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Commonwealth of Massachusetts  
Supreme Judicial Court

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HAMPDEN, ss.

APPEALS COURT  
No. 2025-P-0933

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COMMONWEALTH OF MASSACHUSETTS, APPELLEE

V.

ORETTE NICHOLAS JACKSON, DEFENDANT-APPELLANT

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APPLICATION FOR DIRECT APPELLATE REVIEW  
ON BEHALF OF DEFENDANT ORETTE NICHOLAS JACKSON

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DATE: AUGUST 1, 2025

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## **1. REQUEST FOR DIRECT APPELLATE REVIEW**

Appellant Odette Jackson respectfully requests direct appellate review of two significant questions of first impression:

Whether G.L. ch. 269, §10H, which criminalizes possession by a licensed gun owner of a loaded firearm while under the influence of alcohol, is unconstitutional on its face in the wake of *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022)? The question probes the boundaries of permissible state regulation of firearms in the aftermath of the landmark *Bruen* decision. As part of this inquiry, it addresses a question, suggested in *Commonwealth v. Kelly*, 484 Mass. 53 (2020), whether a statute which carries a significant possible sentence, in contrast to *Kelly*'s "relatively minor punishment," imposes an undue burden on the exercise of the Second Amendment right.

If the answer to the above question is no: Whether G.L. ch. 269, §10H, requires proof that a person knew that the firearm was loaded? The Criminal Model Jury Instructions for Use in the District Court maintain that proof of knowledge is not required. The trial court differed, relying on cases of this Court bearing on related firearms prohibitions and stating "I can't believe that the Appeals Court is not going" to find a scienter requirement. Transcript of Trial, June 9, 2022 (hereafter Tr. \_) at 136. Over the Commonwealth's objection, the trial court

instructed the jury that proof of scienter was required but denied a directed verdict on the issue (a further ground of appeal, to be addressed in the brief on the merits).

## **2. STATEMENT OF PRIOR PROCEEDINGS**

Jackson was charged by complaint with operating under the influence of alcohol, under G.L. c. 90, § 24(1)(a)(1) (count 3), and with possession of a loaded firearm while under the influence of alcohol under c. 269, § 10H (count 4). In addition, he faced two civil infractions, a marked lanes violation under c. 89, § 4 (count 1) and operation without lights displayed under c. 90, § 7 (count 2). Counts 3 and 4 are at issue here.

On June 10, 2022, Jackson was tried before a jury. At the conclusion of the Commonwealth's case, the court said: "I am concerned that the Government has not adduced enough evidence to illustrate that the defendant knew the firearm was loaded.... I recognize there was no motion for directed verdict made in this case, but I feel that my job requires me to address the issue." Tr. 133-34. After argument, the court stated: "... I'm not going to direct out the Commonwealth on their case, but I will allow argument as to knowledge. And I am going to give an instruction that knowledge that the firearm was loaded is required." Tr. 138-39. The court further ruled that there was "strong circumstantial evidence that a licensed holder, prior to ... thrusting a firearm into his waistband would determine whether or not

that firearm was loaded.” Tr. 150. The Commonwealth objected to the instruction. Tr. 145.

Jackson was convicted and sentenced on counts 3 and 4 to concurrent terms of one-year probation, with an order on Count 3 to complete a driver alcohol education program and a license suspension for 90 days. On Counts 1 and 2, both infractions, he was ordered to pay a fine.

On June 13, 2022, Jackson filed a notice of appeal.

### **3. STATEMENT OF FACTS RELEVANT TO THIS APPEAL**

A State Police Trooper, on patrol on Route 291 in Springfield, saw a Dodge Caravan operating without a visible rear light. Tr. 76-77. The vehicle was traveling within the speed limit, but straddling the lane markings, and for a time it drifted into the breakdown lane and back “a few times.” Tr. 80, 109. The Trooper signaled the car to stop; it pulled over safely. Tr. 80, 110-111.

The trooper checked his cruiser’s terminal, finding that Jackson had valid licenses both to drive and to carry a firearm. Tr. 83. He asked him to exit the car to perform some field sobriety tests. Tr. 83. As Jackson was exiting, the trooper asked if he had a firearm. Jackson said that he had it in a holster on his hip. Tr. 83-84. The trooper retrieved it without incident. Tr. 84. It had a full magazine, but the trooper did not believe there was a round in the chamber. *Id.*

During the field sobriety tests, Jackson “seemed kind of off balance” while walking. Tr. 90. While walking on a line, he “stepped offline multiple times.” Tr. 95. Throughout, Jackson was polite and compliant. Tr. 113. He was placed under arrest. Tr. 98.

