

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

SUFFOLK, ss.

NO. FAR-_____

**COMMONWEALTH,
Appellee**

vs.

**WILLIAM J. HOWELL, JR.,
Appellant.**

APPLICATION FOR FURTHER APPELLATE REVIEW

Pursuant to Mass. R. A. P. 27.1(a), Defendant/Appellant William J. Howell, Jr. requests leave to obtain further appellate review expressly limited in scope to the issues addressed in this application. See Commonwealth v. Burno, 396 Mass. 622, 623-624 (1986). Mr. Howell is content with the Appeals Court's disposition of the charge of possession of a large capacity feeding device and does not seek further review of that decision. See Commonwealth vs. Howell, Appeals Court No. 25-P-1143, slip op. at 9 (Jul. 29, 2026) ("On the indictment charging possession of a large capacity feeding device, the judgment is reversed, the finding is set aside, and judgment shall enter for the defendant").

Prior Proceedings

On November 10, 2021, Mr. Howell was indicted on charges of (1) unlawfully carrying a firearm (third offense) (G. L. c. 269, § 10(a)); (2) unlawful possession of ammunition (G. L. c. 269, § 10(h)); (3) unlawfully carrying a loaded firearm (G. L. c. 269, § 10(n)); and (4) unlawful possession of a large capacity feeding device (G. L. c. 269, § 10(m)). RA_20-24.¹

On January 30, 2023, Mr. Howell waived his right to a jury trial and was found guilty of all charges. RA_14.

On February 21, 2023, Mr. Howell filed a motion for a required finding of not guilty pursuant to Mass. R. Crim. P. 25(b)(2) which was denied. RA_17,44. Mr. Howell then pleaded guilty to the third offense portion of count one. He was sentenced to the minimum mandatory seven years to seven years and a day in prison on count one; two years to two years and a day in prison on count four concurrent with count one; and one year and six months of probation on count three. On count two, the

¹ Citation format: transcript, “Tr._vol./page”; Record Appendix, “RA.”

guilty verdict was entered on the docket without a sentence. Mr. Howell timely filed a notice of appeal. RA_15-17,46.

On March 13, 2024, his appeal was entered in the Appeals Court. On December 11, 2024, appellate proceedings were stayed, and Mr. Howell was granted leave to file a motion for a new trial.

On January 16, 2025, Mr. Howell filed a motion for a new trial, asserting a claim of ineffective assistance of counsel. RA_48. On July 25, 2025, Mr. Howell filed an amended new trial motion, adding a claim of insufficient evidence of licensure under Commonwealth v. Guardado, 493 Mass. 1 (2023). RA_75. On July 31, 2025, the trial judge (Lang, J.) denied the motion as to the claim of ineffective assistance. RA_88. On August 12, 2025, the trial judge allowed the motion as to the Guardado claim. RA_100. Mr. Howell's convictions of unlawfully carrying a firearm, unlawful possession of a loaded firearm, and unlawful possession of ammunition (counts one through three) were vacated. RA_102.

On August 25, 2025, Mr. Howell filed a notice of appeal from the July 31, 2025, order denying his motion for new trial as to his conviction of unlawful possession of a large capacity feeding device (count four).

RA_103. On September 16, 2025, his collateral appeal was entered in the Appeals Court. On September 23, 2025, the direct and collateral appeals were consolidated for briefing and decision.

Given that the Commonwealth intended to retry counts one through three, Mr. Howell exercised his right to appellate review of the sufficiency of the evidence at the first trial. See Commonwealth v. Scott, 472 Mass. 815, 816-819 & n.5 (2015) (“the defendant has a right under Massachusetts law to appellate review before he is retried because, if the evidence at the first trial was insufficient to support the conviction, a retrial would be barred by principles of double jeopardy”).

