

**APPENDIX G. RELEVANT PORTIONS OF THE  
COMMONWEALTH'S APPELLEE BRIEF**

police where it was (Tr.II 104).<sup>9</sup> Inside the locked closet, police recovered two blue bins containing multiple firearms, large capacity feeding devices,<sup>10</sup> and ammunition (Tr.II 106, 114). Police also recovered a firearm in an unlocked foot locker on the other side of the defendant's bedroom (Tr.II 106-07).

The defendant was ultimately charged with the unlicensed possession of the following<sup>11</sup>: Sig Sauer magazine with the capacity to hold fifteen nine-millimeter caliber cartridges (Count 1); silver magazine with the capacity to hold twenty nine-millimeter live cartridges (Count 2); .357 caliber revolver<sup>12</sup> (Count 3); .22 caliber revolver (Count 4);<sup>13</sup>

---

<sup>9</sup> Once police began searching the defendant's closet, the defendant complained of shoulder or chest pain and was taken away from the scene by ambulance (Tr.II 116). He was not ultimately admitted to the hospital (Tr.II 116-17).

<sup>10</sup> Massachusetts State Police ballistics expert Glenn Cote testified that a "large capacity feeding device" is a magazine capable of holding more than ten live cartridges (Tr.II 140-41, 144-45).

<sup>11</sup> Police recovered some weapons that day, including a semi-automatic pistol and a "rocket launcher," which did not result in charges against the defendant (see Tr.II 127).

<sup>12</sup> The .357 caliber revolver was fully loaded when police recovered it (Tr.II 108).

<sup>13</sup> A Massachusetts State Police ballistics expert tested the .357 caliber revolver and the .22 caliber

ammunition associated with the recovered Sig Sauer magazine (Count 5); and ammunition associated with the recovered silver magazine (Count 6) (Tr.II 106, 108, 109, 114, 145-46, 149; see also Tr.II 57).<sup>14</sup>

---

<sup>14</sup> The .22 caliber revolver associated with Count 4 was recovered from the unlocked foot locker in the defendant's bedroom (Tr.II 109-110). The remaining items were recovered from the bins in the locked closet in the defendant's bedroom (Tr.II 106, 113-14).

### III. THE TRIAL

#### A. The Commonwealth's case

At trial, the Commonwealth presented nine exhibits and four witnesses, whose testimony is summarized above (see supra, pp. 6-9). The only disputed issue was whether the defendant had knowledge of the firearms, magazines, and ammunition in his home (see Tr.I 12).

To support its case that the defendant was fully aware that he had a supply of firearms and ammunition remaining in his home, the Commonwealth highlighted evidence that: (1) the weapons were recovered from the defendant's bedroom, not far from where he sleeps; (2) one of the firearms was fully loaded; and (3) the defendant initially refused to provide police with the key to his locked closet, where they ultimately

discovered the majority of the contraband (see Tr.III 38-40).

**B. The defense case**

The defendant did not present any witnesses or exhibits at trial (see Tr.III 25). Through cross-examination and argument, he advanced his theory that he had intended to surrender all of the firearms and ammunition to the police on December 1, 2009 and that he had simply forgotten about the items that police recovered the following week (see Tr.III 28-33). The defendant emphasized that he had surrendered a significant amount of his collection on December 1, 2009 and that none of the recovered ammunition matched the weapons that were also recovered (see Tr.III 30-31).

The firearms regulation scheme in the Commonwealth of Massachusetts is comprised of two types of licenses: (1) firearms identification cards ("FID"), which permit an individual to "own or possess" a firearm "within the limits of his own property or residence"; and (2) licenses to carry ("LTC"), which permit the license holder "to purchase, rent, lease, borrow, possess[,] and carry" firearms, feeding devices, and ammunition "for all lawful purposes." G.L. c. 140, § 129C; G.L. c. 140, § 131(a).<sup>21</sup> In the case of a LTC, the licensing authority<sup>22</sup> must suspend or revoke the same upon the

---

<sup>21</sup> Since the defendant committed the charged offenses on December 10, 2009, the Legislature has amended G.L. c. 140, § 131 a number of times. The most significant changes include unifying the two classes of licenses (previously referred to as "Class A" and "Class B" licenses) and clarifying the basis for a licensing authority to find someone unsuitable to hold a license. See Chief of Police of City of Worcester v. Holden, 470 Mass. 845, 851 n. 5, 855 n. 8 (2015). Said amendments do not bear on the defendant's arguments on appeal.

