

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS

DISTRICT COURT DEPARTMENT
BARNSTABLE DISTRICT COURT
No. 0825 CR 2026

COMMONWEALTH

VS.

RICHARD R. BOLDUC

DECISION

The facts of the instant case are not in dispute and are drawn from the memoranda filed by the parties. On Wednesday, June 25, 2008 at approximately 7:25 p.m. Sergeant Murphy of the Sandwich police department responded to 50 Great Hill Road. Upon his arrival he met the defendant's son, 12 year old Owen Bolduc, and asked him if he had a gun. Owen stated that he had been in possession of his father's gun and had returned it to his father's bureau drawer. His father was not at home. Owen took Murphy to his father's bedroom. Murphy opened the drawer and observed a Sig Sauer P226 .40 caliber handgun. The gun had no trigger lock, the slide was forward, there was no round in the chamber and the magazine was not in the gun. Sergeant Murphy took possession of the gun. Richard Bolduc, the defendant and Owen's father, is a member of the Massachusetts State police. He was subsequently charged with a violation of G.L. c. 140 sec. 131L. On November 24, 2008 the defendant filed a motion to dismiss the complaint. A hearing was conducted pursuant to the motion on February 4, 2009.

In his motion, the defendant asks the Court to find that G.L. c.140 sec.131L is unconstitutional based on *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008), in which the United States Supreme Court determined that the trigger lock requirement provision contained within a District of Columbia statute violated the Second Amendment of the United States Constitution. The D.C. statute mandated that any firearm kept in the home be "unloaded and disassembled or bound by a trigger lock or similar device...";

thus rendering it inoperable. D.C. Official Code, sec.7-2502.02. The Court held that such a restriction on firearms in the home "makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional." *Heller*, supra, at 2818.

The Massachusetts statute states that "(i)t shall be unlawful to store or keep (*emphasis supplied*) any firearm, rifle or shotgun...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." G.L. c.140 sec.131L. The locking mechanisms are the functional equivalent of those enumerated in the D.C. statute struck down in *Heller*.

In *Heller*, the Court held that the Second Amendment not only protects an individual's right to possess firearms but that the right requires that the firearms be available for "the purpose of immediate self-defense". *Heller*, at 2822. The Massachusetts statute mandating lock boxes or similar devices would frustrate an owner's ability to immediately access an operable weapon.

Although the statute exempts firearms that are "carried" or "under the control of the owner" from the requirement that they be locked, the statute applies to the lawful owner of a firearm even when he is at home. People can be subject to prosecution whether they are home or not. The term "under the control of the owner" is a question of fact and subject to interpretation. Any ambiguity in the statute as applied to a person lawfully keeping a firearm in the home must be resolved in favor of the holder of the right. Legislation requiring an owner to store firearms in a place inaccessible to children or unauthorized persons would satisfy the Supreme Court's holding in *Heller* and protect the safety of others.

In light of the foregoing, the Court finds that, based on the Supreme Court's decision in *District of Columbia v. Heller*, G.L.c. 140, sec. 131L is unconstitutional. Accordingly, the motion to dismiss is ALLOWED.

Joan E. Lynch, Justice

February 19, 2009