#### **4. STATEMENT OF THE ISSUES OF LAW RAISED BY THE APPEAL**

1. Whether G.L. ch. 269, § 10H, which prohibits a licensed gun owner from possessing a firearm while under the influence of alcohol, is constitutional in the wake of *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), where the United States Supreme Court extended constitutional protection under the Second and Fourteenth Amendments to an individual’s right to carry a handgun for self-defense outside the home.

This challenge, not raised below, is timely. It relies on the constitutional framework set out in *N.Y. State Rifle & Pistol Ass’n v. Bruen*, *supra*, which issued on June 23, 2022 (see face page of decision, Add. 27). The notice of appeal in this matter was filed on June 13, 2022 (Add. 25), before the ruling in *Bruen*, and thus the new rule of *Bruen* applies. See *Commonwealth v. Guardado*, 491 Mass. 666, 693, *rev’d on other grounds*, 493 Mass. 1 (2023) (*Bruen* “applies prospectively and to those cases that were active or pending on direct review as of the date of the issuance of that decision.”)

2. Whether G.L. c. 269, § 10H, which criminalizes the possession by a licensed carrier of a loaded firearm while under the influence of alcohol, requires proof that a person knew that the device was loaded.

The issue was timely addressed as the court itself raised the issue, citing the interests of justice. Tr. 134. The parties were fully heard, and the court ruled squarely on the issue. Tr. 148, Add 24.

If this Court answers the second question in Jackson’s favor, Jackson will further submit that a directed verdict should have entered and that the remaining count, for operating under the influence of alcohol, should be vacated.

## **5. BRIEF STATEMENT OF ARGUMENT**

### **I. G.L. c. 269, § 10H Is Unconstitutional in the Wake of N.Y. State v. Bruen**

Section 10H penalizes “[w]hoever, having in effect a license to carry firearms ... carries on his person ... a loaded firearm ... while under the influence of intoxicating liquor ....” By its terms, the statute requires no finding that the firearm be displayed, brandished, or made the object of a threat, nor that the bearer knew that the firearm was loaded. It penalizes the possession of a firearm “while under the influence,” not that the person was proven drunk.

The contest is two-pronged: first, no colonial analogue existed to permit such a burden on gun carriage, neither in proscription nor in its penalty, and second, no colonial analogue existed to permit a proof standard of “under the influence.”

a. The Bruen Analysis

The Second Amendment provides that “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” Interpreting the Amendment, the Court in *Bruen* held that, when a firearm regulation is challenged, the Government must show that the restriction “is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S., at 17. A court reviews whether the measure is “relevantly similar” to laws that our tradition is understood to permit, “apply[ing] faithfully the balance struck by the founding generation to modern circumstances....” *Id.*, at 29, and n. 7.

Importantly, *Bruen* makes clear that if the Founders and the tradition in which they lived perceived no public safety issue or did nothing about it, none exists for constitutional purposes. Only such restrictions as are “consistent with the Nation’s historical tradition” escape Second Amendment prohibition. Even when a law regulates arms-bearing for a permissible reason, it may not do so “beyond what was done at the founding.” See *United States v. Rahimi*, 602 U.S. 680, 692 (2024). Thus, in *Bruen*, a New York gun licensing law, which discouraged the carrying of firearms in the interests of public safety, was swept aside. Considerations of public safety were irrelevant except as they troubled the Founding generation.

Since *Bruen*, the Supreme Court has ruled on the constitutionality of a single statute, 18 U. S. C. §922(g)(8), which prohibits an individual subject to a domestic violence restraining order from possessing a firearm. See *United States v. Rahimi*, *supra*. The restraining order at issue contained a finding that the charged individual posed a credible threat to the physical safety of an intimate partner. The Court noted that “[f]rom the earliest days of the common law, firearm regulations have included provisions barring people from misusing weapons to harm or menace others.” *Id.*, at 693. These regulations “target[ed] individuals who physically threatened others....” *Id.*, at 694. This was the critical predicate: it “applie[d] to individuals found to threaten the physical safety of another.” *Id.*, at 698.

