

No.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2026

NELSON C. MITCHELL,
Petitioner,

-v.-

COMMONWEALTH OF MASSACHUSETTS,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO
THE MASSACHUSETTS APPEALS COURT**

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QUESTION PRESENTED

Whether Massachusetts General Laws c. 140, § 131L(a), setting forth storage requirements for firearms, violate the Second Amendment as applied in this case because it unduly burdens the Second Amendment right of Petitioner Mitchell to maintain a firearm at the ready in his home for self-defense?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

Petitioner is unaware of any related cases pending in this Court.

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OPINION BELOW

The order of the Massachusetts Supreme Judicial Court denying further appellate review, reported at 496 Mass. 1113, was entered on December 11, 2025. Appendix C1. The memorandum and judgment of the Massachusetts Appeals Court are found in the Appendix at A1-A9.

JURISDICTION

The Supreme Judicial Court issued its order denying review on December 11, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Second Amendment to the United States Constitution provides:

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.

Article 1 of the Fourteenth Amendment to the United States Constitution provides:

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.

Massachusetts General Laws Chapter 140, Section 131L(a) provides:

It shall be unlawful to store or keep any firearm, rifle or shotgun including, but not limited to, large capacity weapons, or machine gun in any place unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable

by any person other than the owner or other lawfully authorized user. It shall be unlawful to store or keep any stun gun in any place unless such weapon is secured in a locked container accessible only to the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept if carried by or under the control of the owner or other lawfully authorized user.

...

The licensing authority shall deny the application or renewal of a license to carry, or suspend or revoke a license issued under this section if the applicant or licensee is unsuitable to be issued or to continue to hold a license to carry. A determination of unsuitability shall be based on reliable, articulable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety or a risk of danger to self or others.

STATEMENT

Petitioner Nelson C. Mitchell was arrested on May 25, 2022, and charged in a criminal complaint in the Springfield, Massachusetts, District Court. Mitchell was charged with improper storage of a firearm, in violation of G.L. c. 140, § 131L(a); assault and battery, in violation of G.L. c. 265, §13A(a); and assault and battery on a family member, in violation of G.L. c. 265, §13M(a). R.A. 23. His arrest and charges arose from a domestic incident at his home, to which the police were called. The police recovered a shotgun. The assault and battery charges were nolle prossed before trial. R.A. 7.¹

Mitchell moved to dismiss the improper storage count, arguing that the Massachusetts storage statute, G.L. c. 140, § 131L(a), as applied in this case,

¹“R.A.” refers to the Record Appendix in the Massachusetts Appeals Court. “Tr.” Refers to the trial transcript.

was inconsistent with the Second Amendment as interpreted in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). R.A. 11.

The district court denied the motion. R.A. 24-27. The court held that Mitchell's challenge to the charge "is limited to an 'as applied analysis.'" R.A. 25. The court then found "that the defendant's conduct in this case is not protected by the Second Amendment." R.A. 26. The court conceded that the Second Amendment protects "an authorized gun owner's ability to possess a firearm in the home." R.A. 26. But the court concluded that "the defendant was not in possession or control of the shotgun that was in the house while he was intoxicated in the backyard." R.A. 27. The court found that the storage requirement of G.L. c. 140, §131L (a), does not interfere with the ability of a licensed gun owner to keep a loaded firearm under his immediate control for self-defense, but that "the defendant's conduct is outside the scope of the Second Amendment and is not presumptively protected." R.A. 27.

Following a jury trial in Springfield District Court, the jury convicted Mitchell of violating G.L. c. 140, § 131L(a). II Tr. 158. Mitchell's motion for a required finding was denied. II Tr. 78, 81, 169-70. His renewed motion to dismiss under the Second Amendment was also denied. II Tr. 78, 82. Mitchell was sentenced to a \$ 1,000 fine, and his shotgun was not returned. II Tr. 174.

The Massachusetts Appeals Court affirmed. The Appeals Court held that "[t]o the extent the defendant asks us to interpret the firearms storage statute to be inapplicable to licensed gun owners whenever they are inside the home or within its

curtilage, we decline to do so. Such an expansive reading contravenes the statutory requirement that the firearm be under the owner or authorized user's immediate control” Mem. at 8 n.7. *See* Appendix A8. The Supreme Judicial Court denied Petitioner’s request for further appellate review. 496 Mass. 1113 (Table), Appendix C1.

A. The Evidence at Trial. Springfield Police Officers Michael Placanico and Guillermo Burgos responded to a disturbance call at the Mitchell home on June 19, 2022. Officer Placanico arrived at the residence and spoke in the living room with both Tiffany Mitchell (“Tiffany”), Petitioner’s spouse, and Alexandria Mitchell (“Alexandria”), his daughter. II Tr. 14. At some point, Tiffany left the living room. Placanico proceeded to the bedroom a few minutes later, where he found Tiffany. *Id.* Placanico testified:

Q. And when you approached the bedroom what did you see?

A. Tiffany was in there and there was a gun bag on the bed.

...

Q. What was Tiffany doing?

A. Standing by the bed.

Q. And you said that there was a bag on the bed, is that accurate?

A. Yes.

Q. What kind of bag did you believe it to be?

A. It was a gun bag.

...

Q. What was in the bag?

A. A shotgun.

II Tr. 15-17. He opened the bag and removed and secured the shotgun. II Tr. 16-17.

After Officer Burgos arrived, he searched for and located Petitioner Mitchell in the backyard. He placed Mitchell in his cruiser. II Tr. 46-47. Burgos took Mitchell's License to Carry Firearms ("LTC") and confirmed that the license was valid. II Tr. 66. Burgos learned that Petitioner Mitchell owned a shotgun. Id. Tiffany Mitchell also possessed a valid LTC. II Tr. 11.

