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SJC-13148

COMMONWEALTH vs. EDWARD FLEURY.

Hampshire. December 8, 2021. - March 31, 2022.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt,
& Georges, JJ.

Firearms. Evidence, Firearm. Search and Seizure, Return.
Forfeiture Proceeding. Statute, Construction. Words,
"Store," "Keep."

Indictments found and returned in the Superior Court Department on December 16, 2014.

A motion for return of property, filed on September 1, 2020, was considered by John A. Agostini, J., and a motion for reconsideration was heard by him.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Thomas E. Robinson for the defendant.
Cynthia M. Von Flatern, Assistant District Attorney, for the Commonwealth.

GEORGES, J. This case presents the question whether firearms found to be improperly secured, according to the requirements of G. L. c. 140, § 131L, are subject to forfeiture

under G. L. c. 276, § 3 (b), which regulates the disposal of certain firearms seized during the execution of a search warrant. For the foregoing reasons, we conclude that they are not. Accordingly, the Superior Court judge's order allowing the forfeiture must be vacated and set aside.

1. Background. The facts are undisputed; in reciting them, we reserve some details for further discussion. In 2014, Edward Fleury, a former chief of police and firearms instructor, was charged with assault by means of a dangerous weapon following an altercation with a friend. Police obtained a search warrant to search Fleury's home for the firearm allegedly used in the altercation. During the search, officers found that some of the firearms in Fleury's extensive collection, which featured over 240 firearms, appeared to be improperly secured, in violation of G. L. c. 140, § 131L. Fleury subsequently was indicted on twenty-seven counts of improperly securing a firearm, one count for each gun the Commonwealth alleged had been secured improperly.

The indictments were divided into two groups, and the Commonwealth proceeded against Fleury at two separate trials. Fleury ultimately was acquitted of the assault and of fifteen of the twenty-seven counts of improperly securing a firearm. He was convicted of the twelve charges relating to the other twelve firearms, each of which was a "large capacity" firearm within

the meaning of G. L. c. 140, § 121, which provides definitions for key terms used throughout G. L. c. 140, §§ 122 to 131Y.¹

After Fleury had exhausted all avenues of appellate review of his convictions,² he moved under Rule 61 of the Rules of the Superior Court³ for the return of all twenty-seven of the seized firearms to a person designated to sell them on his behalf. A designee was necessary because, due to his convictions, Fleury is no longer authorized to possess a firearm or to permit the storage of a firearm in his home, see discussion, infra.

The Commonwealth agreed to return the firearms seized during the execution of the search warrant, except for the twelve that had been found to have been improperly secured in violation of G. L. c. 140, § 131L. In reaching this position, the Commonwealth relied on the view that G. L. c. 276, § 3 (b),

¹ A "large capacity weapon" is "any firearm, rifle or shotgun: (i) that is semiautomatic with a fixed large capacity feeding device; (ii) that is semiautomatic and capable of accepting, or readily modifiable to accept, any detachable large capacity feeding device; (iii) that employs a rotating cylinder capable of accepting more than ten rounds of ammunition in a rifle or firearm and more than five shotgun shells in the case of a shotgun or firearm; or (iv) that is an assault weapon." G. L. c. 140, § 121.

² See Commonwealth v. Fleury, 97 Mass. App. Ct. 1123 (2020), cert. denied, 141 S. Ct. 2517 (2021).

³ Rule 61 provides that "[m]otions for the return of property . . . shall be in writing, shall specifically set forth the facts upon which the motions are based, shall be verified by affidavit, and shall otherwise comply with the requirements of Mass. R. Crim. P. 13."

which pertains to certain weapons seized during the execution of a search warrant, covers firearms that are not stored according to the requirements of G. L. c. 140, § 131L. A Superior Court judge agreed with the Commonwealth and ordered that the twelve firearms be forfeited and destroyed. The judge also denied Fleury's motion for reconsideration. Fleury appealed, and we transferred this case from the Appeals Court on our own motion.