*Rahimi*, thus, sets a boundary: a government may disarm a person as “dangerous” only after a “judicial determinatio[n]” that he “likely would threaten or had threatened another with a weapon.” *Id.*, at 699. See *Kanter v. Barr*, 919 F.3d 437, 451 (7<sup>th</sup> Cir. 2019) (then-Judge Barrett, dissenting: “[L]egislatures have the power to prohibit dangerous people from possessing guns. But that power extends only to people who are dangerous.”) In *Rahimi*, the necessary colonial template was found in the “surety laws,” where “only those reasonably accused [and suspected of future misbehavior] were required to show a special need in order to avoid posting a bond.” *Bruen*, 597 U.S. at 57. Reasoning from this “analogy” to the restraining order in *Rahimi*, the Court stated that the prior judicial finding of



dangerousness, expressed in the restraining order, legitimized the prospective disarming of Rahimi. One sees the same sequence, namely that an adjudication precedes the disarming, in *Heller*'s finding that prohibitions on the possession of firearms by "felons and the mentally ill," are "presumptively lawful." *Heller*, 554 U. S., at 626, n. 26. In both instances, the prohibitions are preceded by judicial proceedings, either a felony conviction under 18 U.S.C. § 922 (g) (1), or under 18 U.S.C. § 922 (g) (4), by a past "adjudicat[ion of a person] as a mental defective or as having been previously ordered committed to a mental institution."

b. Applying Bruen

A court must first determine whether the conduct at issue is covered by the Second Amendment. Since the instant statute regulates gun carriage, it plainly falls within the bounds of the Second Amendment. This is consistent with *Rahimi*, where the charging statute, while alleging criminal possession of a firearm, was a restraint on carriage and so fell within the coverage of the Second Amendment. See *Rahimi*, 602 U.S. at 708 (Gorsuch, J., concurring) ("In this case, no one questions that the law Mr. Rahimi challenges addresses individual conduct covered by the text of the Second Amendment.")

Second, a court must determine whether the restriction "is consistent with the Nation's historical tradition of firearm regulation." In the view of our colonial forebears, in what respect did the use of alcohol impair a person's right to bear

arms, if at all? To answer this, we are instructed to examine “[w]hy and how the regulation burdens the right.” *Rahimi*, 602 U.S. at 692 (emphasis added). The very few historical examples of firearm regulation in colonial times, however, focused on the **use** of a firearm while intoxicated, not its simple presence. The commonly cited instances are few: a 1655 measure in Virginia prohibiting the "shoot[ing of] any gunns at drinkeing;" a 1771 measure in New York prohibiting the discharge of a gun on New Year's Eve and two days after by persons “being often intoxicated with Liquor;" and a 1746 New Jersey law addressed militia members who "appear[ed] in Arms disguised in Liquor" during their enlistment. See, e.g., *United States v. Okello*, 688 F. Supp. 3d 905, 910 (D.S.D. 2023).

It is error either to conflate the “fir[ing] or discharge[ing]” of a firearm with simple carriage or to conflate military discipline with civilian regulation. The historical inquiry requires “a distinctly similar historical regulation addressing [a particular] problem.” *Bruen*, 597 U.S. at 26. Moreover, the Court expressed “doubt that three colonial regulations could suffice to show a tradition of public-carry regulation.” *Bruen*, 597 U.S. at 46. One can fairly conclude that, as of the time of the Founding, our Nation had no historical tradition of disarming people due to intoxication nor, as pertains to the statute at issue here, due to being under the influence.

Indeed, statutes which banned carrying a weapon while actively under the influence “did not emerge until well after the Civil War.” *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023), vacated in light of *Rahimi*, *supra*. Further, until 2010, states were unconstrained by the Second Amendment, and free to regulate gun use as each pleased. *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010). Thus, state measures restricting gun carriage, from the Founding to 2010, have no interpretive value whatever as to the original meaning of the Second Amendment.

c. The Instant Statute, in its Severity, Scope and Preventive Character, Has No Colonial Template

Even when a law regulates arms-bearing for a permissible reason, it may not do so “beyond what was done at the founding.” *Rahimi*, 602 U.S. 692. *Heller* itself noted that colonial gun measures, indeed “[a]ll of them punished the discharge (or loading) of guns with a small fine and forfeiture of the weapon (or in a few cases a very brief stay in the local jail), not with significant criminal penalties. They are akin to modern penalties for minor public-safety infractions like speeding or jaywalking.” *Heller*, 554 U.S. at 633. Thus, as recognized in *Commonwealth v. Kelly*, 484 Mass. 53, 64 (2020), a modern restraint may pass scrutiny under the Second Amendment where its sanctions are “relatively minor” (in *Kelly*, a maximum sentence of three months). Here, the burden on carriage, a maximum penalty of two and a half years, far exceeds that for “speeding or jaywalking” and

is hardly the “comparable burden on the right of armed self-defense” required by *Bruen*. 597 U.S. at 29.