Without giving Miranda warnings, Burgos asked Petitioner Mitchell where the shotgun was located. Mitchell refused to tell him. II Tr. 66-67. Burgos proceeded inside and headed to the bedroom. He testified:

Q. Who was in the [bed]room when you approached it?

A. Tiffany.

Q. And what was she holding?

A. The brown -- she was holding a brown bag and it had a shotgun inside of the brown bag.

Q. What kind of gun safe was in the bedroom? . . .

A. I did not see a safe.

Q. What happened next?

A. We -- Officer Placanico took the shotgun and made sure it was safe.

II Tr. 68.

B. The Appeals Court Decision. The Appeals Court affirmed by summary disposition. See Appendix. The court first determined that “a rational trier of fact could reasonably infer that the shotgun was not secured and was not under [Tiffany’s] control when the police arrived.” Mem. at 5. The court observed that after Tiffany was “out of his sight for two to three minutes, Placanico followed [her] into the bedroom and observed her standing at the bed, with a gun bag that contained the shotgun on the bed and no other items.” Mem. at 6. The officers observed “no gun safe or other securing container.” *Id.* The court continued: “The fact that the [Tiffany] was alone in the bedroom for only two to three minutes coupled with the absence of a gun safe or any visible locking mechanism supports a reasonable inference that the shotgun was not properly secured while it was unattended in the bedroom and outside of [Tiffany’s] control.” *Id.* The court found that Petitioner’s silence about the location of the shotgun “permit[ed] an inference that he knew the shotgun was not properly stored.” *Id.*

As to Petitioner’s as-applied challenge to Section 131L(a), the Appeals Court held that “[t]o the extent the defendant asks us to interpret the firearms storage statute to be inapplicable to licensed gun owners whenever they are inside the home or within its curtilage, we decline to do so. Such an expansive reading contravenes the statutory requirement that the firearm be under the owner or authorized user's immediate control” Mem. at 8 n.7; Appendix A8.

REASONS FOR GRANTING THE PETITION

I. G.L. C. 140, § 131L(A) VIOLATES THE SECOND AMENDMENT AS APPLIED IN THIS CASE, BECAUSE IT IMPERMISSIBLY RESTRICTS THE RIGHT TO KEEP A FIREARM IN THE HOME FOR SELF-DEFENSE

The Commonwealth brought this prosecution for improper storage under Section 131L(a) even though Petitioner Mitchell and his wife, Tiffany, possessed valid licenses to carry firearms, and were therefore entitled to maintain the shotgun in their home. The Commonwealth's theory was that the shotgun was unsecured in the Petitioner's bedroom for a brief period. Under *Bruen*, applying Section 131L(a) in these circumstances violates the Second Amendment.

This Court has recognized that "individual self-defense is 'the central component' of the Second Amendment right." *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008) (cleaned up). And in one's home, "the need for defense of self, family, and property is most acute." *Heller*, 554 U.S. at 628. Even accepting the Appeals Court's conclusion that the evidence was sufficient to establish that the shotgun was unsecured in the bedroom while under no one's control, punishing Petitioner with a felony conviction surely contravenes the Second Amendment in this case.

The Appeals Court held:

To the extent the defendant asks us to interpret the firearms storage statute to be inapplicable to licensed gun owners whenever they are inside the home or within its curtilage, we decline to do so. Such an expansive reading contravenes the statutory requirement that the firearm be under the owner or authorized user's immediate control

....

Mem. and Ord. at 8 n.7, Appendix A8.² To the contrary, Petitioner’s as-applied challenge prevails because under this Court’s reading of the right to have a firearm in the home for self-defense in *Heller* and *Bruen*, applying Section 131L(a) to an LTC holder present with an unlocked shotgun in his home is a violation of the Second Amendment, even though the law might be constitutionally applied in other circumstances (e.g., leaving a firearm unsecured in a vacant home).

Bruen requires the Court to revisit its decisions in *Commonwealth v. Reyes*, 464 Mass. 245 (2013), and *Commonwealth v. McGowan*, 464 Mass. 232 (2013). In *Reyes*, 464 Mass. 245 (2013), the Court distinguished the D.C. statute found unconstitutional in *Heller* and stated:

The storage statute [Section 131L(a)] plainly does not bar the defendant from carrying a firearm on his person or under his control without a trigger lock or the need to secure it in a locked container either inside or outside of a motor vehicle. See G. L. c. 140, § 131C (a)-(b) (specifically permitting gun owner holding class A license to carry to possess or carry firearm on his person for all lawful purposes). Here, as in [Commonwealth v.] Runyan, [456 Mass. 230 (2010)] the storage statute would not infringe on the defendant's Second Amendment right to self-defense because it only imposes storage restrictions where the firearm is not within the gun owner's possession or control.

² Having so ruled, the panel made the erroneous assertion that “the defendant asked us to consider only his argument concerning the sufficiency of the evidence” and not the constitutional claims. Mem. And Ord. at 7-8, Appendix A7. On the contrary, nowhere in Appellant’s argument to the panel did he issue such an invitation. Appellant simply told the panel that a favorable decision on his sufficiency challenge would obviate the need to consider the constitutional issues. But Appellant argued the constitutional issues as well and closed out his argument by addressing the as-applied challenge when time expired. See <https://www.ma-appellatecourts.org/docket/2024-P-0518> (Argument at 7:43 though 22:58), Appendix D1-D13.

