u>	<u>Date</u>
Dismissed	08/23/2023

# 2211CR003931 Commonwealth vs. Marquis, Philip J

- Case Type
- Criminal
- Case Status
- Closed
- File Date
- 10/12/2022
- DCM Track
- Initiating Action
- FIREARM, CARRY WITHOUT LICENSE c269 §10(a)
- Status Date
- 08/23/2023
- Case Judge
- Next Event

All Information Party Charge Event Docket Disposition |

## Party Information

**Marquis, Philip J**  
- Defendant

Alias

### Party Attorney

- Attorney
- CPCS Lowell Office,
- Bar Code
- CPCSLOW
- Address
- 40-44 Church Street, 1st Floor
- Lowell, MA 01852
- Phone Number
- (978)446-3912

[More Party Information](#)

## Party Charge Information

- **Marquis, Philip J**
- - Defendant

269/10/J-1 - Felony FIREARM, CARRY WITHOUT LICENSE c269 §10(a)

- Original Charge
- 269/10/J-1 FIREARM, CARRY WITHOUT LICENSE c269 §10(a) (Felony)
- Amended Charge
- 

### Charge Disposition

Disposition Date  
Disposition  
08/23/2023  
Dismissed

- **Marquis, Philip J**
- - Defendant

269/10/TT - Misdemeanor - more than 100 days incarceration AMMUNITION WITHOUT FID CARD, POSSESS c269 §10(h)(1)

- Original Charge
- 269/10/TT AMMUNITION WITHOUT FID CARD, POSSESS c269 §10(h)(1) (Misdemeanor - more than 100 days incarceration)
- Amended Charge
- 

### Charge Disposition

Disposition Date  
Disposition  
08/23/2023  
Dismissed







RA 13

**Events**






<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Result</u>
11/01/2022 09 00 AM	Arraignment Session		Arraignment	Defendant defaulted-FI to Appear
11/28/2022 09 00 AM	Arraignment Session		Arraignment	Held - Bail or Conditions of Release ordered
01/10/2023 09 00 AM	Administrative Session		Pretrial Hearing	Held-PT
02/13/2023 09 00 AM	Pretrial Session		Discovery Compliance & Jury Election	Reschedule of Hearing
04/05/2023 09 00 AM	Pretrial Session		Discovery Compliance & Jury Election	Held
05/22/2023 09 00 AM	Trial Session		Motion Hearing (CR)	Held - Motion allowed
05/30/2023 09 00 AM	Trial Session		Jury Trial (CR)	Event Cancelled
07/07/2023 09 00 AM	Administrative Session		Motion to Dismiss	Reschedule of Hearing
08/04/2023 09 00 AM	Administrative Session		Motion to Dismiss	Held - under advisement
08/23/2023 09 00 AM	Administrative Session		Hearing to Review Status	Held - Dismiss or to be Dismiss All Charges
09/29/2023 09 00 AM	Administrative Session		Motion Hearing (CR)	Reschedule of Hearing
10/04/2023 09 00 AM	Administrative Session		Motion Hearing (CR)	Held - Motion denied

**Docket Information**

<u>Docket Date</u>	<u>Docket Text</u>	<i>Image Avail.</i>
10/12/2022	Criminal Complaint issued from Electronic Application Originating Court Lowell District Court Case Number 2211AC004273-SU Receiving Court Lowell District Court	
10/12/2022	Complaint issued with a summons	
11/01/2022	Event Resulted Arraignment scheduled on 11/01/2022 09 00 AM Has been Defendant defaulted-FI to Appear Hon Sarah Jubinville, Presiding	
11/01/2022	Default Warrant ordered to issue Judge Jubinville, Hon Sarah	
11/01/2022	Warrant Issued Straight Warrant issued on 11/01/2022 for Marquis, Philip J	
11/28/2022	Warrant recalled Straight Warrant cancelled on 11/28/2022 for Marquis, Philip J	
11/28/2022	Event Resulted Arraignment scheduled on 11/28/2022 09 00 AM Has been Held - Bail or Conditions of Release ordered Hon John F Coffey, Presiding	
11/28/2022	Defendant arraigned before Court, advised of right to counsel Judge Coffey, Hon John F	
11/28/2022	Committee for Public Counsel Services appointed Judge Coffey, Hon John F	
11/28/2022	Advised of trial rights as self-represented defendant Judge Coffey, Hon John F	
11/28/2022	Plea of Not Guilty entered on all charges Judge Coffey, Hon John F	