On July 29, 2026, the Appeals Court issued a summary decision pursuant to M.A.C. Rule 23.0, reversing the conviction of possession of a large capacity feeding device due to the insufficiency of the evidence. On the remaining indictments, the judgments remained vacated but the panel held that the Commonwealth may retry Mr. Howell because there was sufficient evidence presented at trial to prove the elements of the charges. Moreover, the panel held that there would be no abuse of discretion in the admission of thermal imaging evidence without an expert witness. Howell, Appeals Court No. 25-P-1143, slip op. at 9-10.

Facts Relevant to the Appeal

“Facts correctly stated in the decision of the Appeals Court shall not be restated.” Mass. R. A. P. 27.1 (b) (2). Following are additional facts concerning the officer who “determined that the firearm’s temperature cooled” and presented that conclusion to the jury. Howell, Appeals Court No. 25-P-1143, slip op. at 4.

Officer Ortiz testified that a “thermal imager is a device that—it’s kind of like—12 inches long, it’s like a flashlight, in a sense. It has a screen on it. And it peaks up—picks up like heat signatures. It’s like a black-and-white shaded screen.” Tr._1/62. He had used a thermal imager “over a dozen times.” Tr._1/62. He testified, “when we respond to the scene, I exit the vehicle that we took there, and I use the thermal imager.” Tr._1/63. “I take the first images for a heat source.... I usually use the wheel well of the vehicle that we traveled in. I put my hand underneath like the wheel well to feel like if there’s like a—if it’s still hot. Then I capture an image. And then I walk around and find another vehicle that appears it’s been parked there for a while, and I use the thermal imager and—like the darker the vehicle is, usually that’s where it would be coldest. And then I go and I feel around that wheel, and if it’s

cold, then I back up and I capture another image of that one.” Tr._1/64.

“Then we’re directed towards where the item is located.” Tr._1/64.

Here, Officer Ortiz arrived on scene with a thermal imaging device. Tr._1/37. The outside temperature was thirty-one degrees. Tr._1/38. Officer Ortiz began by taking a thermal image of his recently driven vehicle’s wheel well to test the device—“it was lit up.” Tr._1/66-76. He then took a thermal image of the wheel well of a parked vehicle that was cold to the touch. Tr._1/66-67.

Four images were admitted in evidence. An image of “the wheel well of...the gun car that we were driving in” (Exhibit 13). Tr._1/67; RA_37. An image of “a random parked vehicle” (Exhibit 14). Tr._1/67; RA_38. And two images of the “recovered firearm” (Exhibits 15 and 16). Tr._1/68-69; RA_39-40. Officer Ortiz explained that the “firearm” images were generated ten minutes apart “to give the—time for the item to show like a different time period of, so if it’s—like shows a little hotter in the beginning, to see if there’s a difference in color of the item.” Tr._1/68.

Points Presented for Further Appellate Review

- I. Whether sufficient evidence was presented to prove the knowledge element of the offenses of unlawfully possessing ammunition and unlawfully possessing a loaded firearm.
- II. Whether thermal imaging evidence was admissible without expert testimony.

Why Further Appellate Review Is Appropriate

- I. Insufficient evidence was presented to prove knowing possession of ammunition or of a loaded firearm.**

“To convict the defendant of unlawful possession of a loaded firearm, the Commonwealth was required to prove that the defendant knowingly possessed a firearm that was loaded with ammunition.” Commonwealth v. Johnson, 461 Mass. 44, 52 (2011). “To convict the defendant of unlawful possession of ammunition, the Commonwealth was required to prove that the defendant knowingly possessed ammunition that met the legal definition of ammunition.” Id. at 53. Assuming arguendo that Mr. Howell discarded the firearm found by the police, there was insufficient evidence presented at trial to prove that he knew it was loaded.