464 Mass. at 258. In *McGowan*, 464 Mass. at 236-37, the Supreme Judicial Court faced the issue of “whether enforcement of § 131L (a) constitutes impermissible State infringement on an individual's right to keep and bear arms for self-defense in the home.” But *McGowan*, like *Reyes*, did not conduct the analysis later mandated by the Court in *Bruen*, where the Court explained that the initial question that must be considered is whether “the Second Amendment’s plain text covers an individual’s conduct,” because then the Constitution presumptively protects that conduct. The Second Amendment expressly encompasses the right to “keep and bear Arms.” Those subject to Section 131L(a) are surely “keep[ing]” arms—as was Mitchell—and the plain text of the Second Amendment as to keeping arms is not limited to one “carrying a firearm on his person or under his control.” *Reyes*, 464 Mass. at 258. The Second Amendment also applies to one keeping unsecured firearms in their home.

The “immediate control” test of *McGowan*, 464 Mass. at 236-37, is far too vague and nebulous to apply to a fundamental constitutional right, leaving prosecutors with too much leeway to throttle the exercise of the right to have a firearm at the ready in the home for self-defense. *Heller* repeatedly compared the Second Amendment right to keep and bear arms to the First Amendment’s free speech guarantee. 554 U.S. at 582, 595, 606, 618, 634-35. And *Bruen* emphasized that the constitutional right to bear arms for self-defense is not “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *Bruen*, 597 U.S. at 70, quoting *Rahimi v. City of Chicago*, 561 U.S.

742, 780 (2010). While it might be constitutionally permissible to impose Section 131L(a) requirements in other circumstances, it is unconstitutional to apply Section 131L(a) in this case, where two licensed residents were present in the family home.

The Commonwealth's arguments in the Appeals Court illustrate how open-ended the "immediate control" standard is. Implicitly conceding that Tiffany controlled the shotgun when she was present in the bedroom, the Commonwealth argued that Section 131L(a) was violated because Tiffany was present for a "few minutes" with the officers in the living room. II Tr. 14. Tiffany left the living room, and Officer Placanico did not follow her into the bedroom "right away," but joined her "two or three minutes" later. *Id.* There was no evidence as to the location or status of the firearm when Tiffany was in the living room, or in the two or three minutes that she was in the bedroom alone. And in any event, under the Commonwealth's reading, a homeowner with an unsecured handgun in her nightstand would need to apply a trigger lock before every visit to the bathroom. It is even unclear whether she would be permitted to fall asleep without locking the handgun.

In *Jackson v. City & Cty. of S.F.*, 746 F.3d 953, 962-63 (9th Cir. 2014) (applying pre-*Bruen* test for firearms regulations and finding that storage ordinance met that test), *cert. denied*, 576 U.S. 1013 (2015) (Thomas, J., dissenting from denial of certiorari) (considering the burden "significant" where residents are prohibited from keeping handguns operable for immediate self-defense via storage requirements), the Ninth Circuit found that a San Francisco ordinance similar to

Section 131L(a) implicated the Second Amendment right to self-defense in the home. The court stated:

In analyzing the scope of the Second Amendment, we begin with the list of "presumptively lawful" regulations provided by *Heller*. Section 4512 [the firearm storage ordinance] resembles none of them, because it regulates conduct at home, not in "sensitive places"; applies to all residents of San Francisco, not just "felons or the mentally ill"; has no impact on the "commercial sale of arms," and it regulates handguns, which *Heller* itself established were not "dangerous and unusual." 554 U.S. at 626-27.

746 F.3d at 962. After analyzing the historical evidence before it, the court concluded that "storage regulations . . . are not part of a long historical 'tradition of proscription,' we conclude that section 4512 burdens rights protected by the Second Amendment." *Jackson*, 746 F.3d at 963 (cleaned up; applying two-part pre-*Bruen* analysis).

In sum, the Second Amendment's plain text covers Mitchell's right to keep an unsecured firearm in his home outside his immediate control. Under *Reyes* and *McGowan*, the Supreme Judicial Court found a right to have an unsecured firearm in the home only if it is under one's possession or immediate control. *Reyes* and *McGowan* are inconsistent with both *Heller* and *Bruen*. This Court should grant the petition, vacate the judgment below, and remand the case to the Massachusetts courts to reevaluate *Reyes* and *McGowan* and "consider[] whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *United States v. Rahimi*, 602 U.S. 680, 692 (2024) *citing Bruen*, 597 U. S. at 26–31. "A court must ascertain whether the new law 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.’” 602 U.S. at 692, *citing Bruen*, 597 U.S. at 29.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Dated: March 11, 2026

Respectfully submitted,

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APPENDIX

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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

24-P-518

COMMONWEALTH

vs.

NELSON C. MITCHELL.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Following a jury trial, the defendant, Nelson C. Mitchell, was convicted of improper storage of a firearm in violation of G. L. c. 140, § 131L (a) (firearms storage statute).¹ On appeal, the defendant (1) argues that the evidence was insufficient to support the conviction, and (2) asserts facial and as-applied challenges to the constitutionality of the firearms storage statute. We affirm.

Background. 1. Trial. The jury could have found the following facts. Between 9 P.M. and 10 P.M. on June 19, 2022,

¹ The Commonwealth entered a nolle prosequi on one count of assault and battery, G. L. c. 265, § 13A (a), and one count of assault and battery on a household or family member, G. L. c. 265, § 13M (a).

Sergeant Michael Placanico and Officer Guillermo Burgos of the Springfield police department responded to a call about a disturbance at the defendant's home. On arrival, Placanico and Burgos entered the home through the unlocked front door and spoke with the defendant's wife and daughter in the living room. Burgos found the defendant in the backyard, detained him, and placed him in the back of a police cruiser. A records search revealed that the defendant had an active license to carry (LTC) and a valid firearms identification (FID) card, and that a shotgun was expected to be in the home. When Burgos asked the defendant to tell him the location of the shotgun, the defendant refused.