<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail.</u>
11/28/2022	Bail revocation warning (276/58) given to the defendant Judge Coffey, Hon John F	
11/28/2022	Appearance filed On this date CPCS Lowell Office added as Appointed - Able to Contribute for Defendant Philip J Marquis Appearance filed for the purpose of Case in Chief by Judge Hon John F Coffey	
01/10/2023	Event Resulted Pretrial Hearing scheduled on 01/10/2023 09 00 AM Has been Held-PT Hon John F Coffey, Presiding	
01/10/2023	Pretrial conference report filed Judge Coffey, Hon John F	 <a href="#">Image</a>
02/13/2023	Event Resulted Discovery Compliance & Jury Election scheduled on 02/13/2023 09 00 AM Has been Held Hon John F Coffey, Presiding	
04/05/2023	Event Resulted Discovery Compliance & Jury Election scheduled on 04/05/2023 09 00 AM Has been Held Hon Catherine K Byrne, Presiding	
04/05/2023	Event Scheduled Event Jury Trial (CR) Date 05/30/2023 Time 09 00 AM Result Event Cancelled	
04/05/2023	Out of Court discovery compliance date ordered to wit 05/16/2023  Judge Byrne, Hon Catherine K	
05/18/2023	Defendant's motion to reschedule or continue scheduled court hearing filed with the following, if any, supporting documents	 <a href="#">Image</a>
05/22/2023	Event Resulted Motion Hearing (CR) scheduled on 05/22/2023 09 00 AM Has been Held - Motion allowed Hon Stephen B Geary, Presiding	
05/22/2023	Motion to advance and continue ALLOWED	 <a href="#">Image</a>
05/22/2023	Event Resulted Jury Trial (CR) scheduled on 05/30/2023 09 00 AM Has been Event Cancelled For the following reason Brought forward Hon Stephen B Geary, Presiding	
06/27/2023	Defendant's motion to Dismiss filed with the following, if any, supporting documents	 <a href="#">Image</a>
07/07/2023	Defendant's motion for production of interstate "triple I" record filed and ALLOWED	 <a href="#">Image</a>
07/07/2023	Event Resulted Motion to Dismiss scheduled on 07/07/2023 09 00 AM Has been Reschedule of Hearing For the following reason On Order of the Court Hon John F Coffey, Presiding	 <a href="#">Image</a>
08/04/2023	Event Resulted Motion to Dismiss scheduled on 08/04/2023 09 00 AM Has been Held - under advisement Hon John F Coffey, Presiding	
08/23/2023	Event Resulted Hearing to Review Status scheduled on 08/23/2023 09 00 AM Has been Held - Dismiss or to be Dismiss All Charges Hon John F Coffey, Presiding	
08/23/2023	Charges Disposed Charge # 1 FIREARM, CARRY WITHOUT LICENSE c269 §10(a) On 08/23/2023 Judge Hon John F Coffey Dismissed  Charge # 2 AMMUNITION WITHOUT FID CARD, POSSESS c269 §10(h)(1) On 08/23/2023 Judge Hon John F Coffey Dismissed	
08/23/2023	Court orders all charges to be dismissed forthwith, upon order of the court	