2. Statutory overview. The issue here hinges on the relationship between the forfeiture statute, G. L. c. 276, § 3, and the storage statute, G. L. c. 140, § 131L.

The forfeiture statute contains guidance for the forfeiture of property seized during the execution of a search warrant. A version of the statute first was enacted in 1836, see R.S. 1836, c. 142, § 5; after more modest amendments, the statute was substantially amended in 1964, to a form very similar to the language that remains today, see St. 1964, c. 557, §§ 1-4. The statute last was amended in 1996, when the Legislature modified subsection G. L. c. 276, § 3 (b), in a manner not relevant to this case. See St. 1996, c. 151, § 497. General Laws c. 276, § 3 (b), provides:

"Rifles, shotguns, pistols, knives or other dangerous weapons which have been found to have been kept, concealed or used unlawfully or for an unlawful purpose shall be forfeited to the commonwealth and delivered forthwith to the colonel of the state police for destruction or preservation in the discretion of the colonel of the state police" (emphasis added).

The storage statute was enacted in 1998, two years after the forfeiture statute was last amended. See St. 1998, c. 180, § 47. General Laws c. 140, § 131L (a), states:

"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. . . . 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." (Emphases added.)

3. Discussion. In the Commonwealth's view, the twelve firearms that were found to have been improperly secured, in violation of G. L. c. 140, § 131L, are covered by the provision of G. L. c. 276, § 3 (b), mandating forfeiture of firearms "found to have been kept . . . unlawfully." Fleury argues, by contrast, that the forfeiture statute is applicable only to firearms that were possessed or used unlawfully, and not, like the storage statute, to firearms lawfully possessed but unlawfully stored.⁴ The question before us, then, is whether the Legislature intended that firearms found to be improperly

⁴ The Commonwealth does not allege that Fleury unlawfully "used" or "concealed" his firearms, and therefore those provisions of the forfeiture statute have no bearing on this case.

secured under the storage statute be subject to forfeiture under the forfeiture statute.

a. Standards of review. As with all questions of statutory interpretation, we exercise de novo review.⁵ See People for the Ethical Treatment of Animals, Inc. v. Department of Agric. Resources, 477 Mass. 280, 285-286 (2017).

"[A] statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated" (citation omitted). Commonwealth v. Figueroa, 464 Mass. 365, 368 (2013). "If the language is clear and unambiguous, we 'must give effect to its plain and ordinary meaning and . . . need not look beyond the words.'" Shaw's Supermkts., Inc. v. Melendez, 488 Mass. 338, 341 (2021), quoting Doherty v. Civil Serv. Comm'n, 486 Mass. 487, 491 (2020).

⁵ Fleury argues that the Appeals Court's decision in Commonwealth v. Salmons, 96 Mass. App. Ct. 61 (2019), entitles him to a "strong presumption that [he] is entitled to the return of his property." Salmons, however, is inapplicable to this case. There, the property in question was unlawfully seized during a warrantless search, and accordingly was not subject to G. L. c. 276, § 3. This distinction, between "lawful seizure of property pursuant to a warrant" and property "unlawfully seized without a warrant," was made explicitly by the Appeals Court in its decision. See Salmons, supra at 68.

Where the language of a statute is ambiguous, however, we may seek guidance from "extrinsic sources, including the legislative history and other statutes, for assistance in our interpretation." Chandler v. County Comm'rs of Nantucket County, 437 Mass. 430, 435 (2002). We interpret statutes "not alone according to their simple, literal or strict verbal meaning, but in connection with their development, their progression through the legislative body, the history of the times, [and] prior legislation" (citation omitted). Guardianship of B.V.G., 474 Mass. 315, 321 (2016).

