Legal Update

June 2018

The SJC holds that the Commonwealth's statutes restricting the possession of assault weapons and large capacity feeding devices do not violate the Second Amendment.

Commonwealth v. Cassidy, 479 Mass. 527 (2018).

The defendant, John Cassidy, lawfully purchased an AK-47-style pistol and a nine millimeter pistol in Texas and brought them with him when he moved to Massachusetts in August, 2010, to attend law school. At some point, classmate told the defendant that he would need to register the firearms in Massachusetts. See G. L. c. 140, §§ 129B, 131; G. L. c. 269, § 10(a). The defendant obtained the forms necessary to register for a license to possess a firearm in Massachusetts, but he did not file them and he did not obtain either a license to carry (LTC) or firearms identification (FID) card. The nine millimeter pistol, which could hold twelve rounds of ammunition, fell within the definition of a large capacity weapon requiring separate licensing and registration requirements. See G. L. c. 269, § 10(m). The AK-47-style pistol qualified as an assault weapon pursuant to G.L. c. 140, § 121, and is heavily restricted in the Commonwealth.

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.

After executing a search warrant at the defendant's apartment, police located two pistols, four high capacity magazines, several boxes of ammunition, and a bag containing loose rounds of various types of ammunition in the defendant's bedroom. A tag on the suitcase and identification cards found in the bedroom indicated that it was the defendant's bedroom. The police charged the defendant with unlawful possession of an assault weapon, G. L. c. 140, § 131M; unlawful possession of four large capacity feeding devices, G. L. c. 269, § 10(m); unlawful possession of a large capacity firearm, G. L. c. 269, § 10(m); and unlawful possession of ammunition, G. L. c. 269, § 10(h). There was no dispute that the defendant owned the weapons or that they were operable firearms.

The defendant was convicted and appealed, arguing that the Commonwealth failed to prove that he knew the firearm and feeding devices he possessed qualified as "large capacity." The defendant also argued that the Massachusetts firearms statutes violated his right to bear arms under the Second Amendment to the United States Constitution and art. 17 of the Massachusetts Declaration of Rights**.**

Conclusion: The SJC affirmed the convictions and held that the Commonwealth proved that the defendant either knew the firearm or feeding devices met the legal definition of "large capacity" or knew they was capable of holding more than ten rounds of ammunition. Second, the SJC held the Commonwealth's statutes related to assault weapons are constitutional and do not violate the Second Amendment or art. 17.

1st Issue: Did the Commonwealth prove the defendant <u>knew</u> he was in possession of a large capacity firearm or feeding device?

The Commonwealth must prove four elements to sustain a conviction under G. L. c. 269, § 10(m):

<u>First</u>: That the defendant possessed an item;

<u>Second</u>: That the item meets the legal definition of "large capacity (weapon) (feeding device)";

<u>Third</u>: That the defendant knew that (he) (she) possessed that (weapon) (feeding device); and

<u>Fourth</u>: That the defendant knew that the (weapon) (feeding device) met the legal definition of a large capacity (weapon) (feeding device) **or** was capable of holding more than ten rounds of ammunition.

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.

The SJC concluded that there was sufficient evidence to show that the defendant knew that the nine millimeter pistol and four magazines could hold more than ten rounds of ammunition. The defendant had owned the firearms and magazines for a significant period of time because he had purchased them from a gun store in Houston sometime "between the end of 2008 and the beginning of 2009." The defendant had also fired the firearms while living in Texas. Since the defendant had been hunting since he was eight years old, he had familiarity with firearms in the past and he had testified that he did not fully load the magazine so that he would not wear out the spring. In addition, the three magazines for the AK-47-style pistol each were capable of holding thirty rounds of ammunition, and were noticeably larger than a magazine that holds ten rounds. Similarly, the extended, after-market magazine for the nine millimeter pistol, which the defendant had purchased separately, could hold either fifteen or twenty rounds; it, too, was noticeably larger than the stock magazine that was in the pistol when it was found, which the firearms expert testified holds twelve rounds. "Given the defendant's testimony about purchasing, loading, and shooting the two firearms . . . it was reasonable to infer that the defendant was aware that the magazines held more than ten rounds of ammunition." ***Cassidy***, 479 Mass. at 537-538.

2nd Issue: Do G. L. c. 140, § 131M and G.L. c. 269, § 10(m) violate the Second Amendment or art. 17?

The SJC held that the statute does not violate either the Second Amendment or art. 17. While the Second Amendment protects an individual's right to bear arms, that right is not unlimited. ***District of Columbia v. Heller***, 554 U.S. 570, 626 (2008). "Regulations other than total handgun bans are permissible so long as they do not interfere with the Second Amendment's core lawful purpose of self-defense." ***Id***. at 630, 636.

The assault weapons ban is not prohibited by the Second Amendment because that constitutional right "does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes." ***Id.*** at 625. The Second Amendment does not grant "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." ***Id.*** at 626. A ban on assault weapons is more similar to the restriction on short-barreled shotguns upheld in ***United States v. Miller***, 307 U.S. 174, 178 (1939), than the handgun ban overturned in ***Heller***. "In the absence of any evidence tending to show that possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well[-]regulated militia," the Supreme Court held that it "cannot say that the Second Amendment guarantees the right to keep and bear such an instrument." ***Miller, supra. See Heller,*** 554 U.S. at 627 (suggesting that "weapons that are most useful in military service — M-16 rifles and the like — may be banned").

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.