The officers then returned to the living room to speak with the wife and the daughter. During this conversation, the wife walked out of the living room, through the kitchen, and into a bedroom, out of the officers' sight. After two or three minutes, Placanico followed the wife into the bedroom and saw her standing beside the bed, on which there was a gun bag containing a shotgun. When Placanico entered the room, the wife was not holding anything. Neither the shotgun nor the gun bag had a lock attached or nearby. Placanico noted that the bedroom was small and contained only a bed and a dresser. Similarly, Burgos saw a bed, a couple of corner bookshelves, clothing, and the gun bag. Neither Placanico nor Burgos saw a gun safe in the

bedroom or any locking mechanism nearby. Placanico testified that there was nothing in the gun bag other than the shotgun. Placanico "cleared" the shotgun, ensured that it was safe, placed it back into the gun bag, and brought it to his police cruiser.²

2. Motion to dismiss. Before trial, the defendant filed a motion to dismiss the charge of improper storage of a firearm on the ground that the firearms storage statute infringed his right under the Second Amendment to the United States Constitution to possess a shotgun in his home for the purpose of immediate self-defense. Following an evidentiary hearing, the motion judge denied the motion in a well-reasoned written decision.³ The motion judge determined that the defendant had raised only an as-applied challenge and concluded that the firearms storage statute was not unconstitutional because the Second Amendment did not protect his conduct. As the motion judge explained, the Second Amendment protects "an authorized gun owner's ability to possess a firearm in the home." Here, however, "the defendant

² The police officers' interactions with the wife were captured on their body-worn camera footage, which was entered into evidence.

³ The motion judge was not the trial judge.

was not in possession or control of the shotgun that was in the house while he was intoxicated in the backyard."⁴

Discussion. 1. Sufficiency of the evidence. The defendant contends that there was insufficient evidence of improper storage of a firearm. In determining whether the evidence was sufficient to sustain a conviction, we ask "whether, after viewing the evidence in the light most favorable to the prosecution, 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). "A conviction may rest exclusively on circumstantial evidence, and, in evaluating that evidence, we draw all reasonable inferences in favor of the Commonwealth." Commonwealth v. Jones, 477 Mass. 307, 316 (2017). "Inferences 'need only be reasonable and possible and need not be necessary or inescapable'" (citation omitted). Commonwealth v. Gomez, 495 Mass. 688, 693 (2025).

"[T]o prove the offense of improper storage of a firearm, the Commonwealth must demonstrate that the defendant failed to [store or] keep the firearm 'secured in a locked container' or 'equipped with a tamper-resistant mechanical lock or other safety device,'" Commonwealth v. Lojko, 77 Mass. App. Ct. 82,

⁴ The jury did not hear testimony about the defendant's intoxication.

83-84 (2010), quoting G. L. c. 140, § 131L (a), "properly engaged so as to render such firearm inoperable by any person other than the owner or other lawfully authorized user." G. L. c. 140, § 131L (a). "The gun owner's obligation to secure the firearm in accordance with the statute arises only when the firearm is stored or otherwise outside the owner's immediate control." Commonwealth v. Runyan, 456 Mass. 230, 236 (2010).⁵

The defendant asserts that the Commonwealth did not meet its burden of proof because his wife, who also had valid LTC and FID cards, had control of the shotgun when she was in the bedroom before she presented it to the responding officers. We are not persuaded.

"[A] firearm is within the 'control' of its owner or authorized user only when that person has it sufficiently nearby to prevent immediately its unauthorized use." Commonwealth v. Patterson, 79 Mass. App. Ct. 316, 319 (2011). Here, a rational trier of fact could reasonably infer that the shotgun was not secured and was not under the wife's control when the police arrived. The wife spoke with Placanico in the living room for

⁵ The record belies the defendant's contention that the only evidence of ownership was "the prosecutor's objectionable leading question" regarding the results of the records query. The parties jointly stipulated that the defendant legally purchased a shotgun bearing a specified serial number, and the Commonwealth introduced the report identifying the shotgun confiscated from the defendant's home with a matching serial number.

"[a] few minutes," and then traveled through two rooms from the living room to the bedroom. After she was out of his sight for two to three minutes, Placanico followed the wife into the bedroom and observed her standing at the bed, with a gun bag that contained the shotgun on the bed and no other items. Both police officers observed the room to contain the bed, clothing, and a dresser or cabinet, but no gun safe or other securing container. See Commonwealth v. Reyes, 464 Mass. 245, 253-254 (2013) (listing safes, weapon boxes, locked cabinets, gun cases, lock boxes, and soft gun cases secured with padlocks as examples of statutorily acceptable secured containers). The fact that the wife was alone in the bedroom for only two to three minutes coupled with the absence of a gun safe or any visible locking mechanism supports a reasonable inference that the shotgun was not properly secured while it was unattended in the bedroom and outside of the wife's control. Moreover, after the officers confirmed that the defendant had active LTC and FID cards, and that he owned a shotgun, they asked the defendant about its location, and he refused to answer, thereby permitting an inference that he knew the shotgun was not properly stored. See Commonwealth v. Swartz, 343 Mass. 709, 713 (1962) (while not conclusive, consciousness of guilt may combine with other

evidence to support guilty finding).⁶ Accordingly, the evidence sufficed to prove beyond a reasonable doubt that the defendant improperly stored his shotgun.