Here, the plain language of the contested provisions is ambiguous regarding the statutes' relationship to each other. A thorough examination of both statutes in their entirety, however, convinces us that the Legislature did not intend to make improperly secured firearms subject to automatic forfeiture under G. L. c. 276, § 3 (b).

b. Plain language. At first glance, the plain language of the forfeiture statute would seem to encompass improper storage of a firearm. The statute authorizes forfeiture of firearms "found to have been kept . . . unlawfully," G. L. c. 276, § 3 (b), and the storage statute punishes those who have "stored or kept" a firearm without also taking specific security measures, G. L. c. 140, § 131L (a). Both statutes, therefore, refer to firearms "kept" unlawfully (although only the storage

statute contains the word "store"). In this view, by their plain language, the storage and forfeiture statutes could be interpreted to encompass each other.

Closer examination, however, complicates the analysis. Neither statute defines "store" or "keep," or their various tenses. When a term is left undefined in a statute, "we give the term its 'usual and accepted meaning,' as long as it is 'consistent with the statutory purpose'" (citation omitted). Curtatone v. Barstool Sports, Inc., 487 Mass. 655, 658 (2021). "We derive the words' usual and accepted meanings from sources presumably known to the statute's enactors, such as their use in other legal contexts and dictionary definitions" (citation omitted). Id.

The common definitions of each word reveal significant overlap and suggest a critical point of departure -- namely, that "store" connotes the placement of an object at a greater distance from the owner, and suggests future, rather than immediate, use. For instance, Webster's Dictionary defines "store" (among other definitions) as "to deposit in a storehouse, warehouse, or other place for keeping;" "to supply or stock with something, as for future use;" and "to accumulate or put away, for future use (usually [followed] by up or away)." Webster's New Universal Unabridged Dictionary 1877 (2003). "Keep" is defined as "to hold in a given place; store" or to

"retain in one's possession; hold as one's own." Id. at 1048. Black's Law Dictionary defines "store" as "[t]o keep (goods, etc[.]) in safekeeping for future delivery in an unchanged condition." Black's Law Dictionary 1717 (10th ed. 2014). In a similar vein, the American Heritage Dictionary of the English Language notes that to store an object means "[t]o reserve or put away for future use," or "[t]o deposit or receive in a storehouse or warehouse for safekeeping." American Heritage Dictionary of the English Language 1708 (2006).

Accordingly, these definitions suggest that the words "store" and "keep" are closely related, but meaningfully different. Many definitions of one of these words reference the other, even while suggesting temporal and spatial differences between an owner's proximity to objects that are "stored" and objects that are "kept." The line between the two, however, undoubtedly is blurry, and the plain language of the storage statute provides little guidance in discerning it. Indeed, all of the explicit substantive guidance in the statute pertains to a different word, "secured."

The storage statute makes it a crime to "store or keep" any gun that is not "secured." Under G. L. c. 140, § 131L (a), a gun is "secured" if it is locked up or equipped with a safety device that makes it "inoperable by any person other than the owner or other lawfully authorized user." The statute also

provides that a "weapon shall not be deemed stored or kept if carried by or under the control of the owner or other lawfully authorized user." Id. Nothing in these provisions, however, speaks to the difference between the words "store" and "keep," or makes any further distinction regarding a firearm's distance from its owner or lawfully authorized user.

An examination of the record only makes the analysis more difficult. According to the inventory compiled by police after their search of Fleury's home, eleven of the twelve guns at issue were found in the attic. The twelfth was found in "Closet 3B," but the record is silent about that closet's placement within Fleury's home. Under the ordinary definitions of the words, discussed supra, guns placed in the attic may best be understood as far enough away from their owner to be considered "stored" and not "kept." But it is just as plausible that an object placed anywhere in one's home might be considered close enough to its owner to best be deemed "kept," rather than "stored." Thus, the plain language of the statute does not provide conclusive guidance regarding whether the twelve guns in question were "stored" or "kept" (or both) in violation of G. L. c. 140, § 131L. "Where, as here, the statutory language is ambiguous or 'faulty or lacks precision, it is our duty to give the statute a reasonable construction.'" Matter of E.C., 479

Mass. 113, 118 (2018), quoting Commonwealth v. Keefner, 461 Mass. 507, 511 (2012).