Moreover, the burden of the present law extends to its scope, reaching those “under the influence.” This verbiage, first appearing in an 1867 Kansas law, introduced a substantially broader proscription, reflected in the jury charge here: “neither does someone have to be drunk to be under the influence of alcohol.” Tr. 176-77. Differentiating “intoxication” from “under the influence” is not hairsplitting; this Court has noted the difference. *Cutter v. Cooper*, 234 Mass. 307, 317-18 (1920).

Further, the manner of the restriction, targeting conduct which could be harmful, was not a feature of colonial legislation. Only in the mid-Nineteenth Century did legislatures begin imposing strict criminal liability for certain public safety offenses. *Kelly*, 484 Mass. at 56-57. Such laws, which anticipate harms that are, statistically speaking, infrequent, are over-inclusive; they sanction persons (such as Jackson here) who do no harm and have no history of inflicting harm.

The instant statute is such a modern “public welfare offense.” It anticipates a harm (drunken misuse of a firearm) and frames it as a strict liability offense (no scienter requirement). As well, it bursts the template with a significant penalty, a further marker of its unconstitutionality.

For these reasons, this Court should accept this issue for direct appellate review.

II. The Trial Court Correctly Ruled that G.L. c. 269, §10H Requires Proof of Scienter But Erred in Denying a Directed Verdict

G.L. c. 269, § 10H, punishes “[w]hoever, having in effect a license to carry firearms ... carries on his person ... a loaded firearm...” while under the influence of alcohol or drugs. Despite the absence of an explicit scienter requirement, the court below instructed the jury, over the Commonwealth’s objection, that there had to be proof of defendant’s knowledge. The court was correct but then erred in denying a directed verdict on the count. The resolution of the scienter issue by this Court is consequential, not simply for this case, but because the Model Instructions assert, erroneously, that no such proof is required.

“[W]e start from a longstanding presumption ... that Congress intends to require a defendant to possess a culpable mental state regarding ‘each of the statutory elements that criminalize otherwise innocent conduct.’” *Rehaif v. United States*, 588 U.S. 225, 228-29 (2019). The trial court drew comparisons with a similar statute, ch. 269, § 10(a), which addresses unlicensed carrying, punishing “[w]hoever ... knowingly has in his possession ... a firearm, loaded or unloaded” without a license. As originally drafted, § 10(a) did not require proof of “knowingly.” The omission was remedied in *Commonwealth v. Jackson*, 369 Mass. 904, 916 (1976) (“we interpret § 10 (a) as requiring, as a necessary element of the

offense, proof that the accused knew that he was carrying a firearm.”). Similarly, the omission of a mens rea in section § 10(n), which enhances the penalty if the firearm was loaded, was cured judicially. *See Commonwealth v. Brown*, 479 Mass. 600, 601 (2018).

The Commonwealth relied on the commentary to the Criminal Model Jury Instructions for Use in the District Court, Inst. No. 7.670 (Rev. 2022) at Note 2, which states that “[k]nowledge that the firearm was loaded is not required.” The commentary further asserted that “if this offense is construed as a strict liability offense, then there is no mens rea requirement...” This Court, however, has “interpreted statutes that contain no specific mens rea requirement, but that provide a harsh penalty, to contain an implicit requirement of a particular mens rea.” *Kelly*, at 59. In *Jackson*, the Court invoked constitutional prudence lest the statute, if interpreted as imposing strict liability, ran afoul of due process. Comparable statutory provisions, the trial court insisted, should be construed similarly. Small wonder, then, that the trial court expressed full confidence that this Court would find a scienter requirement. Tr. 136.

## **6. WHY DIRECT APPELLATE REVIEW IS APPROPRIATE**

The first issue, whether G.L. c. 269, § 10H, is unconstitutional on its face, probes the boundaries of permissible state regulation of firearms in the aftermath of the landmark *Bruen* decision. As well, it addresses a question, suggested in

*Commonwealth v. Kelly*, 484 Mass. 53 (2020), whether a statute which carries a significant possible sentence, in contrast to *Kelly*'s "relatively minor punishment," imposes an undue burden on the exercise of the Second Amendment right.