2. Constitutional challenges. On appeal, the defendant asserts both a facial challenge and an as-applied challenge to the firearms storage statute. As to the former, he argues that the statute does not comport with the nation's history and tradition of firearm regulation. See New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 24 (2022) (Bruen) (applying text and history test to challenged regulation covered by Second Amendment). As to the latter, he argues that the statute unduly burdened his rights under the Second Amendment "to maintain a firearm at the ready in his home for self-defense." However, at oral argument, the defendant suggested that he agreed with the Commonwealth that the panel of this court was precluded from reaching either issue given the Supreme Judicial Court's decisions in Reyes, 464 Mass. at 257, and Commonwealth v. McGowan, 464 Mass. 232, 244 (2013). Although he preserved the

⁶ Evidence of the defendant's refusal to provide the location of the shotgun was admitted over his objection, and subject to a humane practice instruction regarding the voluntariness of the statement. The defendant does not challenge the statement's admissibility on appeal. Regardless of whether the statement was properly admitted, we may consider this evidence on the issue of sufficiency. See Commonwealth v. Sepheus, 468 Mass. 160, 164 (2014); Commonwealth v. Farnsworth, 76 Mass. App. Ct. 87, 98 (2010).

constitutional arguments, the defendant asked us to consider only his argument concerning the sufficiency of the evidence. Without accepting the proposition that we cannot reach the question whether McGowan and Reyes are consistent with the United States Supreme Court's subsequent decision in Bruen, and noting that the defendant's facial challenge is not properly before us in any event, see Commonwealth v. Hendricks, 452 Mass. 97, 98 n.1 (2008) (facial challenge to constitutionality of statute may not be asserted for first time on appeal); Commonwealth v. Chou, 433 Mass. 229, 237-238 (2001) (same), we accept the defendant's invitation not to address his constitutional claims.⁷

Judgment affirmed.

By the Court (Blake, C.J.,
Vuono, Meade, Massing &
Allen, JJ.⁸),



Clerk

Entered: September 15, 2025.

⁷ To the extent the defendant asks us to interpret the firearms storage statute to be inapplicable to licensed gun owners whenever they are inside the home or within its curtilage, we decline to do so. Such an expansive reading contravenes the statutory requirement that the firearm be under the owner or authorized user's immediate control, as discussed supra. See Patterson, 79 Mass. App. Ct. at 319.

⁸ The panelists are listed in order of seniority.

Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston

In the case no. 24-P-518

COMMONWEALTH

vs.

NELSON C. MITCHELL.

Pending in the Springfield District

Court for the County of Hampden

Ordered, that the following entry be made on the docket:

Judgment affirmed.

By the Court,

 , Clerk

Date September 15, 2025.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

DISTRICT COURT DEPARTMENT
SPRINGFIELD DIVISION
DOCKET NO. 2223CR03032

COMMONWEALTH

V.

NELSON MITCHELL

MEMORANDUM AND ORDER ON DEFENDANT'S MOTION TO DISMISS COUNT
THREE

1. *Introduction.* The defendant, Nelson Mitchell, is charged with assault and battery, assault and battery on a family or household member and improper storage of a firearm, in violation of M.G.L. c. 140, § 131L(a). He now moves to dismiss the charge of improper storage of a firearm, asserting the law improperly burdens the Second Amendment and fails the historical analysis under *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). The court conducted a hearing on March 13, 2023, which was supplemented by three disks of body worn camera footage and the application for criminal complaint. After hearing and review of the materials, the defendant's motion is DENIED.
2. *Facts.* On June 19, 2022, Springfield police officers G. Burgos and Jacob Martinez were dispatched to 1613 Parker Street for a domestic disturbance. Upon arrival they found the front window smashed, and entered the home via an unlocked front door, ultimately locating the highly intoxicated defendant in the backyard. After becoming aggressive, the defendant was placed in handcuffs while the officers continued with their investigation.
3. They spoke with the defendant's wife, Tiffany Mitchell, and their daughter, Alexzandria Mitchell who told them the defendant had become highly intoxicated and shoved his wife.

Mrs. Mitchell grabbed a pool stick for protection which the defendant attempted to grab from her.

4. Mrs. Mitchell screamed for help, and Ms. Mitchell ran to her mother in aid. The victims struggled with the defendant over the pool stick until he was able to pin his wife to the kitchen table with it. Mrs. Mitchell released her grip on the pool stick, and the defendant grabbed it striking the glass window of the front door, shattering it. At this point Mrs. Mitchell fled upstairs and called the police.
5. During their investigation officers learned that the defendant had an active license to carry and three registered firearms. Two were properly stored, and the third – a shotgun- was located unsecured behind a television where anyone could gain access to it.
6. *Analysis.* The defendant asks the court to dismiss the improper storage of a firearm charge on the grounds that the defendant’s conduct is constitutionally protected. He relies on *New York State Rifle & Pistol Ass’n Inc. v. Bruen*, 142 S. Ct. 2111 (2022), arguing that M.G.L. c. 140, §131L(a) improperly burdens the defendant’s rights under the Second Amendment. The court disagrees.
7. M.G.L. c. 140 §131L(a) “makes it unlawful to store a firearm that is not carried by or under the immediate control of the owner or authorized user unless the firearm is secured in a locked container or equipped with a safety device that renders the firearm inoperable by anyone other than the owner or authorized user.” *Commonwealth v. McGowan*, 464 Mass. 232 (2013).
8. The court finds that the defendant’s challenge to the charge is limited to an as applied analysis; an analysis as to whether the charge in this case should be dismissed and not whether the statute, itself, should be struck down in its entirety. *Chief of Police of Worcester v. Holden*, 470 Mass. 845, 860-861 (2015), citing *Hightower v. City of Bos.*, 693

F.3d 61, 81 (1st Cir. 2012). The defendant is limited to a challenge based on the application of the law in his case only. *Id.* Also see: *Ayotte v. Planned Parenthood of Northern England*, 546 U.S. 320 (2006) (a statute may be constitutionally invalid as to one set of facts and valid as to another).

