

Exhibit B

SUPREME JUDICIAL COURT
for the Commonwealth
Case Docket

COMMONWEALTH vs. CARLOS GUARDADO
SJC-13315

CASE HEADER

Case Status	Decided, Rescript issued
Status Date	11/24/2023
Nature	Crime: Possession of Gun
Entry Date	07/29/2022
Appellant	Defendant
Case Type	Criminal
Brief Status	
Brief Due	
Quorum	Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, Georges, Jr., JJ.
Argued Date	09/11/2023
Decision Date	10/26/2023
AC/SJ Number	2022-P-0132
Citation	493 Mass. 1
DAR/FAR Number	
Lower Ct Number	
Lower Court	Middlesex Superior Court
Lower Ct Judge	Charles William Barrett, J.
Route to SJC	Sua Sponte Transfer from Appeals Court

ADDITIONAL INFORMATION

Transcripts received: 6 volumes. Transcript dates: 03/02/20, 05/27/21, 06/01/21, 06/02/21, 06/03/21 and 06/14/21.
Previous citation: 491 Mass. 666 (2023).

INVOLVED PARTY

Commonwealth
Plaintiff/Appellee
Red brief filed

Carlos Guardado
Defendant/Appellant
Blue br, app & reply br filed

Committee for Public Counsel Services
Amicus
Amicus brief filed

Massachusetts Association of Criminal Defense Lawyers
Amicus
On brief of another party

Attorney General
Amicus

ATTORNEY APPEARANCE

[Jamie Michael Charles, A.D.A.](#)
[Thomas D. Ralph, A.D.A.](#)

[Elaine Fronhofer, Esquire](#)

[Patrick Levin, Esquire](#)

[Chauncey B. Wood, Esquire](#)

[M. Patrick Moore Jr., A.A.G.](#)

DOCUMENTS

[Appellant Guardado Brief](#) 

[Appellant Guardado Substitute Brief](#) 

[Appellee Commonwealth Brief](#) 

[Appellee Commonwealth Substitute Brief](#) 

[Appellant Guardado Substitute Reply Brief](#) 

[Amici CPCS and MACDL Brief](#) 

[Appellant Guardado Post Argument Reply Brief](#) 

[Appellant Guardado Post Argument Brief](#) 

[Appellee Commonwealth Post Argument Brief](#) 

DOCKET ENTRIES

Entry Date	Paper	Entry Text
07/29/2022	#1	Entered.

