

SUPERIOR COURT OF NEW
JERSEY APPELLATE DIVISION
DOCKET NO. A-000718-24

STATE OF NEW JERSEY,	:	
	:	<u>CRIMINAL ACTION</u>
Plaintiff-Respondent,	:	
	:	On Appeal From a Judgment of
v.	:	Conviction of the Superior
	:	Court, Law Division, Camden County.
ERNEST TETTEH-OBUBI,	:	
	:	Indictment Number 223-04-1128-I
Defendant-Appellant.	:	
	:	Sat Below:
	:	Honorable David M. Ragonese, J.S.C.
	:	
	:	

THIRD AMENDED BRIEF ON BEHALF OF DEFENDANT-APPELLANT

Attorney I.D. No. 011801986

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DEFENDANT IS NOT CONFINED

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PROCEDURAL HISTORY

The Camden County Grand Jury, in Indictment No. 1128-04-23, charged the defendant-appellant Ernest Tetteh-Obuobi (hereinafter “defendant”), with one Count of Unlawful Possession of a Weapon, a second degree offense, in violation of N.J.S.A. 2C:39-5b(1). (Da 1-2)

On June 22, 2023, the defendant filed a Motion to Dismiss the Indictment. (Da 3) The court heard argument on the defendant’s Motion on October 18, 2023 and denied the Motion. (Da 4)

On July 1, 2024, the defendant entered a guilty plea to an amended Count One of the Indictment charging him with improper transport of a firearm in violation of N.J.S.A. 2C:39-9D, a Fourth degree offense. In return for this plea the State agreed to recommend a period of non-custodial probation. On October 25, 2024 the defendant appeared for sentencing and was sentenced to a five year period of non-custodial probation.

Defendant filed a timely notice of appeal. (Da 8-14)

IT = Transcript of proceedings dated February 22, 2024 (Motion)

STATEMENT OF FACTS

On June 15, 2022, the defendant was arrested by the Stratford Township police on a charge of possession of a handgun without a carry permit. The charge arose from an incident where a handgun was found at a PNC bank branch in Stratford. The police determined that the handgun was owned by this defendant. The gun was found inside a Bank of America banking bag. The employees of the bank said the defendant had been in the bank earlier that day and had left behind the bank bag. They also indicated he was a regular customer of the bank and often made large cash deposits. Later that day the defendant came to the police station and told the police it was his gun, he told them he stopped by the bank to make a deposit and was going to a shooting range. After leaving the bank he realized he left the gun behind in the bank bag.

The defendant has a firearm purchaser's ID card. He has had a purchaser's ID card since June 10, 2010. A firearms search done by the Stratford police showed the gun seized was legally owned by the defendant and registered to him. The defendant took lessons in how to use a handgun and has practiced shooting at Bob's Little Sports Shop in Glassboro, New Jersey. The defendant is a lawful permanent resident alien of the United States.

The defendant owns several businesses which generate substantial amounts of cash. The defendant purchased the weapon for self-protection. The defendant often carries cash from his businesses to the bank to make deposits. At one time the defendant went to the State Police Barracks in Bellmawr, New Jersey to inquire about obtaining a permit to carry a handgun. At that time the Family Dollar store next to his business had been robbed at gunpoint, a gas station across the street from his business was robbed at gunpoint, a restaurant across the street was also robbed at gunpoint. His business was burglarized. Based on these series of events the defendant wanted to be able to carry a handgun for self-protection. The officer he dealt with at the State Police barracks told the defendant he would not be given a carry permit based on these incidents. He was also told that because he is not a citizen it was unlikely he would be granted a permit to carry. Based on this advice he did not file the application to carry, as he believed based on what he was told, that it would be a waste of time.

LEGAL ARGUMENT

POINT ONE: N.J.S.A. 2C:58-4 IS AN UNCONSTITUTIONAL RESTRICTION OF THE SECOND AMENDMENT'S GUARANTEE OF THE RIGHT TO BEAR ARMS.