9. Here the defendant's as applied challenge to the statute fails. Officers Burgos and Martinez were dispatched for a domestic disturbance. Upon arrival to the defendant's home, they were met by a shattered front window and entered the home finding the highly intoxicated defendant in the back yard. After becoming aggressive officers were forced to place him in handcuffs. They spoke with the defendant's wife, Tiffany Mitchell, and his daughter, Alexzandria Mitchell, who told the officers that the defendant had become highly intoxicated and shoved his wife. Tiffany Mitchell grabbed a pool stick for protection which the defendant attempted to grab from her.
10. She screamed for help and her daughter attempted to come to her aid. They grappled with the pool stick, but the defendant was able to pin his wife to the kitchen table with it before using it to shatter a pane of glass. The victims fled upstairs and called the police. Officers learned that the defendant had an active license to carry and three registered firearms. Two were properly stored, but the third, the shotgun, was improperly stored behind a television where anyone could have gained access to it.
11. *Bruen* holds that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct" and it is then the government's burden to justify the regulation. *New York State Rifle & Pistol Ass'n Inc. v. Bruen*, 142 S. Ct. 2111, 2129-2130. (2022). However, the court finds that the defendant's conduct in this case is not protected by the Second Amendment. The protected conduct would be an authorized gun owner's ability to possess a firearm in the home.

12. However, the defendant was not in possession or control of the shotgun that was in the house while he was intoxicated in the backyard. Such conduct is not protected by the Second Amendment. Because the storage requirement of M.G.L. c. 140, §131L (a) does not interfere with the ability of a licensed gun owner to keep a loaded firearm under his immediate control for self-defense, the defendant's conduct is outside the scope of the Second Amendment and is not presumptively protected. *Commonwealth v. McGowan*, 464 Mass. 232, 234 (2013).

13. *Conclusion.* For the foregoing reasons the defendant's as applied challenge to M.G.L. c. 140, §131L(a) fails and his motion to dismiss is DENIED.



Danielle L. Williams

Associate Justice

9.1.23

Dated:

496 Mass. 1113
(This disposition is referenced in the North Eastern
Reporter.)
Supreme Judicial Court of Massachusetts.
COMMONWEALTH

v.
Nelson C. MITCHELL

December 11, 2025

Reported below: [106 Mass. App. Ct. 1102 \(2025\)](#).

Opinion

Appellate review denied.

All Citations

496 Mass. 1113, 272 N.E.3d 1047 (Table)

1 [Case called at Runtime 00:09:28]

2 Mr. LEVCHUK: May it please the court, we have challenged the
3 constitutionality under the Second Amendment of the Massachusetts
4 firearm storage statute. Now, what --

5 THE COURT: Can I ask you a question before you start your
6 argument on that? Do you believe that the facial challenge was
7 preserved? Was that raised below?

8 MR. LEVCHUK: I believe the motion that was made was broad
9 enough to preserve the facial challenge. I will say, however --

10 THE COURT: Tell me how.

11 MR. LEVCHUK: Well, the motion that was filed, you know,
12 talked very generally about how the statute was completely
13 inconsistent in all respects with the nation's historical
14 tradition. It was not briefed extensively; but it was briefed
15 broadly enough to where the argument, it seemed to me, went
16 beyond --

17 THE COURT: So maybe it'd be more helpful if you really
18 addressed it as an as-applied challenge.

19 MR. LEVCHUK: I will do so, although, I would urge the court
20 not even to get there. Although we have done the challenge,
21 preserved the constitutional challenge, I believe my friend is
22 correct that in fact the Reyes decision from the Supreme Judicial
23 Court effectively precludes this court from reaching the
24 constitutional challenge.

25 THE COURT: Mr. Levchuk, the... You didn't include the

1 motion to dismiss in the appendix, so we had to request it. You
2 also don't have a transcript from the motion to dismiss hearing.
3 And Judge Williams said you only made, or counsel below only made,
4 an as-applied challenge. I've read the motions to dismiss several
5 times. And there's nothing in there that lends itself to a facial
6 challenge. The word "facial" doesn't appear in there. None of
7 the telltale signs of striking the law down in its -- section in
8 its entirety is in there. None of it's... It's not valid under
9 any circumstances. None of that language is in there. It's
10 purely an as-applied challenge, in that even the relief you
11 request is just dismissal of his case, not to strike down the
12 statute.

13 MR. LEVCHUK: It's true that that's all he requested. But
14 the... It seemed to me the arguments he made would leave no room
15 for the statute to apply, constitutionally.

16 THE COURT: The problem is you can't raise a facial challenge
17 for the first time on appeal.

18 MR. LEVCHUK: Understood. But --

19 THE COURT: And you didn't include a transcript.

20 MR. LEVCHUK: Understood.

21 THE COURT: Why is that?

22 MR. LEVCHUK: That transcript, it was just an oversight, Your
23 Honor.

24 THE COURT: That's a problem for the appellant.

25 MR. LEVCHUK: It is. But for reasons that I was going to get

1 into, which are the McGowan and Reyes decisions from the Supreme
2 Judicial Court, I think you can reach either a facial or
3 as-applied challenge. In both McGowan and Reyes, the Supreme
4 Judicial Court held that the storage log does not implicate the
5 Second Amendment, that it's not implicated at all because it
6 doesn't affect the ability of the -- of a gun owner to possess a
7 firearm for personal protection when it's within their personal
8 custody or control.

9 And having said that, both in McGowan and Reyes, I think this
10 court's precluded from reaching that issue. We are arguing it to
11 preserve it. But, simply, I don't think the court can, in effect,
12 overrule two SJC decisions. So that's where I am; that's actually
13 where I am on that.