The second question, in the event this Court denies relief under the first question, asks whether the same statute, G.L. ch. 269, §10H, requires proof that a person knew that the device was loaded. The issue is unresolved and presents the important issue of scienter, which this Court has addressed in the context of other firearms statutes (see, e.g., *Jackson*, *Brown*, discussed *supra*), each time finding proof of scienter necessary. Nonetheless, the Criminal Model Jury Instructions for Use in the District Court maintains that proof of knowledge is not required, a directive to district courts that invites continued error.

For these reasons, this Honorable Court should accept this case for direct appellate review.

Respectfully submitted,

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## ADDENDUM

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## **Constitutional Provisions**

### **U.S. Const. amend. IV**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

USCS Const. Amend. 2

### **U.S. Const. amend. XIV, § 1**

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **G.L. c. 269, § 10H: Possession of Firearms While Under the Influence of Alcohol or Drugs**

Whoever, having in effect a license to carry firearms issued under section 131 or 131F of chapter 140, carries on his person, or has under his control in a vehicle, a loaded firearm, as defined in section 121 of said chapter while with a percentage, by weight, of alcohol in their blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor or marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section 1 of chapter 94C, or from smelling or inhaling the fumes of any substance having the property of releasing toxic vapors as defined in section 18 of chapter 270 shall be punished by a fine of not more than \$5,000 or by imprisonment in the house of correction for not more than two and one-half years, or by both such fine and imprisonment.

### **G.L. ch. 269, § 10: Unlawfully Carrying a Firearm**

(a) Whoever, except as provided or exempted by statute, knowingly has in his possession; or knowingly has under his control in a vehicle; a firearm, loaded or unloaded, as defined in section one hundred and twenty-one of chapter one hundred and forty without ... having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty ... shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years, or for not less than 18 months nor more than two and one-half years in a jail or house of correction. The sentence imposed on such

person shall not be reduced to less than 18 months, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 18 months of such sentence ....

....

(n) Whoever violates paragraph (a) or paragraph (c), by means of a loaded firearm shall be further punished by imprisonment in the house of correction for not more than 2½ years, which sentence shall begin from and after the expiration of the sentence for the violation of paragraph (a) or paragraph (c).

# 2123CR001123 Commonwealth vs. Jackson, Orette Nicholas

- Case Type:
- Criminal
- Case Status:
- Closed
- File Date
- 03/15/2021
- DCM Track:
- 
- Initiating Action:
- MARKED LANES VIOLATION \* c89 §4A
- Status Date:
- 03/15/2021
- Case Judge:
- 
- Next Event:
- 06/26/2033

All Information Party Charge Event Docket Disposition

## Party Information

**Jackson, Orette Nicholas**  
- Defendant

### Alias

### Party Attorney

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- 649783
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[More Party Information](#)

## Party Charge Information

- **Jackson, Orette Nicholas**
- - Defendant
- **Charge # 1:**  
**89/4A-0 - Civil Motor Vehicle Infraction** MARKED LANES VIOLATION \* c89 §4A
- Original Charge
- 89/4A-0 MARKED LANES VIOLATION \* c89 §4A (Civil Motor Vehicle Infraction)
- Amended Charge
- 

### Charge Disposition

Disposition Date  
Disposition  
06/09/2022  
Responsible

- **Jackson, Orette Nicholas**
- - Defendant
- **Charge # 2:**  
90/7/C-0 - Civil Motor Vehicle Infraction LIGHTS VIOLATION, MV \* c90 §7
- Original Charge
- 90/7/C-0 LIGHTS VIOLATION, MV \* c90 §7 (Civil Motor Vehicle Infraction)
- Amended Charge
- 
- **Charge Disposition**  
Disposition Date  
Disposition  
06/09/2022  
Responsible
- **Jackson, Orette Nicholas**
- - Defendant
- **Charge # 3:**  
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
- 
- **Charge Disposition**  
Disposition Date  
Disposition  
06/09/2022  
Guilty Verdict - 24D program
- **Jackson, Orette Nicholas**
- - Defendant
- **Charge # 4:**  
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  
06/09/2022  
Guilty Verdict


## Events


<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Result</u>
03/15/2021 09:00 AM	Courtroom 1		Arraignment	Held - Bail or Conditions of Release ordered
06/14/2021 09:00 AM	Courtroom 2		Pretrial Hearing	Held
09/09/2021 09:00 AM	Courtroom 2		Pretrial Hearing	Not Held
12/03/2021 09:00 AM	Courtroom 2		Pretrial Hearing	Reschedule of Hearing
03/04/2022 11:00 AM	Courtroom 6 (Springfield)		Trial Readiness Session	Reschedule of Hearing