The United States Supreme Court in the case of NY State Rifle and Pistols Association v. Bruen, 597 U.S. 1 (2022), ruled the New York State statute regulating the right to carry a handgun was an unconstitutional restriction of the Second Amendment right to bear arms. The New Jersey statute is similarly an unlawful restriction on the Second Amendment right to bear arms. The Supreme Court in Bruen, Supra. , specifically held in the very first paragraph of its decision; “We too agree, and now hold, consistent to Heller and McDonald, the Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home.’ Bruen, Id .8-10

In Bruen, Supra., the court differentiates between states that are “May issue” license states and “shall issue” license states. The difference being in ‘shall issue” states, if the applicant meets the statutory requirements, such as age, lack of criminal record, etc., a carry permit shall issue. “May issue” states are states where even though the applicant meets the statutory requirements the state has discretion to deny the permit because the applicant has not

demonstrated cause. New Jersey is listed in the opinion as a “may issue” state. Bruen, 5-5 It is the “may issue” statutes that violate the Second Amendment.

The New York statute in Bruen requires an applicant to show a special need to carry a handgun beyond a generalized need for self-defense. The New York statute requires the applicant to “show a proper cause” to carry a handgun. The Court held “New York’s proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.” Bruen, Id. at 63

In Justice Alito’s concurring opinion, he writes, “The court’s exhaustive historical survey establishes that point very clearly, and today’s decision therefore holds that a state may not enforce a law, like New York’s Sullivan law, that effectively prevents its law-abiding residents from carrying a gun for this purpose”, Bruen at 65 (the purpose cited being self-defense). Just as New York cannot enforce its statute likewise neither can New Jersey.

The New Jersey statute is at least as restrictive as the New York statute. N.J.S.A. 2C:58-4 requires an applicant to show “justifiable need to carry a handgun”. It then goes on to state the applicant must show “the urgent necessity for self-protection, as evidenced by specific threats or previous attacks which demonstrate a special danger to the applicant’s life that cannot

be avoided by means other than issuance of a permit to carry a handgun”. This specific showing requirement is a clear violation of Bruen, Supra. If anything, the quoted language is even mor restrictive than the New York statute.

Just as New York cannot enforce its’ unconstitutional statute, neither can New Jersey.

CONCLUSION

For the reasons set forth herein the defendant's conviction must be reversed.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'E. Crisonino', with a large, stylized initial 'E' and a long, sweeping horizontal stroke extending to the right.

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Date: April 4, 2025

Superior Court of New Jersey

APPELLATE DIVISION DOCKET NO. A-000718-24

Criminal Action

STATE OF NEW JERSEY,	:	
	:	On Appeal from a Final Judgment of
Plaintiff-Respondent,	:	Conviction of the Superior Court of New
	:	Jersey, Law Division, Camden County.
v.	:	
	:	Sat Below:
ERNEST TETTEH-OBUBI,	:	Hon. David M. Ragonese, J.S.C.
	:	
Defendant-Appellant.	:	

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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August 11, 2025

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PRELIMINARY STATEMENT

For over a century, New Jersey law has required individuals to seek and obtain a permit before they may publicly carry a firearm. And for good reason: The permit requirement allows law enforcement to ensure that only law-abiding, responsible people who do not threaten the public safety may carry firearms in public. But here, defendant flouted that system when he chose not to apply for a permit but proceeded to carry a firearm in public anyway.

Defendant now relies on the U.S. Supreme Court's decision in New York State Rifle & Pistol Association, Inc. v. Bruen to claim that he cannot constitutionally be held accountable for his conduct. Yet this Court has already addressed this exact issue in State v. Wade. There—as here—defendants did not apply for a permit to publicly carry a firearm, but they were later arrested for possessing handguns in public. There—as here—defendants sought to collaterally attack the permitting law based on the invalidity of a single requirement: the justifiable-need provision. And this Court in Wade rejected that challenge on two bases. First, defendants who had never applied for public carry permits could not later challenge the constitutionality of the permitting law to excuse their unlawful conduct, especially when they failed to show that they would have otherwise qualified for a permit but for the unconstitutional

provision. Second, even if defendants could challenge the statute, it would be of no avail, as the justifiable-need provision was severable from the rest of the permitting requirements. The requirement to obtain a permit before publicly carrying a firearm therefore remained valid and enforceable.

So this appeal should begin and end with Wade. Defendant chose to publicly carry a handgun without ever applying for a permit. That forecloses his ability to challenge the constitutionality of the permitting scheme. If defendant in good faith believed that the public carry permitting law was unconstitutional, the proper way to challenge it would have been through a civil suit in state or federal court after the permit was denied, not by breaking the law and then attempting to challenge it collaterally in the course of his criminal prosecution. The Court should thus follow Wade and reject defendant's attempt to collaterally attack the permitting scheme he chose not to follow.