08/02/2022	#2	Appellant brief filed for Carlos Guardado by Attorney Elaine Fronhofer. (Note: Substitute brief filed on September 7, 2022. See paper #12.)
08/02/2022	#3	Appendix filed for Carlos Guardado by Attorney Elaine Fronhofer.
08/02/2022	#4	Reply brief filed for Carlos Guardado by Attorney Elaine Fronhofer. (Note: Substitute reply brief filed on November 21, 2022. See paper #21.)
08/02/2022		The clerk's office has received the appellant's brief, appendix and reply brief through e-fileMA. The briefs and appendix have been accepted for filing and entered on the docket. The appellant shall file with the clerk 4 copies of the briefs and 3 copies of the appendix within 5 days. The clerk's office may require additional copies if necessary. (Substitute appellant's brief filed on September 7, 2022.)
08/02/2022	#5	Appellee brief filed for Commonwealth by Jamie Charles, A.D.A.. (Note: Substitute brief filed on November 1, 2022. See paper #16.)
08/02/2022		The clerk's office has received the appellee's brief through e-fileMA. The brief has been accepted for filing and entered on the docket. The appellee shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (Note: Cover of appellee's brief shall be red.)
08/04/2022	#6	Additional 4 copies of appellee's brief filed by Commonwealth.
08/05/2022	#7	ANNOUNCEMENT: The Justices are soliciting amicus briefs. Whether the trial judge properly declined to instruct the jury that the defendant was exempt from criminal liability for possession of a firearm "in or on his . . . place of business," G. L. c. 269, § 10 (a) (1), where the firearm was found in the defendant's car, which was parked in the parking lot of a retail store where he was employed but where he was not the owner or proprietor.
08/09/2022	#8	Motion to file substitute brief and to exceed the word limit filed for Carlos Guardado by Attorney Elaine Fronhofer.
08/25/2022	#9	ORDER: The appellant's motion is ALLOWED. The parties may file substitute briefs not to exceed 11,573 words on or before September 23, 2022.
08/29/2022	#10	Motion to extend to date for filing of appellee's brief filed for Commonwealth by Jamie Charles, A.D.A. (ALLOWED to November 4, 2022, for the reasons set forth in the motion.)
08/30/2022	#11	NOTICE of December argument sent.
09/07/2022	#12	Substitute Appellant brief filed for Carlos Guardado by Attorney Elaine Fronhofer.
09/08/2022		The clerk's office has received the appellant's substitute brief through e-fileMA. The brief has been accepted for filing and entered on the docket. The appellant shall file with the clerk 4 copies of the substitute brief within 5 days. The clerk's office may require additional copies if necessary. (Note: Cover of appellant's substitute brief shall be blue.)
09/12/2022	#13	Additional 4 copies of substitute appellant's brief filed by Carlos Guardado.
09/16/2022	#14	Additional 4 copies of appellant's reply brief and 3 copies of appendix filed by Carlos Guardado.
09/26/2022	#15	ORDERED for argument on December 5.
11/01/2022	#16	Substitute Appellee brief filed for Commonwealth by Jamie Charles, A.D.A.
11/01/2022	#17	Supplemental Appendix filed for Commonwealth by Jamie Charles, A.D.A..
11/01/2022		The clerk's office has received the appellee's substitute brief and supplemental appendix through e-fileMA. The brief and appendix have been accepted for filing and entered on the docket. The appellee shall file with the clerk 4 copies of the substitute brief and 3 copies of the supplemental appendix within 5 days. The clerk's office may require additional copies if necessary. (Note: Cover of appellee's substitute brief shall be red and supplemental appendix shall be white.)
11/07/2022	#18	Amici brief filed for Committee for Public Counsel Services & Massachusetts Association of Criminal Defense Lawyers by Attorneys Patrick Levin & Chauncey B. Wood.
11/08/2022		The clerk's office has received the amici brief through e-fileMA. The brief has been accepted for filing and entered on the docket. The amici curiae (Committee for Public Counsel Services & Massachusetts Association of Criminal Defense Lawyers) shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (NOTE: The cover of the amici brief shall be green).
11/08/2022	#19	Additional 4 copies of each appellee's substitute brief and supplemental appendix filed by Commonwealth.
11/09/2022	#20	Additional 4 copies of amicus brief filed by Committee for Public Counsel Services & another.
11/21/2022	#21	Substitute Reply brief filed for Carlos Guardado by Attorney Elaine Fronhofer.
11/21/2022		The clerk's office has received the appellant's substitute Reply brief through e-fileMA. The brief has been accepted for filing and entered on the docket. The appellant shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (Cover of reply brief shall be gray.)
11/25/2022	#22	Additional 4 copies of appellant's substitute brief filed by Carlos Guardado.
12/05/2022		Oral argument held. (Budd, C.J., Gaziano, J., Lowy, J., Cypher, J., Kafker, J., Wendlandt, J., Georges, Jr., J.). View Webcast
04/13/2023	#23	RESCRIPT (Full Opinion): The defendant's convictions on the indictments charging unlawful possession of a firearm, unlawful possession of ammunition, and unlawful possession of a loaded firearm are vacated and set aside, and the matter is remanded to the Superior Court for entry of judgments of not guilty on those indictments. The defendant's conviction on the indictment charging unlawful possession of a large capacity feeding device is affirmed. (By the Court)
04/18/2023	#24	Motion to extend time to file motion to reconsider and stay of rescript filed for Commonwealth by Jamie Charles, A.D.A. (ALLOWED to May 26, 2023)