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Result</u>
06/09/2022 09:00 AM	Courtroom 9	Courtroom 9	Jury Trial (CR)	Held - Jury Verdict - 24D
06/09/2023 09:00 AM	Triage by Clerk/PO		Probation Until	Held - Probation Terminated
06/26/2033 09:00 AM	Triage by Clerk/PO		Hearing to Review Status	

## Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<i>Image Avail.</i>
03/15/2021	Complaint issued upon new arrest.	
03/15/2021	Appearance filed On this date Steven E Brady, Esq. added as Appointed - Indigent Defendant for Defendant Orette Nicholas Jackson Appearance filed for the purpose of Case in Chief by Judge Hon. Robert T Santaniello.	
03/15/2021	Legal Counsel Fee Waived. Judge: Santaniello, Hon. Robert T	
03/15/2021	Event Resulted: Arraignment scheduled on: 03/15/2021 09:00 AM Has been: Held - Bail or Conditions of Release ordered Hon. Robert T Santaniello, Presiding	
03/15/2021	Defendant arraigned before Court, advised of right to counsel. Judge: Santaniello, Hon. Robert T	
03/15/2021	Plea of Not Guilty entered on all charges. Judge: Santaniello, Hon. Robert T	
03/15/2021	Bail ordered: \$ \$2,000.00 surety bond or \$ \$200.00 cash. ***POSTED	
03/15/2021	Bail revocation warning (276/58) given to the defendant Judge: Santaniello, Hon. Robert T	
06/14/2021	Event Resulted: Pretrial Hearing scheduled on: 06/14/2021 09:00 AM Has been: Held Hon. Robert T Santaniello, Presiding	
09/13/2021	Event Resulted: Pretrial Hearing scheduled on: 09/09/2021 09:00 AM Has been: Not Held For the following reason: COVID EMERGENCY- Judge ruling without a hearing Hon. Kevin Maltby, Presiding	
12/03/2021	Event Resulted: Pretrial Hearing scheduled on: 12/03/2021 09:00 AM Has been: Reschedule of Hearing For the following reason: Both Parties Request Hon. William E Rooney, Presiding	
12/03/2021	Event Scheduled Event: Trial Readiness Session Date: 03/04/2022 Time: 09:00 AM Result: Reschedule of Hearing	
03/04/2022	Event Resulted: Trial Readiness Session scheduled on: 03/04/2022 11:00 AM Has been: Reschedule of Hearing For the following reason: Both Parties	

<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail.</u>
	Request Hon. Michele Ouimet-Rooke, Presiding	
03/04/2022	Event Scheduled Event: Jury Trial (CR) Date: 06/09/2022 Time: 09:00 AM Result: Held - JuryVerdict - 24D	
06/09/2022	Event Resulted: Jury Trial (CR) scheduled on: 06/09/2022 09:00 AM Has been: Held - JuryVerdict - 24D Hon. Robert S. Murphy, Jr., Presiding	
06/09/2022	Sentence Imposed:: Sentence Date: 06/09/2022 Judge: Hon. Robert S. Murphy, Jr.  Charge #: 3 OUI-LIQUOR OR .08% c90 §24(1)(a)(1)  Financials: Fee assessed for driver alcohol or drug abuse education program. G.L c. 90, §24D Amount \$250.00 OUI Victims Fund assessment ordered. Amount \$50.00 Head Injury fee assessed for OUI or negligent operation. Amount \$250.00 Victim/Witness Assessment on G.L c.258B §8 Amount \$.00  Further Orders of the Court: License Lost Under Section 24D for 90 days	
06/09/2022	Probation order of conditions imposed or revised  Judge: Murphy, Jr., Hon. Robert S.	 <a href="#">Image</a>
06/10/2022	Charges Disposed:: Charge # 1 MARKED LANES VIOLATION * c89 §4A On: 06/09/2022 Judge: Hon. Robert S. Murphy, Jr. Responsible  Charge # 2 LIGHTS VIOLATION, MV * c90 §7 On: 06/09/2022 Judge: Hon. Robert S. Murphy, Jr. Responsible  Charge # 3 OUI-LIQUOR OR .08% c90 §24(1)(a)(1) On: 06/09/2022 Judge: Hon. Robert S. Murphy, Jr. Guilty Verdict - 24D program  Charge # 4 FIREARM, INTOXICATED LICENSEE CARRY c269 §10H On: 06/09/2022 Judge: Hon. Robert S. Murphy, Jr. Guilty Verdict	
06/10/2022	Commonwealth reports ready for trial. Judge: Murphy, Jr., Hon. Robert S.	
06/10/2022	Commonwealth's list of witnesses filed Judge: Murphy, Jr., Hon. Robert S.	
06/10/2022	Defendant's list of witnesses filed. Judge: Murphy, Jr., Hon. Robert S.	
06/10/2022	Trial exhibit list filed. Judge: Murphy, Jr., Hon. Robert S.	
06/10/2022	Request for special Voir Dire questions filed and . Judge: Murphy, Jr., Hon. Robert S.	