The exhibits show that “it was not possible to discern merely by observation whether the pistol found” on the pavement under a vehicle “was loaded.” Cf. Commonwealth v. Brown, 479 Mass. 600, 608 (2018). “In addition, the Commonwealth did not present any evidence from which an inference could be drawn that the defendant was aware that the firearm was loaded.” Id. The firearm was not found in Mr. Howell’s waistband or elsewhere on his person. Compare Commonwealth v. Resende, 94 Mass. App. Ct. 194, 200 (2018) (“A commonsense inference from that fact alone is that a person would check to see if the firearm was loaded before putting it in his waistband”).

There was no evidence that Mr. Howell was familiar with firearms, had threatened anyone, had mentioned a firearm, had fired a firearm, had separately possessed ammunition, or had “made any other statement indicative of knowledge.” Commonwealth v. Grayson, 96 Mass. App. Ct. 748, 253-254 (2019).

Nevertheless, the panel concluded that “[a] fact finder also could reasonably infer that the defendant, while retrieving and throwing the firearm, perceived its weight, balance, and configuration, and therefore knew that the firearm was loaded with live rounds of ammunition.”

Howell, Appeals Court No. 25-P-1143, slip op. at 5. The panel failed to explain, however, why the mere act of throwing a firearm would support a reasonable inference that a defendant knew the gun was loaded.

There was no evidence comparing the “weight, balance, and configuration” of the firearm when loaded or unloaded. Those particular characteristics are not common knowledge. There was no evidence as to whether the presence of ammunition in a firearm would be perceptible to a handler. The officers who allegedly found the firearm did not testify, nor did the expert who allegedly tested it. There was no testimony regarding the detection of ammunition by feel. And, although the firearm was in evidence—presumably unloaded and inoperable—the trial judge did not load or unload it to compare its relative weights, balances, and configurations on the record. Tr._1/39.

In cases cited by the panel, far more evidence was presented than here. In Commonwealth v. Cooper, 97 Mass. App. Ct. 772 (2020), a firearm “tucked into the defendant’s armpit area” admittedly had been obtained for self-defense purposes, supporting a conclusion (in the Court’s view) that the defendant knew it was loaded. Id. at 774. And in Commonwealth v. Mitchell, 95 Mass. App. Ct. 406 (2019), the defendant

“pulled out a handgun from his belt and shot at [another man] four times” which “would support a reasonable inference that he had knowledge that the gun was loaded.” Id. at 408, 412-413.

Here, by contrast, “the ammunition in the firearm was the only evidence presented that the firearm was loaded” and “the Commonwealth presented no evidence that the defendant knew it was loaded[.]” Commonwealth v. Galarza, 93 Mass. App. Ct. 740, 748 (2018). The panel’s conclusion that Mr. Howell “perceived” ammunition by feel is unfounded.

“Accordingly, on the facts of this case, no rational trier of fact could have found beyond a reasonable doubt that the defendant knew the firearm was loaded, and the conviction of possession of a loaded firearm without a license cannot stand.” Brown, 479 Mass. at 609. For the same reasons, “there was insufficient evidence to support the possession of ammunition charge.” See Grayson, 96 Mass. App. Ct. at 749 n.1, citing Johnson, 461 Mass. at 53.

II. It was error to admit thermal imaging evidence without expert testimony.

This issue is one of first impression. As the panel noted, “there is no appellate case directly on point[.]” See Howell, Appeals Court No. 25-P-1143, slip op. at 7.

The Commonwealth moved in limine to admit thermal images of a firearm and to elicit testimony “that the firearm appears to be warmer than its ambient environment.” Tr._ 1/16; RA_24. Trial counsel opposed the motion, arguing, “there’s no expert testifying to the heat device.... The cases that my sister cited all relate to expert testimony. There’s no expert testifying here.” Tr._ 1/19-20. The judge allowed the motion, telling counsel, “I note your objection.” Tr._1/20-21.²

That was error. A thermal imaging camera uses specialized technology to generate black-and-white images that are outside the experience of ordinary jurors. Cf. Onofrio v. Department of Mental Health, 408 Mass. 605, 613 (1990) (“expert testimony is not a prerequisite