<sup>22</sup> A "licensing authority" is "the chief of police or the board or officer having control of the police in a city or town, or persons authorized by them." G.L. c. 140, § 121.

occurrence of a disqualifying event<sup>23</sup> and “may” do so “if it appears that the holder is no longer a suitable person to possess such a license,” G.L. c. 140, § 131(f). The licensing authority may then “seek immediate surrender of [the] individual’s license, firearms, and ammunition” in accordance with G.L. c. 140, § 129D. See Commonwealth v. Adams, 482 Mass. 514, 533-34 (2019). A person whose LTC has been revoked or suspended has a right to judicial review of the same in district court.<sup>24</sup> G.L. c. 140, § 131(f).

Here, the defendant claims that the licensing authority unconstitutionally violated his Second Amendment rights when it required the surrender of the firearms and ammunition in his possession upon the suspension of his LTC pursuant to G.L. c. 140, § 131(f). However, the threshold basis for this claim – the defendant’s representation on appeal that he had a

---

<sup>23</sup> Such events include convictions for certain crimes and institutionalization for mental illness. See G.L. c. 140, § 131(d)(i). None of these disqualifying events applied to the defendant.

<sup>24</sup> The district court may, after hearing, reinstate a license to carry if the court “finds that there was no reasonable ground” for revoking the license. G.L. c. 140, § 131(f).

valid FID at the time of his LTC suspension<sup>25</sup> – is not supported by the record. To the contrary, the defendant's FID was not an exhibit at trial.<sup>26</sup> In fact, the defendant's other filings in the case indicate that his FID was expired at the time of his LTC suspension.<sup>27</sup> Furthermore, if he possessed a valid FID as he now claims, the licensing authority would not have required him to surrender his firearms in the first place,<sup>28</sup> and he certainly would have raised this

---

<sup>25</sup> The defendant asserts throughout his brief that he had a valid FID when police recovered firearms and other contraband from his home (see, e.g., D.Br. 25).

<sup>26</sup> In his brief, the defendant cites only to the transcript of his sentencing hearing to support his claim that he had a valid FID at the time of his LTC suspension (see, e.g., D.Br. 16).

<sup>27</sup> On May 16, 2016, the defendant filed a *pro se* motion to dismiss on grounds of possessing an "unexpired" FID and attached a copy of such FID to the motion (see S.R. 77-79). The court did not act on this motion to dismiss, presumably because the defendant was represented by counsel at the time (see S.R. 11-12). The FID attached to the motion indicates that the license was issued for an "indefinite" term (see S.R. 78). Notably, in 1998, the Legislature enacted sweeping firearms regulations which eliminated "indefinite" FID's and required any previously-issued FID to be renewed. See § 73(a) of St. 1998, c. 180, "An Act Relative to Gun Control in the Commonwealth". If the defendant, in fact, properly renewed his FID, and continued to do so every four to six years per the applicable regulations, a copy of said properly-renewed FID is not part of the record.

<sup>28</sup> Under the plain language of G.L. c. 140, § 131(f) and G.L. c. 140, § 129D, the licensing authority may require the surrender of an individual's firearms upon

as an affirmative defense at trial, which he did not do<sup>29</sup> (see Tr.I 12).

---

an LTC suspension **only "if said [FID] is not then in force."** G.L. c. 140, § 129D (emphasis supplied).

<sup>29</sup> In fact, possession of a valid FID would have been grounds for dismissal of four of the six charges under the plain language of G.L. c. 269, § 10(h)(1). See also Commonwealth v. Powell, 459 Mass. 572, 582 (2011) (It is well-settled that "the Commonwealth does not need to present evidence to show that the defendant did not have a license or FID card because the burden is on the defendant . . . to come forward with such evidence.").