<b><u>Docket Date</u></b>	<b><i>Docket Text</i></b>	<b><i>Image Avail.</i></b>
06/10/2022	Motion for individual Voir Dire of Jurors filed and . Judge: Murphy, Jr., Hon. Robert S.	
06/10/2022	Commonwealth's request for jury instructions filed. Judge: Murphy, Jr., Hon. Robert S.	
06/10/2022	Defendant's request for jury instructions filed. Judge: Murphy, Jr., Hon. Robert S.	
06/10/2022	Jurors impaneled and sworn. Juror list filed Judge: Murphy, Jr., Hon. Robert S.	
06/10/2022	List of Jurors rendering verdict filed Judge: Murphy, Jr., Hon. Robert S.	
06/13/2022	Notice of appeal to the Appeals Court filed by the Defendant	
08/05/2022	Committee for Public Counsel Services appointed Lisa Parlagreco for Appeal  Judge: Maltby, Hon. Kevin	<a href="#"><u>Image</u></a>
06/09/2023	Event Resulted: Probation Until scheduled on: 06/09/2023 09:00 AM Has been: Held - Probation Terminated Hon. Kevin Maltby, Presiding	
<b>Case Disposition</b>		
<b><u>Disposition</u></b>	<b><u>Date</u></b>	
Disposed by Jury Verdict	06/10/2022	

1 the jury. After receiving -- after reading all of the cases  
2 recently decided in this arena, albeit through the lens of a  
3 different statute, I think that there is sufficient evidence  
4 to allow this case to go to the jury on the possession while  
5 under -- possession of the firearm while under the influence.

6 As to knowledge, despite the Commonwealth's objection, I  
7 am going to instruct on knowledge in this case. I cannot  
8 imagine that a reviewing court, based on a statute that has  
9 identical language with regards to loaded firearm, would  
10 somehow strike the knowledge element.

11 I get the case law with regards to whether or not the  
12 Commonwealth would have to prove it was an operable firearm.  
13 And in fact, I'm going to instruct these people that you don't  
14 have to prove that knowledge. But I am going to instruct this  
15 jury that you do have to instruct that he knew it was loaded  
16 and allow you to make whatever circumstantial evidence you  
17 might have to make that argument.

18 So those are going to be my rulings. I am going to  
19 instruct on knowledge. And I'm actually going to depart from  
20 the standard instruction 767. I'm going to renumber it. I'm  
21 going to say first that the defendant carried a weapon on  
22 their person that met the legal definition of a firearm. And  
23 I'm going to inform them that they -- that that has been  
24 stipulated to as to the definition of the firearm.

25 That the firearm was loaded without ammunition. That has



COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SPRINGFIELD DISTRICT COURT  
DOCKET NO. 2123CR001123

COMMONWEALTH

v.

ORETTE JACKSON

**NOTICE OF APPEAL**

Now comes the defendant, through and by his attorney, and gives notice, pursuant to Rule 3 of the Massachusetts Rules of Appellate Procedure, of his intent to appeal certain opinions, rulings, directions and judgments of the Court in the above-entitled matter.

Orette Jackson,  
By his attorney,

/s/ Steven E. Brady  
Steven E. Brady  
Steve Brady Law, LLC  
BBO # 649783  
623 Chandler Street  
Worcester, MA 01602  
508-471-4600  
steve@stevebradylaw.com

Dated: 6/13/2022

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of this Notice of Appeal upon the Commonwealth, ADA Hilary Sullivan, via email.

Dated: 6/13/2022

Signed: /s/ Steven E. Brady  
Steven E. Brady BBO #649783

# *N.Y. State Rifle & Pistol Ass'n v. Bruen*

Supreme Court of the United States

November 3, 2021, Argued; June 23, 2022, Decided

No. 20-843.