But even if defendant could challenge the permitting law, his constitutional challenge fails on the merits. The U.S. Supreme Court was careful to clarify that its decision in Bruen did not call into question the States' ability to require individuals to obtain a permit before carrying a handgun in public. So the Court should follow Wade's conclusion that New Jersey's permit requirement remains constitutional and enforceable, notwithstanding Bruen's invalidation of a single, severable provision of that law.

COUNTERSTATEMENT OF PROCEDURAL HISTORY

On April 11, 2023, a Camden County Grand Jury returned Indictment Number 1128-04-23, charging defendant with one count of second-degree unlawful possession of a weapon without a permit, contrary to N.J.S.A. 2C:39-5(b)(1). (Da1-2).¹

On June 22, 2023, defendant filed a Motion to Dismiss the Indictment, arguing that New Jersey’s gun permitting statute, N.J.S.A. 2C:58-4, was unconstitutional based on the U.S. Supreme Court’s ruling in New York State Rifle & Pistol Association, Inc. v. Bruen, 597 U.S. 1 (2022). (Da3). On October 18, 2023, the Honorable David M. Ragonese, J.S.C., heard oral argument on the Motion. (2T3-14 to 9-19). He denied defendant’s Motion that same day in an oral opinion. (2T7-19 to 9-19); see also (Da4) (order denying Motion). The judge reasoned that “Defendant needed a permit to carry a handgun outside of his home, and, if the State proves that he did not have a permit, he will be guilty of a crime under N.J.S.A. 2C:39-5(b)(1).” (2T9-13 to 16). Therefore, “the statute is not unconstitutional under State versus Wade,” and the motion to dismiss was denied. (2T9-17 to 19).

¹ Da refers to defendant’s appendix; Db refers to defendant’s brief; and Sa refers to the State’s Appendix. 1T refers to the transcript dated February 22, 2024, and 2T refers to the transcript dated October 18, 2023.

On December 18, 2023, defendant filed a second Motion to Dismiss the Indictment, arguing that the State was required to inform the Grand Jury that the law permits an individual to transport a gun under certain circumstances. See (1T3-11 to 13-8). The second Motion to Dismiss was denied on March 5, 2024. (Sa001).

On July 1, 2024, defendant pleaded guilty to an amended count of unlawful transport of a firearm in violation of N.J.S.A. 2C:39-9(d), a fourth-degree offense. (Sa002); (Da5). Under the terms of the negotiated plea agreement, defendant preserved his ability to appeal the constitutionality of the gun statute, as raised in his first Motion to Dismiss the Indictment. (Sa003).

On October 25, 2024, Judge Ragonese sentenced defendant to a five-year period of non-custodial probation. (Da5).

Defendant filed a Notice of Appeal on November 11, 2024. (Da8-9).

COUNTERSTATEMENT OF FACTS

A. New Jersey's Public Carry Permitting Law.

Public carry of handguns has long been “the most closely[]regulated aspect of [the State’s] gun-control laws.” In re Preis, 118 N.J. 564, 568 (1990). Since 1905, New Jersey has restricted the concealed carrying of firearms to individuals who had permits to do so. See 1905 N.J. Laws, ch. 172 at 324. That remains true today: any individual who wishes to carry a handgun in public must first obtain a permit. N.J.S.A. 2C:39-5(b)(1). Knowingly possessing a handgun in public without such a permit is a second-degree crime. Ibid.

To obtain a permit, an applicant must follow a two-step process. First, the applicant must apply to the relevant law enforcement official—the chief police officer in the municipality or the superintendent of the New Jersey State Police. N.J.S.A. 2C:58-4(c). At the time of defendant’s arrest in June 2022, the permit application required certain biographical information and the endorsement of “three reputable persons who have known the applicant for at least three years preceding the date of application, and who shall certify . . . that the applicant is a person of good moral character and behavior.” N.J.S.A. 2C:58-4(b).²

² As noted below, N.J.S.A. 2C:58-3 and 58-4 were amended effective December 22, 2022. L. 2022, c. 131, §§ 2-3. These citations are to the statutes as they existed at the time of defendant’s offense on June 15, 2022.