² Counsel did not object to the photos when they were introduced at trial. Tr._1/66,68. But appellate rights were preserved. See Commonwealth v. Hart, 493 Mass. 130, 143 n.8 (2023), citing Commonwealth v. Grady, 474 Mass. 715, 719 (2016).

to a finding about matters that are within ordinary human experience”). Interpretation of those images—translating visual data to thermal data—required “scientific, technical, or other specialized knowledge that will assist the jury in understanding a fact in issue,” namely, the relative temperatures of objects found on the street. Cf. Commonwealth v. Cauty, 466 Mass. 535, 541 (2013).

There was no evidence that Officer Ortiz had “sufficient education, training, experience and familiarity with the subject matter of the testimony”—the interpretation of the thermal images generated by his camera. Cf. Commonwealth v. Richardson, 423 Mass. 180, 183 (1996). Indeed, the judge here did not find Officer Ortiz to be qualified as an expert witness, but relied “only on the argument that expert testimony is not necessary.” Tr._1/18,20.

The images appear dark and light. In the image of the “cold” vehicle, the tire and body panels are dark but the interior of the wheel well and the pavement are light. In the image of the “hot” vehicle, the wheel well, parts of the pavement and panels are light while the tire, bumper, and parts of the pavement are dark. And in both images of the “recovered firearm” parts of the gun and the pavement are light while

other parts are dark; no appreciable darkening is apparent from the earlier photo to the later one. Indeed, the image of the “hot” firearm glows as brightly as the image of the “cold” wheel well. Exhs. 13-16.

The panel relied on Commonwealth v. Whitlock, 74 Mass. App. Ct. 320 (2009) to reason that the thermal images were properly admitted without expert testimony. Howell, Appeals Court No. 25-P-1143, slip op. at 7-8. But a comparison to Whitlock highlights the shortcomings in that analogy.

In Whitlock, the contested evidence concerned the distance measurement of a school zone. Id. at 325. The measuring tool was “basically a computerized map[.]” Id. at 325-326. Each time the testifying officer used the program, “he tested the program’s accuracy by having it generate the distance between two known points he had personally measured with a measuring wheel, the accuracy of which he had personally determined.” Id. at 326. The evidence presented through the officer’s testimony was “that the distance from the point of sale at 49 School Street to the school was 473.29 feet.” Id. at 325. Cross examination could proceed on that basis.

Here, by contrast, quantitative measurements of heat and cold were not provided to the jury. Unlike the distance measurement in Whitlock, the hazy, black-and-white images presented to the factfinder contained no objective data, such as a temperature reading on which a lay witness could be cross-examined. In Whitlock, the lay witness could testify that he quantified distances using a measuring tool and confirmed those distances with another measuring tool. Id. at 325-326. Here, the thermal imager did not provide measurements but images. Without expert interpretation, the images themselves were meaningless because no objective information was conveyed. Officer Ortiz was not qualified to be cross-examined as to why some “cold” areas, such as the wheel well or the ground, were glowing in the images he produced.

Had Officer Ortiz touched the firearm and testified regarding his own perceptions of heat or cold, the evidence would have been admissible. See Canty, 466 Mass. at 541–542 (“a lay opinion is admissible only where it lies within the realm of common experience”). But the inconsistent shadings and gradations of the thermal images in this case required the assistance of an expert to “interpret evidence that lies outside of common

experience[.]” Id.; see also Commonwealth v. Bankert, 103 Mass. App. Ct. 107, 120–121 (2023).

Moreover, there is a reasonable possibility that the erroneous admission of the thermal images contributed to the verdict. The officers who stopped Mr. Howell “didn’t see any gun come out of the window at the time the car swerved.” Tr._1/84. There was no damage to the side of the parked vehicle. Tr._1/83. There was no evidence that the car’s windows had been lowered prior to the stop. Tr._1/84. Only the thermal images linked the gun on the street to Mr. Howell’s car. And based on those images the judge concluded “that that particular gun” came from “the interior of Mr. Howell’s vehicle.” Tr._1/85.