- 05/09/2023 #25 Motion for time extension to file a motion for reconsideration filed for Carlos Guardado by Attorney Elaine Fronhofer. (ALLOWED)
- 05/09/2023 #26 Motion for Reconsideration or Modification filed for Carlos Guardado by Attorney Elaine Fronhofer.
- 05/24/2023 #27 Motion to Reconsider filed for Commonwealth by Jamie Charles, A.D.A.. (Paper copies were also filed.)
- 05/24/2023 #28 Motion to exceed page limit in motion to reconsider filed for Commonwealth by Jamie Charles, A.D.A.. (ALLOWED)
- 05/24/2023 #29 Letter in support of Commonwealth's motion to reconsider filed for Attorney General by M. Patrick Moore, A.A.G..
- 05/25/2023 #30 ORDER: It is ORDERED that the parties shall file memoranda not to exceed 10 double-spaced pages on or before June 5, 2023, on the following question: where a judge erroneously placed the burden on the defendant to produce evidence of license or authority, pursuant to G. L. c. 278, § 7, is the appropriate remedy an entry of judgment for the defendant, see Commonwealth v. Munoz, 384 Mass. 503 (1981), or a new trial, see Commonwealth v. Skinner, 408 Mass. 88 (1990)?
- 05/30/2023 #31 Motion to enlarge time to file memorandum ordered by Court filed for Carlos Guardado by Attorney Elaine Fronhofer. (The defendant's motion to enlarge time is ALLOWED; the parties' memoranda are due on or before June 13, 2023.)
- 06/13/2023 #32 MEMORANDUM of Law filed for Commonwealth by Jamie Charles, A.D.A..
- 06/13/2023 #33 MEMORANDUM of Law filed for Carlos Guardado by Attorney Elaine Fronhofer.
- 06/30/2023 #34 ORDER: This matter came before the court on motions for reconsideration and memoranda filed by the parties following this court's order dated May 25, 2023. The Commonwealth's motion for reconsideration is allowed in part. It is ORDERED that this matter is scheduled for oral argument on September 11, 2023. The parties shall file briefs on the following issue: whether the court should continue to hold that the remedy in Commonwealth v. Guardado, 491 Mass. 666, 686-687 (2023), for an erroneous jury instruction relieving the Commonwealth of the burden of proving absence of firearm licensure is vacatur of the conviction and remand for entry of a judgment of acquittal. See Commonwealth v. Munoz, 384 Mass. 503, 510 (1981). See also Commonwealth v. Beal, 474 Mass. 341, 353-354 (2016). Or, should the court consider the jury instruction, which conformed to controlling precedent at the time, to be trial error that results in vacatur of the conviction and remand for a new trial. See Commonwealth v. Repoza, 400 Mass. 516, 520, 522 (1987); Commonwealth v. Rembiszewski, 391 Mass. 123, 126, 135 (1984). See also United States v. Reynoso, 38 F.4th 1083, 1090-1091 (D.C. Cir. 2022). The appellant's brief is due on or before July 24, 2023; the Commonwealth's brief is due on or before August 11, 2023. Enlargements of time should not be anticipated. Disposition of the remaining issues raised in the motions for reconsideration shall follow at a later date.
- 06/30/2023 #35 ANNOUNCEMENT: The Justices are soliciting amicus briefs. Whether the court should continue to hold that the remedy in Commonwealth v. Guardado, 491 Mass. 666, 686-687 (2023), for an erroneous jury instruction relieving the Commonwealth of the burden of proving absence of firearm licensure is vacatur of the conviction and remand for entry of a judgment of acquittal. See Commonwealth v. Munoz, 384 Mass. 503, 510 (1981). See also Commonwealth v. Beal, 474 Mass. 341, 353-354 (2016). Or, should the court consider the jury instruction, which conformed to controlling precedent at the time, to be trial error that results in vacatur of the conviction and remand for a new trial. See Commonwealth v. Repoza, 400 Mass. 516, 520, 522 (1987); Commonwealth v. Rembiszewski, 391 Mass. 123, 126, 135 (1984). See also United States v. Reynoso, 38 F.4th 1083, 1090-1091 (D.C. Cir. 2022).
- 07/24/2023 #36 Appellant Post-Argument brief filed for Carlos Guardado by Attorney Elaine Fronhofer.
- 07/24/2023 The clerk's office has received the appellant's post-argument brief through e-fileMA. The brief has been accepted for filing and entered on the docket. The appellant shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (Note: Cover of appellant's post-argument brief shall be blue.)
- 07/28/2023 #37 Additional 4 copies of appellant's post-argument brief filed by Carlos Guardado.
- 08/03/2023 #38 Assented-to Motion to stay execution of sentence filed for Carlos Guardado by Attorney Elaine Fronhofer.
- 08/07/2023 #39 ORDER OF REFERENCE of Paper #38 (Assented-to motion to stay execution of sentence) to single justice for disposition. (By the Court)
- 08/08/2023 #40 Single Justice Decision on Order of Reference for Paper #38: "Upon consideration thereof, it is hereby ORDERED that the motion be, and hereby is, ALLOWED. (Gaziano, J)". (Please see SJ-2023-M008)
- 08/11/2023 #41 Appellee Post-Argument brief filed for Commonwealth by Jamie Charles, A.D.A..
- 08/11/2023 The clerk's office has received the appellee's post-argument brief through e-fileMA. The brief has been accepted for filing and entered on the docket. The appellee shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (Note: Cover of appellee's post-argument brief shall be red.)
- 08/17/2023 #42 Additional 4 copies of appellee's post-argument brief filed by Commonwealth.
- 08/29/2023 #43 Post-Argument reply brief filed for Carlos Guardado by Attorney Elaine Fronhofer.
- 08/29/2023 #44 Supplemental appendix filed for Carlos Guardado by Attorney Elaine Fronhofer.
- 08/29/2023 The clerk's office has received the appellant's post-argument reply brief and supplemental appendix through e-fileMA. The brief and appendix have been accepted for filing and entered on the docket. The appellant shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (NOTE: The cover of the reply brief shall be grey on the cover of the appendix shall be white.)
- 09/05/2023 #45 Additional 4 copies of appellant's post-argument reply and 3 copies of supplemental appendix filed by Carlos Guardado.
- 09/11/2023 Oral argument held. (Budd, C.J., Gaziano, J., Lowy, J., Cypher, J., Kafker, J., Wendlandt, J., Georges, Jr., J.). [View Webcast](#) 
- 09/11/2023 #46 Supplemental Citation filed for Commonwealth by Jamie Charles, A.D.A..
- 09/13/2023 #47 Post-argument Letter filed for Carlos Guardado by Attorney Elaine Fronhofer.