An applicant must also satisfy several substantive criteria. He must “not [be] subject to any of the disabilities set forth in [N.J.S.A. 2C:58-3(c)],” which turn on the applicant’s age, mental and physical health, criminal history, and potential danger to public safety, among other considerations. N.J.S.A. 2C:58-4(c). He must show “that he is thoroughly familiar with the safe handling and use of handguns,” ibid., which he can show by completing a training course, submitting qualification scores, or passing a use-of-force test, N.J.A.C. 13:54-2.4(b), (c). Until Bruen, an applicant also had to establish “a justifiable need to carry a handgun” based on an “urgent necessity for self-protection.” N.J.S.A. 2C:58-4(c).

Second, after the application is submitted, the chief or the superintendent conducts the necessary background checks. Ibid. At the time of defendant’s offense, if the chief or superintendent approved the application, the applicant had to present it to the Superior Court for review. N.J.S.A. 2C:58-4(d). (Today, there is no such requirement; approval by the chief or superintendent is final.) If the Superior Court was likewise satisfied that all permit requirements were met, it issued an order granting the applicant a public carry permit. Ibid. If the court instead considered denying the permit, state law required it to first hold a hearing to allow the applicant “to proffer reasons why he satisfies the standard and respond to any questions from the judge.” In re Carlstrom, 240 N.J. 563,

572 (2020). At the hearing, the court could take evidence and hear testimony to assess whether the applicant qualified for a permit. Id. at 572-73.

If the chief police officer or superintendent instead denies the application, then the applicant may request a hearing in the Superior Court within 30 days of the denial. N.J.S.A. 2C:58-4(e). In any case, a permit applicant dissatisfied with the decision of the Superior Court may appeal the decision “in accordance with law and the rules governing the courts of this State.” Ibid.

New Jersey partially amended these laws after defendant’s arrest, but the State retained the requirement that individuals obtain a permit before carrying a gun in public. On June 23, 2022, the U.S. Supreme Court issued its decision in Bruen, holding that New York’s “proper cause” requirement—which required individuals to establish a special need for self-defense to obtain a license to carry firearms in public—violated the right of “ordinary, law-abiding citizen[s] ... to carry handguns publicly for their self-defense.” 597 U.S. at 9-11. The Court noted that other States’ analogous requirements to show “special need for self-protection” to get public carry permits were also invalid. Id. at 12-15 & n.2.

But Bruen did not disturb other parts of the permitting laws. The majority in Bruen explicitly acknowledged that a wide range of States had “well-defined restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under which one could not carry arms.”

Id. at 38. Beyond recognizing their existence, the Court made clear it had no doubt as to the validity of those “licensing regimes”; that is, while it found that States could not condition the grant of a public carry license on a showing of a special need for self-defense, it confirmed that States could still require an individual to obtain a permit to carry more broadly. Id. at 38 n.9; see also id. at 80 (Kavanaugh, J., concurring) (confirming that “the 6 States . . . potentially affected by today’s decision,” including New Jersey, “may continue to require licenses for carrying handguns for self-defense” without the heightened self-defense requirement). In other words, “Bruen[’s] ... holding did not effectuate a wholesale invalidation of the various states’ gun licensing and permit systems.” In re M.U.’s Application for a Handgun Purchase Permit, 475 N.J. Super. 148, 192 n.11 (App. Div. 2023).

The day after the Court issued Bruen, the New Jersey Attorney General issued a Law Enforcement Directive to implement the decision. See N.J. Att’y Gen. L. Enf’t Dir. No. 2022-07 (June 24, 2022) (Sa008-010). The Directive emphasized that, “[w]hile Bruen impacts our justifiable need requirement, the ruling does not change any other aspect of New Jersey’s public carry laws.” (Sa008). The Directive reminded residents that “carrying a handgun without a permit is still illegal in this state, and law enforcement agencies must consider all other ... mandatory requirements for obtaining a carry permit before granting

an application.” (Sa008-009). It further instructed that “the applicable law enforcement agency shall continue to ensure that the applicant satisfies all of the criteria of N.J.S.A. 2C:58-4d and N.J.A.C. 13:54-2.4, except that the applicant need not submit a written certification of justifiable need to carry a handgun.” (Sa009).