The Commonwealth asks us to resolve this issue by focusing exclusively on the similarities between the words "store" and "keep," and disregarding the differences. It posits that, in the storage statute, the words "store" and "keep" are "synonymous" and should be treated as "functional equivalents." For the Commonwealth, this synonymity is crucial, because it removes any ambiguity created by the fact that, while the storage statute uses both "stored" and "kept," the forfeiture statute uses only the word "kept," and makes no mention of objects that were "stored."

We cannot accept the Commonwealth's suggestion that we treat both words as one. First, the suggestion disregards what appear to be meaningful differences in the definitions of "store" and "keep." See discussion, infra. Second, adopting the Commonwealth's construction would violate the fundamental and long-standing principle of statutory interpretation "that we must strive to give effect to each word of a statute so that no part will be inoperative or superfluous." Ciani v. MacGrath, 481 Mass. 174, 179 (2019). See, e.g., Matter of a Civil Investigative Demand Addressed to Yankee Milk, Inc., 372 Mass. 353, 358 (1977) (rejecting interpretation that "would controvert the established principle of statutory construction that every

word in a statute should be given meaning"); Commonwealth v. Woods Hole, Martha's Vineyard & Nantucket S.S. Auth., 352 Mass. 617, 618 (1967) (noting "well established principle of statutory interpretation that '[n]one of the words of a statute is to be regarded as superfluous, but each is to be given its ordinary meaning without overemphasizing its effect upon the other terms appearing in the statute'" [citation omitted]). See also Commonwealth v. Daley, 463 Mass. 620, 623-624 (2012) (rejecting interpretation that would have rendered one word superfluous).

"We presume that the Legislature enacts legislation with 'an aware[ness] of the prior state of the law as explicated by the decisions of this court'" (citation omitted). Commonwealth v. Mogelinski, 466 Mass. 627, 646 (2013). If, therefore, the Legislature had intended "store" and "keep" to mean the same thing, there would have been no reason for it to have included both words in the statutory text, and it would not have done so.

The Commonwealth acknowledges this bedrock principle of statutory construction, but argues that, here, it may be overcome by way of an exception for superfluous language that exists to allow a statute to "be read harmoniously with existing statutes." The Commonwealth, however, points to nothing that suggests that the Legislature intended the "store or keep" provision in the storage statute to function in such a manner. Indeed, the Commonwealth does not mention any case establishing

its purported exception, and we are unaware of any.

Accordingly, we decline to adopt the Commonwealth's proposed exception to our long-standing presumption against construing any word in a statute as superfluous.

Consistent with our long-standing principles, therefore, the words "store" and "keep" in the storage statute refer to distinct, if undeniably related, actions. This, in turn, necessarily implies that some conduct covered by one word is not covered by the other. In order for the statutory text to be dispositive about the relationship between "stored or kept" in the storage statute, and "kept" in the forfeiture statute, then, the storage statute would have to delineate the places in which "store" and "keep" do not overlap. Because the text does not do so, the plain language of G. L. c. 140, § 131L, is ambiguous as to its relationship to G. L. c. 276, § 3 (b).⁶ Thus, we turn to