Therefore, because the erroneously admitted images were “unique” in establishing the relative warmth of the firearm on the street, and because the Commonwealth’s other evidence of possession “was not overwhelming, the error was prejudicial.” Cf. Commonwealth v. Rodriguez, 92 Mass. App. Ct. 774, 781 (2018).

Conclusion

For the foregoing reasons Mr. Howell requests further appellate review, limited in scope to the issues addressed in this application.

Respectfully submitted,

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Dated: 8/6/26

CERTIFICATE OF COMPLIANCE

I, Andrew P. Power, hereby certify that the foregoing application complies with the applicable length limitation in Mass. R. A. P. 27.1(b) because it is produced in the proportional font Century Schoolbook size 14, and contains 1,630 total non-excluded words as counted using the word count feature of Microsoft Word for Office 365.

CERTIFICATE OF SERVICE

I hereby certify, under the penalties of perjury, that on 8/6/26, a true and accurate copy of this document was served by the Electronic Filing System on:

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NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

25-P-1143

COMMONWEALTH

vs.

WILLIAM HOWELL.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

After a bench trial in February 2023, a Superior Court judge convicted the defendant of unlawfully carrying a firearm (third offense),¹ unlawful possession of ammunition, unlawfully carrying a loaded firearm, and unlawful possession of a large capacity feeding device. The judge subsequently granted the defendant's motion for a new trial on the first three charges, because the Commonwealth did not present evidence that the defendant lacked a license to carry a firearm. See Commonwealth v. Guardado, 491 Mass. 666 (2023), S.C., 493 Mass. 1 (2023), cert. denied, 144 S. Ct. 2683 (2024). By separate order, the

¹ After the trial, the defendant pleaded guilty to the third and subsequent offense portion of the indictment.

judge denied the defendant's request for a new trial on the large capacity feeding device indictment, determining that the defendant was not prejudiced by his trial counsel's ineffective assistance.

In this consolidated appeal, the defendant argues that (1) the trial evidence was insufficient to establish that the defendant knew that he possessed ammunition, knew that the firearm was loaded, or knew that the firearm had a large capacity feeding device; (2) the judge erred by admitting thermal images in evidence at trial; and (3) the judge abused his discretion by denying the defendant's motion for a new trial as to the large capacity feeding device conviction.² To the extent the Commonwealth elects to retry the defendant, we conclude that there was sufficient evidence of the element of knowledge on the indictments charging possession of ammunition and carrying a loaded firearm and discern no error in the trial judge's admission of thermal imaging evidence. However, we conclude that the trial evidence was insufficient to establish

² The defendant appealed from the order dated July 31, 2025, denying his motion for a new trial as to the large capacity feeding device conviction, but not from the separate order vacating his other convictions. However, as part of the defendant's direct appeal, we consider his argument that he is entitled to judgment in his favor on the indictments charging possession of ammunition and carrying a loaded firearm because the Commonwealth presented insufficient evidence of those offenses at trial.

that the defendant knew the firearm had a large capacity feeding device, and therefore we reverse the defendant's conviction on that charge.³

Discussion. 1. Sufficiency of evidence. We review the evidence in the light most favorable to the Commonwealth to determine whether, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" (citation omitted). Commonwealth v. Latimore, 378 Mass. 671, 677 (1979). "The inferences that support a conviction need only be reasonable and possible; [they] need not be necessary or inescapable" (quotation and citation omitted). Commonwealth v. Faherty, 93 Mass. App. Ct. 129, 133 (2018). Here, the defendant challenges the sufficiency of the trial evidence only as to the knowledge element of the crimes for which he was convicted.

a. Possession of ammunition and carrying loaded firearm. "To convict the defendant of unlawful possession of ammunition, the Commonwealth was required to prove that the defendant knowingly possessed ammunition." Commonwealth v. Johnson, 461 Mass. 44, 53 (2011). To convict the defendant of unlawful possession of a loaded firearm, the Commonwealth was required to