In December 2022, the Legislature likewise amended the permitting laws. Consistent with Bruen and Directive 2022-07, the statute formally eliminated the justifiable-need requirement and revised a series of other requirements. See L. 2022, c. 131. But the amended statute did not change the basic requirement that a person in New Jersey obtain a permit before lawfully carrying a handgun in public, or that the person would need to satisfy a number of longstanding requirements before obtaining such a permit. See id.; N.J.S.A. 2C:39-5(b)(1). Chapter 131 retained the various disqualifications under N.J.S.A. 2C:58-3(c) and added that an applicant cannot receive a permit if he is subject to an outstanding arrest warrant or is a fugitive fleeing from another state. L. 2022, c.131, § 2. In addition, an applicant must be endorsed by four reputable persons who certify that he “has not engaged in any acts or made any statements that suggest the applicant is likely to engage in conduct, other than lawful self-defense, that would pose a danger to the applicant or others.” Id. § 3(b). The new statute modified the safe-handling requirement by enumerating conditions

for online instruction, in-person instruction, and target training. See id. § 3(d), (g). And it added requirements for how an individual who has obtained a permit may lawfully carry, such as requiring that the person carry the handgun in a holster. See id. §§ 3, 4, 5.

B. This Case.

On June 15, 2022, defendant carried a firearm in public without a permit. See (Sa014-016) (State's exhibit in response to Motion to Dismiss the Indictment) (transcript of police interview); (2T7-21 to 8-2, 8-21 to 9-16). Defendant carried a handgun concealed inside of a bank deposit bag into a bank while making a deposit, and he then left the firearm unattended at the bank. See (Sa014-016). When defendant spoke with officers at the police station later that day, he confirmed that he owned the firearm and that it was registered to him. (Sa014). Defendant acknowledged that he regularly kept the firearm in his car because he frequently transports large amounts of cash from his business. (Sa014-015, 018). It is undisputed that, at the time of the offense, defendant did not have a permit to carry a handgun and had never applied for one. (2T7-25 to 8-2); see also (Db7); (Sa014).

ARGUMENT

POINT I

DEFENDANT’S COLLATERAL CHALLENGE TO NEW JERSEY’S PERMIT REQUIREMENT IS FORECLOSED BY WADE.

Wade dictates the outcome of this appeal. As in Wade, defendant possessed a handgun in public without a permit in violation of N.J.S.A. 2C:39-5(b)(1). State v. Wade, 476 N.J. Super. 490, 495 (App. Div. 2023); (2T7-25 to 8-2). As in Wade, defendant conceded that he never applied for a permit. 476 N.J. Super. at 495; (2T7-25 to 8-2); (Db7). And as in Wade, defendant now seeks to leverage Bruen to collaterally attack his charges, on the very same basis rejected in Wade. 476 N.J. Super. at 495; (Db8-10). Yet, as Wade held, defendant has no standing to launch such a collateral attack, and even if he did, New Jersey’s public carry permitting law remains valid and enforceable because the justifiable-need provision is severable. Wade, 476 N.J. Super. at 505-11. The trial court thus correctly applied “binding precedent” with “the same or indistinguishable fact pattern” when it denied defendant’s Motion to Dismiss. See State v. Farmer, 48 N.J. 145, 183 (1966); (2T8-12 to 9-19). This Court should do the same.

A. Defendant Does Not Have Standing To Challenge The Permitting Statute.

As a threshold matter, defendant does not have standing to challenge the

constitutionality of a permitting statute he did not follow. It is well established that to show “standing to challenge an allegedly unconstitutional permit statute, the challenger must have applied for a permit or license under the statute.” Wade, 476 N.J. Super. at 505-06 (collecting cases); see also, e.g., Borough of Collingswood v. Ringgold, 66 N.J. 350, 364 (1975); United States v. Decastro, 682 F.3d 160, 164 (2d Cir. 2012); Westfall v. Miller, 77 F.3d 868, 870-73 (5th Cir. 1996); Kendrick v. Bruck, 586 F. Supp. 3d 300, 308 (D.N.J. 2022). Indeed, our courts have recently and repeatedly denied defendants the ability to mount collateral attacks to New Jersey’s gun permit laws when they have not applied for a permit. See, e.g., Wade, 476 N.J. Super. at 505-08; State v. Purvis, No. A-3064-22, 2025 WL 573685, at *4-7 (App. Div. Feb. 21, 2025) (Sa026-028) (relying on Wade to conclude the defendant “ha[d] no standing to challenge New Jersey’s gun permitting scheme” as unconstitutional); State v. Pinkett, Nos. A-3121-23, A-3122-23, 2025 WL 1260551, at *5-6 (App. Div. May 1, 2025) (Sa032-033) (same); State v. Byrd, No. A-1665-21, 2025 WL 1155923, at *10 (App. Div. Apr. 21, 2025) (Sa042-043) (same); State v. Emanuel, No. A-2274-23, 2024 WL 4511194, at *4 (App. Div. Oct. 17, 2024), leave to appeal denied, 260 N.J. 7 (2025) (Sa051-052) (same); State v. Gilliard, Nos. A-1513-21, A-3877-21, 2024 WL 502337, at *8 (App. Div. Feb. 9, 2024) (Sa059-060)