⁶ While of course not dispositive, we note that, throughout these proceedings, both the parties and the lower court often have used language consistent with the view that Fleury's convictions were for "stor[ing]" his firearms improperly. In an unpublished opinion upholding Fleury's convictions under G. L. c. 140, § 131L, the Appeals Court characterized the charges as pertaining to "improper storage" and "firearms [that] were improperly stored." Similarly, in denying Fleury's motion for the return of property, a judge of the Superior Court characterized the twelve firearms in question as having been "deemed to be illegally stored." In its renewed motion opposing the return of those twelve firearms, the Commonwealth described Fleury as having been "convicted of twelve of the felony counts of improper storage of large capacity rifles/handguns"; in a different, related motion, the Commonwealth alleged that "the defendant knowingly improperly stored firearms." Moreover,

consideration of the structure of both the forfeiture statute and the storage statute in their entirety, and the relationships between their various parts. See Boss v. Leverett, 484 Mass. 553, 557 (2020) ("We look at the statute in its entirety when determining how a single section should be construed"); Commonwealth v. Rodriguez, 482 Mass. 366, 369 (2019), citing 2A N.J. Singer & S. Singer, *Statutes and Statutory Construction* § 46:5 (7th ed. rev. 2014) ("We do not confine our interpretation to the words of a single section" [citation omitted]).

c. Structure. "[A] statute must be interpreted 'as a whole'; it is improper to confine interpretation to the single section to be construed" (citation omitted). Chin v. Merriot, 470 Mass. 527, 532 (2015).

i. The forfeiture statute. General Laws c. 276, § 3, sets forth the baseline procedures for handling property seized during the execution of search warrants, and then details, in four subsections, exceptions to those procedures. The statute begins by establishing that, aside from the instances enumerated

while the indictments assert that Fleury "did store or keep a large capacity weapon . . . without securing the weapon," as required by G. L. c. 140, § 131L, each indictment is titled "Improper Storage of a Firearm."

below, judges may exercise their discretion regarding the disposal of the seized property:

"If an officer in the execution of a search warrant finds property or articles therein described, he shall seize and safely keep them, under the direction of the court or justice, so long as necessary to permit them to be produced or used as evidence in any trial. As soon as may be, thereafter, all property seized under [G. L. c. 276, § 1, First,] shall be restored to the owners thereof; and all other property seized in execution of a search warrant shall be disposed of as the court or justice orders and may be forfeited and either sold or destroyed, as the public interest requires, in the discretion of the court or justice, except [for the exceptions enumerated in G. L. c. 276, § 3 (a) to (d)]."

The first three of the four enumerated exceptions concern specific types of contraband and detail precisely the State official to whom that contraband should be forfeited or how it should be destroyed.⁷ General Laws c. 276, § 3 (a), pertains to "[d]iseased animals or carcasses" or "unwholesome meat, fish, vegetables, produce, fruit or provisions of any kind" that has been "kept or concealed with intent to kill, sell, or offer the same for sale for food." This provision mandates that such property be "destroyed or disposed of" either by the board of health or "by an officer designated by the court or justice" acting under board of health regulations, or else by "the

⁷ General Laws c. 276, § 3 (d), the fourth and final exception, provides, "Any property, including money seized under [G. L. c. 276, § 1], the forfeiture and disposition of which is specified in any general or special law shall be disposed of in accordance therewith."

division of animal health and department of food and agriculture."

General Laws c. 276, § 3 (b), discussed infra, gives discretion "for destruction or preservation" of firearms and "other dangerous weapons . . . found to have been kept, concealed or used unlawfully or for an unlawful purpose" to "the colonel of the state police"; G. L. c. 276, § 3 (c), requires that money "seized under [G. L. c. 276, § 1, Third]" -- which pertains to property "the possession or control of which is unlawful, or which [is] possessed or controlled for an unlawful purpose" -- "shall be forfeited and paid over to the state treasurer."

These three subsections, then, pertain to property that may not be possessed under any circumstances, regardless of the way in which it is stored, and provide which specific State official should dispose of that property.