<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail.</u>
08/23/2023	Written finding of Justice after motion to Dismiss hearing received and filed Judge Coffey, Hon John F	 <a href="#">Image</a>
09/22/2023	Commonwealth's motion for reconsideration of allowance of defendant's motion to dismiss filed with the following, if any, supporting documents	 <a href="#">Image</a>
09/29/2023	Event Resulted Motion Hearing (CR) scheduled on 09/29/2023 09 00 AM Has been Reschedule of Hearing For the following reason On Order of the Court Hon John F Coffey, Presiding	
10/04/2023	Event Resulted Motion Hearing (CR) scheduled on 10/04/2023 09 00 AM Has been Held - Motion denied Hon John F Coffey, Presiding	
10/04/2023	Motion to reconsider prior ruling of allowance of defendant's motion to dismiss DENIED	 <a href="#">Image</a>
10/05/2023	Docket report of court proceedings to date Judge Coffey, Hon John F	 <a href="#">Image</a>
10/06/2023	Notice of Appeal to the Appeals Court filed by the Commonwealth Judge Coffey, Hon John F	 <a href="#">Image</a>
10/25/2023	Misc Entry Notice of Appearance filed by K Hayne Barnwell for appeal Judge Coffey, Hon John F	
11/03/2023	Misc Entry Emailed Assembled Record to parties Judge Coffey, Hon John F	

**Case Disposition**

<u>Disposition</u>	<u>Date</u>
Dismissed	08/23/2023

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

LOWELL DISTRICT COURT  
NO. 2211CR2835

COMMONWEALTH )  
VS. )  
DEAN F. DONNELL )  
\_\_\_\_\_ )

MEMORANDUM OF DECISION ON DEFENDANT’S MOTION TO DISMISS

The defendant Dean Donnell is charged in the Lowell District Court with carrying a firearm without a license under *G.L. 269 §10(a)*<sup>1</sup>. The defendant has filed a motion to dismiss the charge in the complaint claiming that:

1. *G.L. 269 §10(a)* is unconstitutional on its face.
2. *G.L. 269 §10(a)* is unconstitutional as applied to the defendant, and
3. *G.L. 269 §10(a)* violated the defendant’s right to be free from cruel and unusual punishment.<sup>2</sup>

The defendant in his memorandum in support advances arguments that; 1. *G.L. 269 §10(a)* impermissibly infringes on the Second Amendment of the U.S. Constitution; 2.

1 The defendant is also charged in a separate complaint #2111CR4759 with possession of a firearm, possession of ammunition and operating under the influence of alcohol.

2 The Court finds that pursuant to *Commonwealth v. Jackson 369 Mass. 904 (1976) GL 269, sec 10(a)* does not constitute cruel and unusual punishment and nothing in the Bruen decision changes that holding.

*G.L. 296 §10(a)* impermissibly shifts the burden of proof onto the defendant to prove he was in fact licensed; 3. Requiring non-residents to obtain licenses to carry firearms violates the Second Amendment because there is no historical analogue burdening the right to interstate travel; 4. The holding of *Commonwealth v Harris 481 Mass. 767 (2019)* does not survive Constitutional muster and is inapplicable to the defendant's case; and 5. The defendant's right to equal protection and the right to travel has been violated.

The facts leading up the issuance of the complaint are not in dispute and for the purposes of this motion, the Court accepts them. Those facts are contained in both the Commonwealth's Memorandum in Opposition to the Motion to Dismiss as well as the Defendant's Memorandum in Support of Addendum to the Motion to Dismiss.

There is no question that the holding of the U.S. Supreme Court in *New York State Rifle and Pistol Association, Inc. v. Bruen, 141 S. Ct. 2111 (2022)*, has changed the legal landscape on how the second amendment of the Constitution is interpreted, particularly how it affects existing firearm statutes and challenges to their constitutionality. In fact, the Supreme Judicial Court in *Commonwealth v. Guardado, 491 Mass. 666 (2023)* recognized for the first time that the Second Amendment to the U.S. Constitution guarantees an individual's right to possess and carry a firearm outside of his home. *Id. at 690*. Prior to *Guardado*, Massachusetts treated the possession or carrying a firearm outside of one's home as a "privilege" that was conferred on a person by the state. *Harris supra at 767*. It was against the *Bruen* backdrop that the SJC reversed the longstanding law in Massachusetts that licensure to possess a firearm was not an essential element of the felony of unlawful possession of a firearm outside of the home. Massachusetts had previously

required that holding a valid license to carry a firearm was an exception to the otherwise prohibition of carrying a firearm and that requiring a defendant to produce a license at trial did not infringe on Constitutionally protected conduct.