(same).³ Defendant concedes that he did not attempt to apply for a permit, (Db7); (2T7-25 to 8-2). That alone is enough to foreclose his constitutional argument.

This outcome is essentially dictated by this Court's ruling in Wade, which was decided on almost precisely the same factual grounds. Wade, 476 N.J. Super. at 505-08. There, the Court rejected defendant's attempt to challenge the same justifiable-need provision of New Jersey's public carry permitting law without first having applied for a permit. Ibid. And this is consistent with our Supreme Court's decision in Borough of Collingswood v. Ringgold, which involved a constitutional challenge to a municipal ordinance prohibiting door-to-door canvassing or soliciting without a permit. 66 N.J. at 354. While the Court found that the ordinance granted officials "too broad discretion" to deny a permit on the basis of a prior conviction or reports of unethical business practices, it upheld the remainder of the permitting scheme. Id. at 366-67, 371. This included the requirement to obtain a permit in the first place because defendants had never "attempted to register as required." Id. at 364, 371.

Put simply, it is a bedrock principle that "law-abiding citizens are not free

³ Though unpublished opinions are not binding on the Court, R. 1:36-3, such opinions may serve as secondary authority. See Nat'l Union Fire Ins. Co. of Pittsburgh v. Jeffers, 381 N.J. Super. 13, 18 (App. Div. 2005). The Attorney General is not aware of any contrary unpublished opinions. R. 1:36-3.

to ignore a statute and presume that they would have been granted a permit but for one potentially invalid provision of a permit statute.” Wade, 476 N.J. Super. at 507. Indeed, allowing an individual to “proceed without the required permits” based on personal disagreement with the permitting law and then challenge the law only after he is caught violating it would be “apt to cause breaches of the peace or create public dangers” and to undermine people’s incentive to comply with the law. Poulos v. New Hampshire, 345 U.S. 395, 409 (1953). This is especially troubling when the permitting scheme is in place to protect the public safety against the “risk of serious injury from accident and misuse” associated with handguns. In re Wheeler, 433 N.J. Super. 560, 584 (App. Div. 2013). If defendant in good faith believed that the public carry permitting law was unconstitutional, the proper way to challenge it would have been through a civil suit in state or federal court after the permit was denied, not breaking the law and then attempting to challenge it collaterally in the course of his criminal prosecution. See Poulos, 345 U.S. at 409 n.13 (“[D]efendants are given the choice of complying with the regulation, or not engaging in the regulated activity, or, before they act, petitioning the appropriate civil tribunals for a modification of or exception from the regulation.”); see also, e.g., Bruen, 597 U.S. at 15-16; McDonald v. City of Chicago, 561 U.S. 742, 752 (2010); Dist. of Columbia v. Heller, 554 U.S. 570, 575-76 (2008).

While defendant appears to argue that the unconstitutionality of the justifiable-need provision alone would excuse him from following the law, see (Db8-11), that is not the case. When only one provision of a larger scheme is invalid, a defendant is nonetheless subject to the remainder of the law. See Wade, 476 N.J. Super. at 507-08. For example, in Ringgold, although one provision of the challenged ordinance was unconstitutional, the ordinance was “sufficient on its face so that it could not properly be ignored with impunity by the[] defendants.” 66 N.J. at 364. In other words, because “[d]efendants’ conduct clearly f[e]ll[] within the proscription of th[e] ordinance” as a whole, they could not be excused from complying due to the invalidity of a single provision. Ibid.

