



Future of state's gun laws hangs in balance

Local bar has eye on Supreme Court ruling

By Jack Dew

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At any other time, the Supreme Judicial Court's ruling in *Commonwealth v. Runyan* would be considered groundbreaking and precedent setting, resolving a running dispute between the U.S. Supreme Court and state judges about the storage of firearms.

But attorneys instead view the March 10 decision as a temporary bubble protecting the state's gun restrictions, soon to be popped by the Supreme Court when it decides *McDonald v. Chicago*, a challenge to that city's handgun prohibition.

"Unless some of the more recent appointees suddenly go off the court and President Obama gets to name some more liberal appointees, the *McDonald* court is going to say that the Second Amendment is applicable to the states by means of the due process clause of the 14th Amendment," said Edward F. George Jr., the Malden attorney who represented the defendant and Gun Owners Action League in *Runyan* before the SJC.

That ruling, said Ladd Everitt of the Coalition to Stop Gun Violence in Washington, D.C., means "you are going to see a challenge to everything" at the state level, from gun storage laws to permitting policies to bans on assault rifles.

Defense attorneys, prosecutors and those concerned with gun rights and safety had been closely watching the *Runyan* case since it surfaced in Lowell District Court. In light of the Supreme Court's decision in *District of Columbia v. Heller* in 2008, they expected the SJC to be forced to decide whether Massachusetts' law requiring guns to be stored with a trigger lock, G.L.c. 140, §131L, was constitutional.

But the SJC somewhat sidestepped the issue because *Heller* did not conclude that the Second Amendment applies to the states. The judges also ruled that 131L is sufficiently distinguishable from the Washington, D.C., statute because it does not require gun owners to keep their weapons inoperable at all times, suggesting the statute was not necessarily barred by the Supreme Court's ruling.

But in a footnote, the SJC acknowledged that that question is far from decided.

"We note that the Court in *Heller* ... declared that its analysis should not be taken to 'suggest the invalidity of laws regulating the storage of firearms to prevent accidents,'" Justice Ralph D. Gants wrote for the court. "We do not, however, decide whether the defendant's alleged violation of G.L.c. 140 §131L (a), could survive a motion to dismiss if the Second Amendment were made applicable to the States

through incorporation under the Fourteenth Amendment's due process clause."

That, George said, means there was no clear winner in Runyan: The Supreme Court will soon decide that the Second Amendment applies to the states, and the question will have to be argued all over again.

"The law will get attacked as unconstitutionally vague," George said. "As the expansion [of state power] comes closer and closer to you and says you must use X, Y or Z method of storage, it becomes more and more unconstitutional, and I think the Heller court made that clear."

But it remains to be seen, Everitt said, how far McDonald will go to restrict the states' ability to regulate gun ownership.

"Since Heller, there have been many challenges, but most laws have stood the test, and I'm not sure that [McDonald] will get into enough substantive discussion to really change that," he said.

The 12-page Runyan decision is Lawyers Weekly No. 10-047-10. [The full text of the ruling can be found by clicking here.](#)

McDonald had a lawsuit

The Supreme Court heard oral arguments in McDonald on March 2. Just as in Heller, the court is expected to come down on the side of gun rights and to conclude that the Second Amendment applies to state and local laws through the due process clause of the 14th Amendment.

"I think it's going to be 6 to 3," predicted Springfield attorney and gun owner Greg T. Schubert, who has filed a lawsuit against police for detaining him when an officer spotted Schubert's holstered handgun - for which he has a permit - under his suit coat.

Schubert said the question will then become how the state's various gun laws fit under the Second Amendment. If one person in the home has the necessary permits to own a gun and another does not, and the gun is unlocked, is that a violation?

"If McDonald comes down as I think it will, I think I'm protected if police come and search my house," Schubert said. "But under Runyan, you could regulate the right to have a gun inside one's own home. That would be like passing an ordinance saying you can't smoke in your own home, and that seems like too much of an extension."

Still, Schubert said, the Runyan decision is bad for his lawsuit because "it is essentially the SJC saying that guns are just bad." His case had already been rejected by the U.S. District Court, and he has now decided not to appeal that decision.

Brenden J. McMahan of The Law Offices of Richard A. Lalime in Lowell represented defendant Richard Runyan. For his client, the SJC's decision means a return to District Court where he faces prosecution on a single count of improper storage of a firearm. Though the looming McDonald decision could give his client a second chance at dismissal, McMahan says he is instead pursuing a motion to suppress based on the search of the residence.

"But there are defendants out there who are really waiting on this question of whether or not the local trigger law applies," McMahan said.

Even if the Supreme Court sides with gun owners in McDonald, the SJC could still argue that the decision does not strike down Massachusetts' gun laws, he added. "The question will then become whether these cases are ripe for certiorari. If there are several out there that address this issue, I think they probably are."

McMahan said it is not a given that the Supreme Court will "throw out every statutory restriction on gun ownership in every state. I don't think they will do that, and I don't think it would make any sense to do that. But I am interested to see how far they will go. You have the right to have a gun, but is it an absolute

right, or can they make reasonable restrictions?"

Questions looming

State Rep. David P. Linsky, D-Natick, said Heller may be the leading authority on gun storage laws, but he does not read it to be as far-reaching as gun-rights advocates do.

"I read Heller as saying that the right to keep and bear arms ... is not a totally unlimited right," said Linsky, a lawyer at Denner Pellegrino in Boston. "That gives the Massachusetts Legislature the authority to put in reasonable restrictions, and [the SJC] was not prepared to say that the Massachusetts gun laws are unreasonable restrictions in light of Heller."

Linsky said he expects the Legislature to implement further regulations, and he is still championing bills that would limit people to one gun purchase per month and require "microstamping" on ammunition to make it easier for law enforcement to trace guns used in crimes.

"I can't believe that a court would say that it would be an unreasonable restriction to only purchase one gun a month, and I can't believe that microstamping wouldn't be considered a reasonable restriction," he said.

Roscoe J. Mutz, an attorney in George's Malden office, said the SJC seemed to take a very restrictive view of gun rights that he expects will be contradicted by the Supreme Court, paving the way for future challenges.

"We spent a lot of time on the brief talking about who is an authorized user under the statute and arguing that family members in the home should be able to use firearms in self defense," Mutz said.

The SJC seemed unresponsive to that argument, which foreshadows several challenges in light of McDonald.

Everitt, of the Coalition to Stop Gun Violence, suggested, however, that the Supreme Court's changes will not lead to radical reform. In Heller, the justices listed several restrictions on gun ownership that would pass constitutional muster, such as the ban on carrying concealed weapons.

"If you look closely at Heller, D.C.'s storage law was by all accounts written very poorly and in a way that seemed to suggest that guns had to be unloaded and trigger-locked or disassembled, and there was no self-defense exemption in the text of the law," Everitt said. "Looking back, D.C. could have saved itself a great deal of pain by clarifying the law before it went to the Supreme Court."

For more information about the judge mentioned in this story, visit the Judge Center at www.judgecenter.com.