Because the SJC has already addressed the burden shifting claim made by the defendant, the five remaining arguments of the defendant can be summarized as follows;

What affect does the Bruen decision have on the status of an ordinary, law-abiding resident of the state of New Hampshire who exercises his Constitutional right under the Second Amendment while traveling in Massachusetts.

Bruen articulated a two-step analysis in determining whether a law or regulation of constitutionally protected conduct is unconstitutional. First, courts must determine whether "the Second Amendment's plain text covers an individual's conduct[.]" Bruen supra at 2129-30. If so, then the "Constitution presumptively protects that conduct," and the Government "must justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." Id. at 2130. To carry its burden, the Government must point to "historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation." Id. "Only then may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." Id.

The conduct of the defendant in the instant case clearly is covered by the Second Amendment. Therefore, the burden falls on the Commonwealth to justify the law showing that it is consistent with the Country's tradition of firearm regulation.

As the defendant in the instant case is not a resident of Massachusetts and was in

compliance with his home states laws on the possession of the firearm, the Commonwealth needed to show some historical analogue relating to disparate treatment of nonresidents and must point to some "historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation." Bruen Id. at 2131-32.

The Commonwealth argues that under the holding in Commonwealth v. Harris, supra, Massachusetts is not obligated to recognize an out of state resident right to carry a firearm under the Full Faith and Credit clause of the Constitution. They claim that the Commonwealth is not required to substitute its statutes for those of New Hampshire. See Harris supra at 776 and Bruen does not affect the ability of states to require a license as long as the license criteria are objective.

This argument is not persuasive because at the time of the Harris decision, carrying a firearm outside of the home was a privilege, and the Harris Court held that Massachusetts didn't have to give Full Faith and Credit to New Hampshire laws conferring that same privilege. Harris, supra. The Commonwealth is correct that a concurring opinion<sup>3</sup> in Bruen did state that the ability of States to require a license is not affected, but the holding in Bruen basically took away all subjective criteria for the issuance of such a license. The Commonwealth points to no historical precedent limiting the reach of one's exercise to a federal constitutional right to only within that resident's states borders.

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<sup>3</sup> Thomas B. Bennett et al., *Divide & Concur: Separate Opinions & Legal Change*, 103 CORNELL L. REV. 817, 839 (2018) ("[L]ower courts should follow the majority opinion . . . [They] must follow binding precedent and ignore concurring opinions . . ."). Justices Alito, Kavanaugh (joined by Chief Justice Roberts), and Barrett filed concurring opinions. Because they all joined the majority opinion, however, these "vanilla concurrences" have "no impact" and "count[] for nothing" legally. *Id.* at 847.

Moving on to the defendant's claim that *GL 269, sec. 10(a)* violates the defendant's right to travel and equal protection, the Commonwealth also asserts that it does not violate the right to travel and equal protection clause because the Commonwealth's license requirements do not prohibit him from traveling in Massachusetts; they only prohibit him from carrying a firearm while traveling in Massachusetts. The Commonwealth further argues that the licensing requirements don't treat non-residents differently than a residents because they can apply for a temporary nonresident license to carry, or they can travel through the state while complying with statutory exemptions of unloading the firearm and storing it secured in a locked compartment and the travel is for a specific purpose such as training or competition. *See G.L.C. 140 § 131, 131F, 129 and 18 USC § 926A.*

The Commonwealth points to the Massachusetts firearm licensing scheme to argue that a nonresident can travel in Massachusetts with a firearm without a license if they are in compliance with the exceptions as listed. However, the exceptions miss the point of the Second Amendment. The Second Amendment and the right to possess firearms is for personal protection, self-defense. The exceptions strip away the right by disarming the individual while he is traveling within the state. The Commonwealth does not point to any historical precedent for this.