While the legislative history of the forfeiture statute is scant, all of the substantive amendments since 1964 (when the statute was rewritten and the first mention of firearms was added, see St. 1964, c. 557, § 4) either have added or have removed categories of contraband from the enumerated exceptions, see St. 1971, c. 1071, § 7 (removing specific types of narcotics); St. 1977, c. 556, § 4 (adding "including money seized under section one" to G. L. c. 276, § 3 [d]), or have

changed the State entity or official designated to dispose of the property, see, e.g., St. 1967, c. 347, § 12 (substituting "division of animal health" for "division of livestock disease control"); St. 1996, c. 151, § 497 (substituting "colonel of the state police" for "commissioner of public safety"). The forfeiture statute, therefore, began as a statute unrelated to firearms, and all of its modern amendments revolve around the proper disposal of contraband. As discussed infra, this development and focus make it significantly different from the storage statute.

ii. The storage statute. Improper storage of a firearm was not a crime until the storage statute was enacted in 1998. See St. 1998, c. 180, § 47. In adopting the forfeiture statute, therefore, the Legislature could not have intended that unsecured firearms be included within the sweep of the forfeiture statute's provision regarding firearms "kept . . . unlawfully." See G. L. c. 276, § 3 (b). The question, then, is whether, in enacting the storage statute, the Legislature intended to incorporate the forfeiture statute through its provision concerning firearms improperly "stored or kept," see G. L. c. 140, § 131L (a). We conclude that it did not so intend, because, while the forfeiture statute pertains to the disposal of contraband by particular State officials, the storage statute pertains to the proper care of lawfully

possessed firearms and takes as its particular focus the prevention of access by children and those adults who are ineligible to possess a firearm under the restrictions in G. L. c. 140, § 129B (1) (i)-(xi), including, among many others, people who have been convicted of a felony and, with some exceptions, those who have been committed to a hospital for treatment of mental illness within the preceding five years.

Taken as a whole, G. L. c. 140, § 131L, evinces the Legislature's concern for gun safety and, in particular, children's access to firearms. First, G. L. c. 140, § 131L (a), provides that "weapon[s] shall not be deemed stored or kept if carried by or under the control of the owner or other lawfully authorized user." Because guns that are "not . . . stored or kept" are not subject to the storage statute, this provision means that lawful owners are relieved of the duty properly to "secure" a firearm in accordance with the storage statute when that firearm is carried on their persons. See, e.g., Commonwealth v. Runyan, 456 Mass. 230, 236 (2010) ("[the] obligation to secure the firearm in accordance with [G. L. c. 140, § 131L,] arises only when the firearm is stored or otherwise outside the owner's immediate control"). In this way, the storage statute stands in marked contrast to the forfeiture statute, which contains no such exception for property that is under its owner's control.

Moreover, the provisions in G. L. c. 140, § 131L (b) to (d), which outline the penalties for violating the storage statute, are concerned primarily with two factors: whether the firearm in question is a "large capacity weapon," and whether a "person younger than [eighteen] years" old "may have access without committing an unforeseeable trespass."⁸ See, e.g., G. L. c. 140, § 131L (c).⁹ These penalty provisions, therefore, underscore that G. L. c. 140, § 131L, is a statute about the proper storage of lawfully possessed firearms.¹⁰

The legislative history of the storage statute further underscores the Legislature's focus on gun safety. We previously have observed that the legislative history of the

⁸ General Laws c. 140, § 131L (c), one of the penalty provisions, is limited to weapons "stored or kept in a place where a person younger than [eighteen] years of age who does not possess a valid firearm identification card . . . may have access without committing an unforeseeable trespass."

⁹ In a similar vein, G. L. c. 140, § 131L (e), provides that a violation of the statute "shall be evidence of wanton or reckless conduct in any criminal or civil proceeding" if the firearm in question is possessed by someone under the age of eighteen and lacking the authority to possess it lawfully, "and such access results in the personal injury to or the death of any person."