14 I think the court should reverse the conviction, for
15 insufficient evidence. Essentially, what we have here is two
16 officers going into a house, responding to a domestic disturbance.
17 They enter the building, encounter the defendant's wife and his
18 daughter. There's a brief exchange. And at some point the
19 defendant's wife, Tiffany Mitchell, leaves and goes to a separate
20 room, the bedroom. She's there for two to three minutes,
21 according to Officer Placanico. And then he goes in, encounters
22 her in the bedroom, and sees her, you know, with a shotgun in a
23 bag on the bed.

24 THE COURT: And you don't dispute that your client is
25 outside, drunk?

1 MR. LEVCHUK: I'm sorry?

2 THE COURT: You don't dispute that your client is outside,
3 drunk?

4 MR. LEVCHUK: He is outside and, I would say, intoxicated.

5 THE COURT: Okay. So, because she has an LTC, your view is
6 that the evidence was insufficient.

7 MR. LEVCHUK: For that reason and others. She has an LTC.
8 So when the officer comes upon the shotgun, it is unlocked but in
9 the possession of someone who is licensed to possess and control
10 it.

11 THE COURT: Can you give us all the facts that... You say
12 she was in possession of that firearm.

13 MR. LEVCHUK: Well, when --

14 THE COURT: In the light most favorable to the Commonwealth.

15 MR. LEVCHUK: In the light most favorable to the
16 Commonwealth, Officer Placanico comes into the bedroom. The
17 firearm... She is standing over the bed, with the firearm on the
18 bed, in the case.

19 THE COURT: Maybe we should back up. When the police arrive,
20 she's not in the bedroom, is she?

21 MR. LEVCHUK: She is not.

22 THE COURT: She's in the living room.

23 MR. LEVCHUK: She's in the living room.

24 THE COURT: And there's no shotgun there. So she's not in
25 possession, custody, and control of the shotgun in another room.

1 MR. LEVCHUK: She is not; that is true. So... But she...
2 When she leaves the area where the police are, she is gone for two
3 to three minutes. Now, in two to three minutes, we don't know
4 what happened in the bedroom. We don't know where the shotgun
5 was. We don't know whether it was unlocked. It could have
6 been --

7 THE COURT: But we also know that there's nothing in the
8 bedroom that would indicate there was a storage safe or trigger
9 lock or any other mechanism that would satisfy the statute.

10 MR. LEVCHUK: Well, yeah, we know that; we do know that. On
11 the other hand, we do know that there was not a search of the
12 bedroom. Officer Burgos, who is a second officer, goes -- does
13 not even go into the bedroom, according to his own testimony.
14 He's never more than outside the door. Officer Placanico, when he
15 goes into the bedroom, he gives a very cursory look around. And
16 so there could have been, you know, any number of places. He did
17 not do a search or thorough search of the bedroom, by any means.
18 So --

19 THE COURT: So to think of what could have been, isn't that
20 looking at the evidence in the light most favorable to the
21 defendant?

22 MR. LEVCHUK: Well, it's not, in this case, because this is
23 circumstantial evidence. And the evidence... When you're
24 convicting based on circumstantial evidence, the evidence has to
25 exclude, it seems to me, the possibility of guilt. I mean,

1 here --

2 THE COURT: That's --

3 MR. LEVCHUK: -- we have --

4 THE COURT: That's incorrect.

5 MR. LEVCHUK: Well, we have no idea what's going on in that
6 bedroom.

7 THE COURT: We don't have to exclude hypotheses of innocence.

8 MR. LEVCHUK: You don't have to exclude hypotheses of
9 innocence. But where there are two -- there are competing things
10 that could have happened --

11 THE COURT: Well, if there was a gun safe or a trigger lock
12 mechanism on the bed, that may be true. But why isn't it, in the
13 light most favorable to the Commonwealth, a fair inference that
14 the gun was unsecured while she was in the living room and
15 remained unsecured when she went into the bedroom?

16 MR. LEVCHUK: Because that's not an inference. It seems to
17 me it's a guess. We just... There's no evidence. In other
18 words, you have to take the evidence in the light most favorable
19 to the Commonwealth.

20 THE COURT: It's an inference.

21 MR. LEVCHUK: But an inference from nothing, an inference
22 from absolutely no evidence.

23 THE COURT: An inference that there is nothing in the room
24 that indicated she had an ability to secure the shotgun.

25 MR. LEVCHUK: That's a guess, not an inference, because there

1 was no search of that room.

2 THE COURT: Again, this goes to Justice Massing's point: that
3 doesn't view the evidence in the light most favorable to the
4 Commonwealth.

5 MR. LEVCHUK: There... But you have to view evidence in the
6 light most favorable to the Commonwealth. We are now viewing the
7 absence of evidence in the light most favorable --

8 THE COURT: Isn't it possible that it wasn't secured in the
9 bedroom?

10 MR. LEVCHUK: Is it possible? Sure.

11 THE COURT: Don't inferences only need to be reasonable and
12 possible?

13 MR. LEVCHUK: No. They need to have some basis in evidence
14 and in fact. And there's nothing.

15 THE COURT: That's wrong, too.

16 MR. LEVCHUK: In two or three minutes, that firearm...
17 Anything could have been done to that firearm. It could have been
18 taken out from under the bed, from a closet, from anywhere. You
19 can look at the videos, which are -- have been lodged with the
20 Commonwealth, or lodged with the court by the Commonwealth. And
21 you can look around that room. It is not in a well-kept state.
22 And that firearm could have been anywhere. And what you're
23 doing --

24 THE COURT: Let me ask --

25 MR. LEVCHUK: -- is saying --

1 THE COURT: If I interrupt you for a second, ask you a
2 question, assuming that we agree that at the time that the police
3 officers walk into the bedroom -- that the wife had possession and
4 control of that firearm: but was she authorized?

5 MR. LEVCHUK: I'm sorry?

6 THE COURT: Was she authorized to have possession or control
7 of that firearm? In other words, the firearm is owned by your
8 client, who is outside, arguably or maybe not even arguably does
9 not have possession or control at that time.