The Commonwealth's argument against the defendant's claim that *GL 269, sec. 10(a)* violates his rights under the equal protection clause because he can obtain a temporary nonresident license to carry is also unpersuasive. As stated above, prior to the *Bruen* decision, Massachusetts treated the carrying of a firearm as a privilege. While it allowed nonresidents to apply to obtain a license for that privilege, nonresidents were not

treated the same as residents. Residents of Massachusetts obtaining a license were granted the license for five years. A temporary non resident license was only valid for one year.

The Commonwealth next argues that the Massachusetts licensing scheme imposes a permissible burden because of the substantial state interest in preventing certain people from possessing firearms. However, under federal law, certain people are prohibited from obtaining/possessing firearms. *18 U.S.C. § 922(g)*, makes it unlawful for certain categories of persons to ship, transport, receive, or possess firearms or ammunition, to include any person:

- *convicted in any court of a crime punishable by imprisonment for a term exceeding one year;*
- *who is a fugitive from justice;*
- *who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, codified at 21 U.S.C. § 802);*
- *who has been adjudicated as a mental defective or has been committed to any mental institution;*
- *who is an illegal alien;*
- *who has been discharged from the Armed Forces under dishonorable conditions;*
- *who has renounced his or her United States citizenship;*
- *who is subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner;<sup>4</sup> or*
- *who has been convicted of a misdemeanor crime of domestic violence.*

Nothing in the *Bruen* decision is contrary to the argument raised by the

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<sup>4</sup> The United States Supreme Court has agreed to hear the government's appeal of a decision from the 5<sup>th</sup> circuit *United States v. Rahimi*, 59 F.4th 163 (2023) holding that this provision of section 922 (g) does not survive post Bruen.

Commonwealth that there is a substantial interest in making it unlawful for certain individual to possess firearms. In fact, throughout the *Bruen* decision, reference is made to "ordinary, law-abiding" citizens when speaking of the rights under the second amendment. The logical conclusion to the Commonwealth's argument is that an "ordinary law abiding" resident of the state of New Hampshire can become a felon merely by traveling into the state of Massachusetts. Given that there is already a federal law applying to the entire country as to who is prohibited from possessing firearms, the Court is not persuaded by that argument.

### CONCLUSION

A law-abiding resident of New Hampshire who is exercising his Constitutional right should not become a felon by exercising that right while he is traveling thorough Massachusetts merely because he has not obtained a Massachusetts license to carry, which now, under the holding of *Bruen*, has to be issued to an applicant unless the applicant is otherwise disqualified. The standard for who is a disqualified individual must be the same. Otherwise, a state may decide to impose different requirements on the exercise of any Constitutional right. For example, some states could impose different age limits on voting in elections.<sup>5</sup>

This Court can think of no other constitutional right which a person loses simply by traveling beyond his home state's border into another state continuing to exercise that

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<sup>5</sup> While the Twenty Sixth Amendment to the US Constitution directly forbids this, the Court points this out to contrast this amendment with the Second Amendment's prohibition of the right to keep and bear arms are not to be infringed.

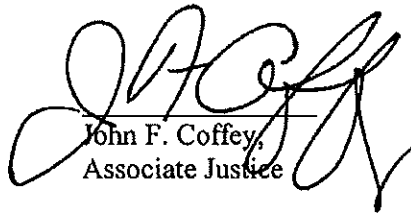


right and instantaneously becomes a felon subject to mandatory minimum sentence of incarceration. Anecdotally, a law abiding New Hampshire resident exercising his constitutional right to carry while shopping at the Pheasant Tree Mall in Nashua, New Hampshire would become a felon when he shops in a section of a store at that Mall, which happens to be in Tyngsborough, Massachusetts

An individual only loses a constitutional right if he commits an offense or is or has been engaged in certain behavior that is covered by *18 USC section 922*. He doesn't lose that right simply by traveling into an adjoining state whose statute mandate that *residents of that state* obtain a license prior to exercising their constitutional right. To hold otherwise would inexplicably treat Second Amendment rights differently than other individually held rights.