³ Based on this conclusion and the entry of acquittal, we need not resolve whether the judge abused his discretion by denying the defendant's motion for a new trial based on ineffective assistance of counsel and we dismiss the appeal from the order denying the new trial motion as moot.

prove that the defendant knew "that the firearm was loaded with ammunition." Commonwealth v. Brown, 479 Mass. 600, 608 (2018). The defendant asserts that the Commonwealth did not present evidence from which a reasonable inference could be drawn that the defendant knew the firearm was loaded with ammunition. We disagree.

The Commonwealth presented the following evidence at trial. On March 17, 2021, Boston police officers saw a car with excessively tinted windows pass by their unmarked vehicle. They activated their emergency lights and followed the vehicle. During their brief pursuit, police saw the vehicle swerve toward a parked car, narrowly missing it, then stop a short time later. The defendant was the sole occupant. When police removed the defendant from his vehicle, they noticed that the vehicle's passenger side window, which was closed when the car initially passed them, was now open. Shortly thereafter, officers found a firearm underneath the rear of the car that the defendant had nearly hit during the chase. The firearm had a large capacity feeding device attached and was loaded with nineteen rounds of ammunition. It had visible exterior damage that appeared to be scratch marks. Furthermore, an officer used a thermal imaging device to take two photographs of the firearm and determined that the firearm's temperature cooled in the ten minutes that elapsed between the first and second photographs.

Based on this evidence, a rational fact finder could reasonably infer that the defendant threw the gun out of his car window as he passed the parked car. A fact finder also could reasonably infer that the defendant, while retrieving and throwing the firearm, perceived its weight, balance, and configuration, and therefore knew that the firearm was loaded with live rounds of ammunition. See Commonwealth v. Ashford, 486 Mass. 450, 454 (2020) (jury rationally may infer that defendant knew gun loaded from circumstantial evidence); Commonwealth v. Cooper, 97 Mass. App. Ct. 772, 773-775 (2020) (sufficient evidence that gun loaded where defendant held it under armpit); Commonwealth v. Mitchell, 95 Mass. App. Ct. 406, 412-413 (2019) (evidence that defendant brought gun to location would support reasonable inference of knowledge that gun was loaded).

b. Possession of large capacity feeding device. To sustain a conviction for unlawful possession of a large capacity feeding device, the Commonwealth must prove that a defendant "either knew the firearm or feeding device met the legal definition of 'large capacity' or knew it was capable of holding more than ten rounds of ammunition." Commonwealth v. Cassidy, 479 Mass. 527, 529, cert. denied, 586 U.S. 876 (2018). A large capacity feeding device is "a fixed or detachable magazine . . . or similar device capable of accepting, or that can be readily

converted to accept, more than ten rounds of ammunition." G. L. c. 140, § 121, as amended through St. 2018, c. 123, §§ 4, 7.⁴ "[T]he large capacity of a weapon often is not readily apparent." Commonwealth v. Marrero, 484 Mass. 341, 346 (2020).

In Cassidy, 479 Mass. at 528, police recovered two firearms, four feeding devices, and ammunition from the defendant's apartment. The court concluded that the jury could have inferred that the defendant knew that the nine millimeter pistol and four magazines recovered were capable of holding more than ten rounds of ammunition based on evidence that the defendant had owned the firearms and magazines for a significant period of time, had fired the two firearms, had owned other firearms in the past and hunted with firearms since age eight, had stated that he did not fully load the magazine to avoid wearing out the spring, and could see the "obvious large size of the thirty-round 'banana-style' magazines." Id. at 538. Here, by contrast, there was no evidence that the defendant had owned the firearm for a significant period, how he had acquired it, or whether he had owned firearms in the past. Nor was there evidence that the defendant made statements that he knew about firearms or feeding devices. Also, unlike Cassidy, there was only one magazine in this case and the photographs of the

⁴ We cite the version of the statute in effect at the time of the actions giving rise to the indictments.

firearm offered in evidence show the magazine protruding only a few inches from the weapon's handle. Given the evidence presented, we conclude that no rational trier of fact could have found beyond a reasonable doubt that the defendant knew the firearm was high capacity or that its feeding device could hold more than ten rounds of ammunition. See Commonwealth v. Resende, 94 Mass. App. Ct. 194, 202 (2018).