## Reporter

597 U.S. 1 \*; 142 S. Ct. 2111 \*\*; 213 L. Ed. 2d 387 \*\*\*; 2022 U.S. LEXIS 3055 \*\*\*\*; 29 Fla. L. Weekly Fed. S 440; 2022 WL 2251305

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC., ET AL., PETITIONERS v. KEVIN P. BRUEN, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF NEW YORK STATE POLICE, ET AL.

**Notice:** The Lexis pagination of this document is subject to change pending release of the final published version.

**Subsequent History:** As Revised July 29, 2022.

**Prior History:** [\*\*\*\*1] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

*N.Y. State Rifle & Pistol Ass'n v. Beach*, 818 Fed. Appx. 99, 2020 U.S. App. LEXIS 27455, 2020 WL 5032995 (2d Cir. N.Y., Aug. 26, 2020)

**Disposition:** Reversed and remanded.

## Syllabus

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[\*1] [\*\*\*395] [\*\*2117] The State of New York makes it a crime to possess a firearm without a license, whether inside or outside the home. An individual who wants to carry a firearm outside his home may obtain an unrestricted license to “have and carry” a concealed “pistol or revolver” if he can prove that “proper cause exists” for doing so. *N. Y. Penal Law Ann. §400.00(2)(f)*. An applicant satisfies the “proper cause” requirement only if he can “demonstrate a special need for self-protection distinguishable from that of the general community.” *E.g., In re Klenosky*, 75 App. Div. 2d 793, 428 N. Y. S. 2d 256, 257.

Petitioners Brandon Koch and Robert Nash are adult, law-abiding New York residents who both applied for unrestricted licenses to carry a handgun in public based on their generalized interest in self-defense. The [\*\*\*396] State denied both of their applications for unrestricted licenses, allegedly because Koch and Nash failed to satisfy the “proper cause” requirement. Petitioners then sued respondents—state officials who oversee the processing of licensing applications—for declaratory and injunctive relief, alleging that respondents violated their *Second* and *Fourteenth Amendment* rights by denying their unrestricted-license applications [\*\*\*\*2] for failure to demonstrate a unique need for self-defense. [\*2] The District Court dismissed petitioners’ complaint and the Court of Appeals affirmed. Both courts relied on the Second Circuit’s prior decision in *Kachalsky v. County of Westchester*, 701 F. 3d 81, which had sustained New York’s proper-cause standard, holding that the requirement was “substantially related to the achievement of an important governmental interest.” *Id.*, at 96.

**Held:** New York’s proper-cause requirement violates the *Fourteenth Amendment* by preventing law-abiding citizens with ordinary self-defense needs from exercising their *Second Amendment* right to keep and bear arms in public for self-defense. Pp. 8-63.

(a) In *District of Columbia v. Heller*, 554 U. S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637, and *McDonald v. Chicago*, 561 U. S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894, the Court held that the *Second* and *Fourteenth Amendments* protect an individual right to keep and bear arms for self-defense. Under *Heller*, when the *Second Amendment’s* plain text covers an individual’s conduct,

**APPELLEE'S CERTIFICATION PURSUANT  
TO MASS. R. APP. P. 16(k)**

I hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

Rule 11(b) (permitting a brief argument, consisting of not more than 2,000 words in proportional font); Rule 16(a)(13) (addendum); Rule 16(e) (references to the record); Rule 18 (appendix to the briefs); Rule 20 (form and length of briefs, appendices, and other documents); and Rule 21 (redaction).

The foregoing brief complies with the applicable length limit of Rule 11(b), permitting a brief argument consisting of not more than 2,000 words in proportional font, as it uses proportionally spaced font Times New Roman, size 14, with 11 characters per inch, with a brief argument containing fewer than 2,000 words. The word count was determined by the word processing program by extracting section 5 entitled Brief Statement of Argument and obtaining the word count of 1991 words.

/s Charles P. McGinty  
Charles P. McGinty  
BBO # 333480  
287 Auburn Street, Suite 106  
Newton, Ma 02466

## **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the Defendant-Appellant's Application For Direct Appellate Review on Behalf of Defendant Orette Nicholas Jackson was served this day, August 1, 2025, electronically via efileMA and via email to:

Blake McConnell, Assistant D.A., Hampden District Attorney's Office, 50 State Street, Springfield, MA 01103 and

Katherine E. McMahon, Chief of Appellate Division, Hampden District Attorney's Office, 50 State Street, Springfield, MA 01103.

/s Charles P. McGinty

Charles P. McGinty

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287 Auburn Street, Suite 106

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