Therefore, the Court finds that *GL. 269, sec. 10(a)* is unconstitutional as applied to this particularly situated defendant and Allows the motion to dismiss on that ground.

SO ORDERED.

  
John F. Coffey,  
Associate Justice

Dated: 8-3-23

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

LOWELL DISTRICT COURT  
NO. 2211CR3931

COMMONWEALTH	)
	)
VS.	)
	)
PHILLIP MARQUIS	)
_____	)

**MEMORANDUM OF DECISION ON DEFENDANT’S MOTION TO DISMISS**

The defendant Phillip Marquis is charged in the Lowell District Court with carrying a firearm without a license under *G L 269 §10(a)*. The defendant has filed a motion to dismiss the charge in the complaint claiming that:

- 1 *G L 269 §10(a)* impermissibly infringes on his right to keep and bear arms
- 2 *G L 140* and laws proscribing the possession of firearms under *G L 269 §10(a)* impermissibly violate the rights of nonresidents to keep and bear arms, and
- 3 *G L 269 §10(a)* violated the defendant’s right to be free from cruel and unusual punishment.

The facts leading up the issuance of the complaint are not in dispute and for the purposes of this motion, the Court accepts them. Those facts are contained in both the Commonwealth’s Memorandum in Opposition to the Motion to Dismiss as well as the Defendant’s Memorandum in Support of the Motion to Dismiss.

This Court addressed similar arguments and opposition in its findings in the case of

Commonwealth v Donnell #2211CR2835 and adopts those finding in this related case as well. The parties have asked the Court to make findings on the defendant's claim that *G L 140 section 131F* (nonresidents or aliens temporary license to carry firearms) restricts nonresidents to only carry while participating in shooting competition (or hunting or attending exhibitions) and not for self-defense. The Commonwealth argues that that specific restriction only applies to aliens.

The Court did address this issue in the Donnell decision. But to clarify its finding, *G L 140 section 131F*, as written, groups nonresidents or persons not falling within the jurisdiction of a local licensing authority or aliens that reside outside the Commonwealth, to obtaining licenses for purposes of firearms competitions. While the Commonwealth is correct that since June 23, 2022, EOPS will consider all nonresident license to be unrestricted, that is not how the statute reads.

Furthermore, as stated in the Court's Donnell decision, *New York State Rifle and Pistol Association, Inc v Bruen, 141 S. Ct 2111 (2022)* articulated a two-step analysis in determining whether a law or regulation of constitutionally protected conduct is unconstitutional. First, courts must determine whether "the Second Amendment's plain text covers an individual's conduct/ *Id.*" *Bruen supra at 2129-30*. If so, then the "Constitution presumptively protects that conduct," and the Government "must justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2130. To carry its burden, the Government must point to "historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation." *Id.* "Only then may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *Id.*

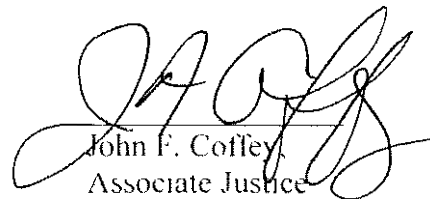
The constitutionality of *140 section 131F* rises or falls on the Commonwealth meeting its burden as articulated by the United States Supreme Court in *Bruen, Id.* The Commonwealth cannot

simply point to a case decided pre Bruen or a statute (however that statute may be read or what it meant to say) and meet its burden when the conduct it seeks to criminalize is constitutionally protected under the Second Amendment. [T]he Government "must justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation " Id. at 2130 To carry its burden, the Government must point to "historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation " Id. "Only then may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command " Id.

The Commonwealth has not met its burden on this issue.

Therefore, the Court finds that GL 269 sec 10(a) is unconstitutional as applied to this particularly situated defendant and Allows the motion to dismiss on that ground

**SO ORDERED.**

  
John F. Coffey  
Associate Justice

Dated: 8-21-23