10 MR. LEVCHUK: Right.

11 THE COURT: Right? So just because she has a license to
12 carry, and even an FID card, how does that make her authorized
13 over that firearm, to have possession and control over that
14 firearm?

15 MR. LEVCHUK: Well, and it's in... I am aware of no case and
16 I believe there is none in which someone with a license to carry a
17 firearm has been found to be illegally in possession of a firearm
18 because the title to the firearm was in someone else's name. I
19 mean, that's just not the law.

20 THE COURT: All right.

21 MR. LEVCHUK: So I think she is entitled to have that firearm
22 in her possession. But in the end, it still comes down to: we
23 don't know what happened in that bedroom for the time she was
24 gone. The officers were there on a domestic. If they had been...
25 You know, they weren't obviously focused on doing a firearms

1 investigation and doing a thorough review of that room. And so,
2 you know, we're just left to guess. And that's why I say I think
3 the evidence is... In the light most favorable to the
4 Commonwealth, there's just no evidence, admissible evidence or
5 even circumstantial evidence.

6 THE COURT: What's your closest case under the statute, to
7 the facts, under conviction for improper storage?

8 MR. LEVCHUK: I don't think I have a case like this, because
9 I don't think the... I... I'll put it to you this way: I don't
10 think this case would have been brought, but for the domestic
11 disturbance. This is not a case where the Commonwealth... It
12 seems to me, in cases... Any case I've seen would normally
13 charge, you know, a failure to store by a violation. You know,
14 this is a case where we have... You know, they're there for the
15 disturbance. Their primary goal is to secure those weapons and
16 make sure they're cleared and not dangerous. And so there's
17 nothing that I was able to find which is like this, which suggests
18 to me that this is sort of out-there.

19 And I think the Commonwealth, to its credit, I mean, they
20 recognized that this was an issue. I think at some... During
21 Officer Burgos's testimony, I think they argued at one point that
22 this might be a joint venture between Mrs. Mitchell and her
23 husband, to try to get in statements that she may have made. And
24 so it's a real issue as to whether... You know, I think they
25 understood it, and I don't think it would have been charged

1 outside the context in which we find ourselves.

2 Going back to the Second Amendment, I'll just note that, you
3 know, in an as-applied challenge it is a case where this was a
4 firearm of the sort that can be kept in the home for personal
5 protection. And while, as the Commonwealth points out in their
6 brief, in Heller, I believe they said, they don't... You know,
7 they weren't excluding laws allowing for the securing-firearms.
8 You know, in our view, the law in this particular case is applied,
9 you know, sort of well beyond, it seems to me, what the Second
10 Amendment would allow.

11 THE COURT: This statute is essentially, right, a firearms
12 regulation that is listed presumptively under Heller as a lawfully
13 regulatory mean. And I think Rahimi reaffirmed that, right?

14 MR. LEVCHUK: Rahimi didn't really go there. Was... Rahimi
15 dealt with --

16 THE COURT: But Rahimi says in Heller the Supreme Court's
17 inquiry into the scope of the Second Amendment began with
18 constitutional text and history. That sets the stage for the
19 regulatory list that Heller sets forth as still being
20 constitutional under the Second Amendment.

21 MR. LEVCHUK: Well, I don't know that Heller... I would push
22 back, that Heller gave a regulatory list. I mean, Heller gave a
23 two-part --

24 THE COURT: I'm sorry; it was Bruen that gave the regulatory
25 list.

1 MR. LEVCHUK: Well, it's not even a... I don't know that
2 they were seeking to pronounce broad dicta on what is and what
3 isn't constitutional.

4 THE COURT: I agree; there's not a bullet-point list, right?

5 MR. LEVCHUK: Right.

6 THE COURT: But Bruen's directed the courts to examine our
7 historical tradition of firearm regulation to delineate the
8 contours of that right.

9 MR. LEVCHUK: Right.

10 THE COURT: So is this a firearm regulation?

11 MR. LEVCHUK: Yes. In other words... And that's where --

12 THE COURT: And is there a SCOTUS case that says that
13 improper storage of a firearm is a burden on a citizen's Second
14 Amendment right.

15 MR. LEVCHUK: Not yet. But --

16 THE COURT: Thank you for your honesty.

17 MR. LEVCHUK: Yeah, I... It's coming. But I will say, I
18 mean, what... I mean, the --

19 THE COURT: Justice Thomas...

20 MR. LEVCHUK: The... In the opinion here, it says when the
21 Second Amendment's plain text covers an individual's conduct, the
22 Constitution presumptively protects that conduct. Now, McGowan
23 and Reyes found, well, the conduct's not protected or is not
24 implicated, the Second Amendment isn't implicated, because it
25 doesn't affect someone's right to possess a firearm for

1 self-defense. I don't think --

2 THE COURT: Mr. Levchuk, unfortunately, we're going to have
3 to leave it there, unless the panel has any other questions. I
4 want to make sure -- if Justice Allen has any questions.

5 Justice Massing?

6 MR. LEVCHUK: Thank you.

7 THE COURT: Thank you very much.

8 [End of argument at Runtime 00:24:56]

C E R T I F I C A T I O N

I, Quaverly H. Rothenberg, stenographer, approved court transcriber, and notary public, do hereby certify that the foregoing is a true and accurate record of the proceedings in the above-entitled matter.

I further certify that the foregoing is in compliance with the Massachusetts Administrative Office of the Trial Court Directive on Transcript Format.

I further certify that I neither am counsel for, related to, nor employed by any of the parties to the above entitled matter and that I am not financially nor otherwise interested in the outcome.



October 28, 2025

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Time stamp(s) of indiscernible word(s):

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COMMENTS:

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