- 09/13/2023 #48 NOTICE: The video recording of the oral argument in this matter has been posted to the SJC YouTube archive. Subscribe and view: <https://www.youtube.com/c/massachusettsupremecourt>.
- 09/14/2023 #49 Supplemental Citation filed for Carlos Guardado by Attorney Elaine Fronhofer.
- 10/26/2023 #50 RESCRIPT (Full Opinion): The Supreme Judicial Court concludes that it erred when remanding to the Superior Court for entry of judgments of not guilty on the indictments charging unlawful possession of a firearm, unlawful possession of ammunition, and unlawful possession of a loaded firearm. Accordingly, that portion of the prior order is vacated and the matter is remanded to the Superior Court for a new trial on those indictments. (By the Court)
- 10/26/2023 #51 ORDER: The Commonwealth's motion for reconsideration is allowed with respect to certain modifications of the opinion in Commonwealth v. Guardado, 491 Mass. 666 (2023) (Guardado I).
- The following sentences appearing at 499 Mass. 668 are deleted:
- Because there is no constitutional right to possess a large capacity magazine, we affirm the defendant's conviction of unlawful possession of a large capacity feeding device. See Commonwealth v. Cassidy, 479 Mass. 527, 540, cert. denied, 139 S. Ct. 276 (2018), quoting District of Columbia v. Heller, 554 U.S. 570, 625 (2008) (right to bear arms "does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes").
- The following paragraph appearing at 491 Mass. 693 is deleted:
- Nonetheless, we decline the defendant's suggestion that we extend this holding to the crime of unlawful possession of a large capacity feeding device. See G. L. c. 269, § 10 (m). We previously have held that G. L. c. 140, § 131M, a statute that proscribes possession of large capacity feeding devices, "is not prohibited by the Second Amendment, because the right [to bear arms] 'does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes.'" Cassidy, 479 Mass. at 540, quoting Heller, 554 U.S. at 625. See Worman v. Healey, 922 F.3d 26, 30, 40 (1st Cir. 2019), cert. denied, 141 S. Ct. 109 (2020) ("Massachusetts law proscribing the sale, transfer, and possession of certain semiautomatic assault weapons and large-capacity magazines" does not violate Second Amendment). Accordingly, we conclude that the defendant was not entitled to an instruction that licensure is an essential element of unlawful possession of a large capacity feeding device.
- A footnote has been added after the following sentence appearing at 491 Mass 693:
- Accordingly, we conclude that the defendant's rights under the Second Amendment and his rights to due process were violated when he was convicted of unlawfully possessing ammunition although the jury were not instructed that licensure is an essential element of the crime.¹⁰
- The following footnote is added:
- 10 Because the defendant does not argue that absence of licensure is an essential element of the crime of unlawful possession of a large capacity feeding device, G. L. c. 269, § 10 (m), we do not reach that issue.
- With the exception of the issue discussed in Commonwealth v. Guardado, 493 Mass. 1 (2023) (Guardado II), released on this date, in all other respects the parties' motions for reconsideration are denied. The Reporter of Decisions has been notified, and a copy of the revised opinion will be issued to the parties on this date.
- 10/26/2023 #52 Copy of the revised opinion sent to the parties. (See entry 51).
- 11/24/2023 RESCRIPT ISSUED to trial court.

As of 11/24/2023 2:20pm