That is not necessarily true when the permitting scheme is unconstitutional as a whole, rather than in part. In that scenario, a defendant would be excused because there are no other provisions of the law left for him to violate; in other words, it would be “as though [the permitting scheme] did not exist” in the first place. Poulos, 345 U.S. at 414. But that exception has no relevance here because defendant challenges only the justifiable-need provision. And this Court has already found in Wade that the invalidity of that provision does not exempt a defendant from compliance with the remainder of the permitting statute. Wade, 476 N.J. Super. at 507-08. So defendant could not

simply disregard all other requirements of the permitting statute, and he remains in violation of the law even if the justifiable-need provision is invalidated. Indeed, “[n]o New Jersey decision or federal decision addressing New Jersey’s gun-permit statutes has held that a defendant has standing to challenge the permit statutes without first having applied for a permit.” Wade, 476 N.J. Super. at 508. This Court should not be the first.

B. New Jersey’s Requirement To Obtain A Permit Before Carrying A Firearm In Public Remains Valid After Bruen.

Defendant was required to apply for a permit to carry a handgun, regardless of the constitutionality of one severable provision. Although Bruen invalidated the requirement to show a justifiable need to obtain a permit to carry a handgun, 597 U.S. at 71, it did not invalidate the rest of the permitting law, id. at 38 & n.9; id. at 80 (Kavanaugh, J., concurring). This Court already held as much in Wade: the requirement to obtain a permit under N.J.S.A. 2C:39-5(b)(1) “was constitutional and enforceable at the time of defendant[’s] arrest.” Wade, 476 N.J. Super. at 511.

In Bruen, the U.S. Supreme Court invalidated a New York law requiring an applicant to show “proper cause”—i.e., a “special need for self-protection distinguishable from that of the general community”—in order to obtain a permit to carry a handgun in public. Bruen, 597 U.S. at 11-12. The Court held that the law was inconsistent with the Second and Fourteenth Amendments’ protection

of the right of “ordinary, law-abiding citizens” to “carry a handgun for self-defense outside the home.” Id. at 9-11. In so ruling, the Court noted that analogous requirements to the proper-cause standard—including New Jersey’s justifiable-need requirement—would also be invalid. Id. at 11, 13-15 & n.2.

But Bruen did not invalidate other parts of the permitting law. The Supreme Court clarified that “nothing in [its] analysis should be interpreted to suggest the unconstitutionality of ... ‘shall-issue’ licensing regimes,” which may contain objective standards to determine, for example, that “those bearing arms in the jurisdiction are, in fact, ‘law-abiding, responsible citizens.’” Id. at 38 n.9 (quoting Heller, 554 U.S. at 635). Similarly, concurring Justices reiterated that “the 6 States including” New Jersey “potentially affected by today’s decision may continue to require licenses for carrying handguns for self-defense so long as those States employ objective licensing requirements.” Id. at 80 (Kavanaugh, J., concurring); see also id. at 71-72 (Alito, J., concurring) (clarifying that the holding does not affect “who may lawfully possess a firearm,” “the requirements that must be met to buy a gun,” or “restrictions that may be imposed on the possession or carrying of guns”). In light of the decision’s narrow scope, our courts have “held that, consistent with Heller and Bruen, New Jersey can continue to regulate who can purchase and carry a handgun in public so long as those regulations are consistent with the text of the

Second Amendment and our Nation’s historical tradition of firearm regulation.”
Wade, 476 N.J. Super. at 510 (citing M.U., 475 N.J. Super. at 163).

Against that backdrop, this Court has already held that the permit requirement under N.J.S.A. 2C:58-4, as it existed at the time of defendant’s arrest, remains valid and enforceable because the justifiable-need provision was severable from the rest of the permitting scheme. Id. at 511. The Court held that the statute was not dependent on the justifiable-need provision because the remainder of the permitting scheme included “other criteria that were independent from, and served purposes separate from, the justifiable need requirement.” Id. at 509. Other requirements—such as demonstrating that one is “mentally and physically capable of handling a handgun” and is familiar with “safe handling and use of handguns”—“address several safety concerns” independent of the justifiable-need requirement. Id. at 509-10. Indeed, the Legislature confirmed “that statutory construction ... when, six months after Bruen was issued, it amended various gun-permit statutes, including N.J.S.A. 2C:58-4.” Id. at 510. Specifically, the Legislature “deleted the justifiable need provision,” but “left in and revised various other criteria for obtaining a permit to carry a gun.” Ibid. These subsequent legislative enactments thus “demonstrate that the Legislature intended to enforce the valid provisions of the statutes regulating guns if any provision was found to be unconstitutional.” Ibid.