¹⁰ See, e.g., Commonwealth v. McGowan, 464 Mass. 232, 241-242 (2013) (describing statute as "designed to keep firearms out of the hands of those not authorized by law to possess a firearm, including but not limited to felons, the mentally ill, and children"); Jupin v. Kask, 447 Mass. 141, 154 (2006) (observing that statute is "illustrative of the societal concern with weapons reaching the hands of unauthorized users").

storage statute "leaves no doubt that the measure was intended to prevent accidental injuries and deaths resulting from firearms falling into the hands of children and other unauthorized users, by criminalizing negligent storage" (footnote omitted).¹¹ See Commonwealth v. Reyes, 464 Mass. 245, 250-251 (2013).

These two statutes, therefore, have very different aims: the forfeiture statute regulates the disposal of certain types of illicit property, while the storage statute is designed to ensure that lawfully possessed firearms are accessed only by those with the requisite firearms license.

iii. The 1998 gun control reforms. The Commonwealth acknowledges that the purpose of the storage statute is to promote gun safety. It argues, however, that these safety concerns support the view that the Legislature intended unsecured firearms to be subject to forfeiture. This

¹¹ In characterizing the legislative history this way, we pointed to numerous illuminating statements from legislators, including statements discussing the number of unintentional deaths in the United States resulting from improperly stored guns, State House News Service, House Sess., June 23, 1998; extolling the life-saving potential of "lock-box provisions," id.; describing the storage statute as an attempt "to keep guns out of the hands of people who should not have them," id.; and arguing that "attacking the issue of negligent storage of firearms is long overdue," State House News Service, House Sess., July 20, 1998. See Commonwealth v. Reyes, 464 Mass. 245, 251 n.6 (2013).

contention, however, fails to acknowledge that the act of which the storage statute is a part addresses these safety concerns by its plain terms. The act does so by providing detailed procedures for removing firearms from the possession of those who have lost their license to own them.

The storage statute was enacted in 1998 as part of an extensive package of gun regulations titled, "An Act relative to gun control in the commonwealth" (act). See 1998, c. 180; 1997 Senate Doc. No. 1985. One part of the act sets forth a detailed scheme for the disposal of guns that no longer may be lawfully possessed by their owner. This scheme was created primarily by amendments to two statutory provisions: G. L. c. 140, § 129B, which regulates firearm identification (FID) cards; and G. L. c. 140, § 129D, which regulates the surrender of firearms upon the loss of the requisite firearms license. Taken together, these provisions indicate that effectuating the safety-promoting purposes of the storage statute does not require subjecting improperly stored firearms to forfeiture under G. L. c. 276, § 3 (b). That such a firearm is not subject to the forfeiture statute does not mean that it remains in the possession of someone convicted of having stored it improperly, risking it falling into the hands of a child or other person who has not demonstrated sufficient qualifications to possess a firearm. The Legislature has established, through its licensing scheme,

that those convicted of improper storage of a firearm may no longer lawfully possess any firearm.

A. Gun licensure. There are two broad categories of gun licenses in Massachusetts.¹² An FID card entitles the cardholder to possess a rifle or shotgun that is not a large capacity weapon, but prohibits the possession of handguns, rifles, or shotguns that are capable of accepting large capacity feeding devices. See G. L. c. 140, § 129B (6). A license to carry (LTC), of which there were two types, placed more stringent requirements on licensees. Class B licenses entitled licensees to possess handguns and shotguns or rifles capable of accepting large capacity feeding devices, see G. L. c. 140, § 131 (b), while Class A licenses permitted both possession of a large capacity firearm and concealed carry, see G. L. c. 140, § 131 (a). General Laws c. 140, § 129B, the FID statute, provides that licensing authorities "shall issue" an FID card to anyone who is not a "prohibited person." G. L. c. 140, § 129B (1). Among those considered "prohibited person[s]" is anyone who has been convicted of a felony. See G. L. c. 140, § 129B (1) (i). "A crime punishable by . . . imprisonment in