2. Admission of thermal imaging evidence. "We do not disturb a judge's decision to admit . . . evidence absent an abuse of discretion or other legal error" (citation omitted). Commonwealth v. Souza, 492 Mass. 615, 626 (2023). The defendant asserts that the judge abused his discretion by admitting evidence of thermal imaging of the firearm without expert testimony. We disagree.⁵

Although there is no appellate case directly on point, our analysis is guided by Commonwealth v. Whitlock, 74 Mass. App. Ct. 320 (2009). In Whitlock, the judge properly admitted testimony in a drug distribution case of a nonexpert police

⁵ The defendant also contends that the error resulted in prejudice. See Commonwealth v. Correia, 492 Mass. 220, 232 (2023). Although the defendant did not object when the photographs taken using the thermal imaging device were admitted in evidence during the trial, he objected to the Commonwealth's motion in limine to admit evidence of thermal imaging. Because we discern no abuse of discretion or other error in the admission of the evidence, we do not reach the issue of prejudice.

witness that he "used a software program called ArcView to determine that the distance from the point of sale" was within a school zone. Id. at 325. The witness testified he was trained in the use of the program, used it to determine distances in over 150 similar cases, and confirmed its accuracy by having it generate the distance between two points he had independently measured with a measuring wheel. See id. at 326. Although the officer did not know how the program worked, he was familiar with how to operate it as a measuring tool. See id. at 327-328. Therefore, any foundational deficiencies went to the weight and not the admissibility of the witness's testimony. See id. at 328.

Here, the officer was trained in using the thermal imaging camera and operated it over a dozen times, including with firearms. He testified that the device was used as a measuring tool that "picks up . . . heat signatures." The officer took photographs of known hot and cold areas before "imaging" the firearm twice, ten minutes apart. The judge was able to compare the photographic evidence of the "known" areas and the two photographs of the firearm to see that the hot area and the first firearm photograph glowed more brightly than the cold area and the second firearm photograph. The judge thus was able to apply common sense to the evidence, which was contextualized by the defendant's trial counsel's cross-examination. Because the

officer's testimony was limited to what he did and the resulting images, without any interpretation of the images, we conclude that the judge did not abuse his discretion by admitting the testimony. As in Whitlock, any foundational shortcomings due to the officer's lack of expertise on technical aspects of the device's operation went to the weight rather than admissibility of the thermal imaging of the firearms.

Conclusion. On the indictment charging possession of a large capacity feeding device, the judgment is reversed, the finding is set aside, and judgment shall enter for the defendant. On the remaining indictments, the judgments remain vacated and the Commonwealth may retry the defendant, if it so

chooses.⁶ The appeal from the order dated July 31, 2025, denying the motion for a new trial is dismissed as moot.

So ordered.

By the Court (Singh,
Brennan & Allen, JJ.⁷),

A handwritten signature in blue ink, appearing to read "Paul Little".

Clerk

Entered: July 29, 2026.

⁶ As discussed above, there was sufficient evidence at trial that the defendant knew he possessed ammunition and knew that the firearm he carried was loaded. To the extent that the Commonwealth chooses to retry the defendant on the indictments charging carrying a firearm, possession of ammunition, and carrying a loaded firearm, we discern no abuse of discretion or error of law in the admission of thermal imaging evidence, even absent an expert witness.

⁷ The panelists are listed in order of seniority.