And New Jersey courts have since upheld the constitutionality of various other provisions of New Jersey’s firearm permitting laws, further confirming that the permitting scheme as a whole remains in force. See, e.g., M.U., 475 N.J. Super. at 163, 193-94.

This Court should follow Wade’s conclusion that “N.J.S.A. 2C:39-5(b)(1) was constitutional and enforceable at the time of defendant[’s] arrest.” Wade, 476 N.J. Super. at 511. The permitting scheme—and the other elements an applicant must show to qualify for a permit—remain valid and unchanged by Bruen. So defendant’s conviction was constitutional and should be affirmed.

CONCLUSION

This Court should affirm defendant's conviction.

Respectfully submitted,

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OF COUNSEL AND ON THE BRIEF

DATED: August 11, 2025

STATE OF NEW JERSERY,	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
Plaintiff-Respondent,	:	
	:	DOCKET NO. A-000718-24
v.	:	
	:	On Appeal from a Final Judgment
	:	Conviction of the Superior Court of New
ERNEST TETTEH-OBUBI	:	Jersey, Law Division, Camden County
Defendant-Appellant.	:	
	:	Sat Below:
	:	Hon. David M. Ragonese, J.S.C:

REPLY BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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DEFENDANT IS NOT CONFINED

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Defendant-Appellant, by his new counsel Troy A. Archie, Esq., respectfully submits this reply to the State's opposition. The State leans heavily on *State v. Wade*, 476 N.J. Super. 490 (App. Div. 2023), to argue that Mr. Tetteh-Obuobi lacks standing and that New Jersey's permitting scheme remains valid. That reliance is misplaced.

Point I - Wade is Distinguishable

Unlike *Wade*, Mr. Tetteh-Obuobi made documented inquiries with law enforcement about a carry permit but was affirmatively told, due to his non-citizen status, that applying would be futile. This constitutes more than a mere failure to apply; it shows that the statutory scheme, as administered, categorically excluded him. Courts have long recognized that when a statute itself deters application through discriminatory or unconstitutional barriers, a defendant may challenge it without the formal step of applying. See *Borough of Collingswood v. Heller*, 66 N.J. 350, 364 (1975) (standing where application is a "vain act" under an overbroad statute). Thus, *Wade* does not foreclose standing here.

Point II - Bruen Directly Invalidates New Jersey's "Justifiable Need" Requirement

The State concedes that *Bruen* struck down discretionary “may-issue” systems like New Jersey’s pre-2022 regime. But it attempts to sever the unconstitutional “justifiable need” language and preserve the remainder of N.J.S.A. 2C:58-4. That argument ignores *Bruen*’s central holding: requiring citizens to demonstrate a special, individualized danger beyond ordinary self-defense is repugnant to the Second and Fourteenth Amendments. 597 U.S. 1, 63 (2022). New Jersey’s statutory language—demanding “urgent necessity for self-protection ... as evidenced by specific threats” (N.J.S.A. 2C:58-4(c))—is even stricter than New York’s struck-down “proper cause” standard.

Point III. Severability Does Not Cure the Constitutional Defect

The State invokes severability, but the Appellate Division in *Wade* did not address the unique circumstance presented here: Ernest’s inability to apply due to categorical exclusion as a lawful permanent resident. Unlike discretionary screening for training or moral character, this exclusion demonstrates that the permitting regime was not a valid “shall issue” system but a de facto bar. *Bruen* explicitly forecloses regimes that “prevent law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.” *Id.* at 63.

Point IV. Public Safety Cannot Trump Constitutional Rights

While the State emphasizes safety concerns, *Heller*, *McDonald*, and *Bruen* make clear that constitutional rights are not subject to open-ended balancing. See *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010). The Constitution protects the right of lawful permanent residents like Ernest—who lawfully owned his firearm, possessed a purchaser’s ID card, and sought only ordinary self-defense—to bear arms in public.

CONCLUSION

For these reasons, Ernest Tetteh-Obuobi respectfully maintains that his conviction under N.J.S.A. 2C:39-5(b)(1) cannot stand. The statute, as enforced against him, violates the Second and Fourteenth Amendments under *Bruen*. Accordingly, the judgment should be reversed.

Respectfully submitted,

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