¹² As with the forfeiture statute, the statute on firearms licensing was amended after the events here, in ways not relevant to any issue in this case. See, e.g., St. 2017, c. 110, § 21; St. 2018, c. 123, §§ 11, 12. We discuss the licensing provisions in effect in 2014.

the state prison is a felony. All other crimes are misdemeanors." G. L. c. 274, § 1. Unlike many other types of "prohibited person[s]," those who have been convicted of a felony are permanently prohibited from becoming an FID cardholder. G. L. c. 140, § 129B (1) (i). The FID statute further provides that an FID card "shall be revoked or suspended by the licensing authority . . . upon the occurrence of any event that would have disqualified the holder from being issued such card or from having such card renewed." See G. L. c. 140, § 129B (4).

The section of the storage statute under which Fleury was convicted provides that "[a] violation of this section" involving "a large capacity weapon or machine gun" "shall be punished . . . by a fine of not less than \$2,000 nor more than \$15,000 or by imprisonment for not less than [one and one-half] years nor more than [twelve] years or by both such fine and imprisonment." See G. L. c. 140, § 131L (b). Taken together, these provisions mean that the moment Fleury was convicted under the storage statute, he became permanently prohibited from possessing a firearm of any kind. See G. L. c. 140, § 131 (d), (f).

B. Surrender of firearms pursuant to G. L. c. 140, § 129D.

In addition to subjecting those who have been convicted of improper storage of a firearm to the loss of their firearms

license, the Legislature has provided detailed procedures by which those who have lost their license may dispose of, and be compensated for, the firearms that they may no longer possess.

The FID statute provides that, "[u]pon revocation or suspension . . . the person whose card is so revoked or suspended shall take all action required under the provisions of [§] 129D." See G. L. c. 140, § 129B (4).¹³ General Laws c. 140, § 129D, mandates that anyone whose FID card or LTC has been revoked or suspended "shall without delay deliver or surrender to the licensing authority where the person resides all firearms, rifles, shotguns and machine guns and ammunition which the person then possesses unless an appeal of the revocation or suspension is pending." The section provides, however, that "[t]he person or the person's legal representative shall have the right, at any time up to [one] year after the delivery or surrender, to transfer the firearms . . . to any licensed dealer or any other person legally permitted to purchase or take possession of the firearms," so long as "the purchaser or transferee shall affirm in writing" that he or she will not then

¹³ General Laws c. 140, § 129B, therefore, offers a helpful illustration of a situation in which a firearm could be "kept," in violation of the forfeiture statute, albeit that the firearm was "stored" in accordance with G. L. c. 140, § 131L. A firearm possessed by someone without a valid license would be subject to the forfeiture statute, even if it was secured in a locked container or otherwise stored properly in compliance with the storage statute.

transfer the firearms back to the original (and now ineligible) owner. Id.

Fleury intends to sell the twelve firearms in question, through a designee, now that he is permanently forbidden from owning or possessing a firearm himself. General Laws c. 140, § 129D, not only explicitly establishes "the right" to "transfer the firearms" to "any other person legally permitted to purchase or take possession of" them, but also provides that the "licensing authority shall at the time of delivery or surrender inform the person in writing" that this right exists.

By its plain terms, G. L. c. 140, § 129D, applies only to firearms "deliver[ed] or surrender[ed]," not to those seized during a lawful search. Here, however, the plain language is ambiguous regarding the relationship between the storage statute and the forfeiture statute. The statutes regulate different types of property in different ways; moreover, improper storage was not a crime when the forfeiture statute was last amended. Given this, it appears that the Legislature intended lawfully owned, improperly stored firearms to be subject to the scheme detailed in G. L. c. 140, §§ 129B and 129D, rather than to the regulations on the disposal of contraband outlined in G. L. c. 276, § 3 (b).

4. Conclusion. The order allowing forfeiture of the twelve firearms is vacated and set aside, and the matter is

remanded to the Superior Court for further proceedings
consistent with this opinion.

So ordered.