IN THE MATTER OF ELWOOD BELL APPLICATION FOR A FIREARMS PURCHASER IDENIFICATION CARD	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A – 002057-24 T1 Civil Action ON APPEAL FROM SUPERIOR COURT OF NEW JERSEY LAW DIVISION – ATLANTIC COUNTY DOCKET NO.: GPA-ATL-12-24 SAT BELOW: Hon. Pamela D'Arcy, J.S.C.

AMENDED BRIEF ON BEHALF OF PLAINTIFF/APPELLANT ELWOOD BELL

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PRELIMINARY STATEMENT

Appellant Elwood Bell (Applicant) appealed to the Law Division a police chief's denial of his applications for a firearms purchaser identification card (FPIC) and permit to purchase a handgun (PPH). During the ensuing hearing in the Law Division, the police chief failed to present competent evidence to support the court's determination that Applicant was disqualified from holding an FPIC because its issuance would not be in the interest of the public health, safety and welfare, N.J.S.A. 2C:58-3(c)(5). The trial court nonetheless determined Applicant was disqualified under the statute. The court also determined Applicant was disqualified under N.J.S.A. 2C:58-3(c)(8) because his firearms had been seized under the Prevention of Domestic Violence Act of 1991—even though the police had been directed to return the firearms and even though Applicant had not been given notice and an opportunity to develop proofs and be heard on this issue.

For these reasons, the Law Division's order should be reversed and the matter remanded for the return of Applicant's weapons and issuance of a FPIC.

PROCEDURAL HISTORY

On January 24, 2024, the Absecon New Jersey police chief (Chief) denied Applicant's Application for a Firearms Purchaser Identification Card (FPIC) and a handgun purchase permit (HPP). (T6-13 to 15.)[1] Applicant appealed the Chief's denial to the Law Division. (Pa 5). There, the court conducted an evidentiary hearing at which the Chief (T8), Applicant (T27), and a witness for Applicant (T44) testified. One exhibit was entered into evidence. At the hearing's conclusion, the court delivered an oral opinion from the bench. (T59 to 74).

The court found that granting Applicant's application would not be in the interest of public health, safety, or welfare. The court also found that N.J.S.A. 2C:58-3(c)(8), which disqualifies an Applicant whose firearms have been seized pursuant to the Prevention of Domestic Violence Act of 1991 from obtaining an FPIC, barred Applicant from obtaining the FPIC. The court also ordered firearms that police had seized three years earlier—pursuant to a long-since dismissed domestic violence temporary restraining order—not be returned to him. (T78-16 to 20). Applicant appealed (Pa2) and the trial court filed a supplemental opinion (Pa7). These proceedings followed.

1. Transcript of Trial Court's Oral Decision date 1/31/25 (T1-T79). T6-13 to 15 references the transcript at page 6, lines 13 to 15.

STATEMENT OF FACTS

A. The Chief's presentation at the hearing.

The Chief testified but presented no other witnesses and moved into evidence only a single document. His investigation of Applicant's FPIC application came about after he had received a December 12, 2023, letter from the Atlantic County Prosecutor's Office authorizing him to release to Applicant firearms seized in 2021 pursuant to a domestic violence complaint and TRO. (T9-17 to 19). The Chief presented neither testimony nor evidence to explain the delay between dismissal of the TRO and the return of Applicant's firearms. (T8 to 14). Nonetheless, because the FPIC had a Pleasantville address and Applicant now resided in Absecon, the Chief took the position Applicant had to apply for a card with an updated address before his weapons could be released. (T10-9 to 20). The prosecutor's office concurred. (T10-21 to 25).

The Chief denied Applicant's FPIC application on January 24, 2024. (T8-20 to 24; (Pa6). His letter to Applicant gave the following reasons: "Public Health Safety and Welfare"; "Extensive Domestic Violence and weapon seizure history." When asked at the hearing to tell the court why he denied the application, the Chief testified:

> I denied the application based on public health and welfare. And that is explained in page 3 of that report you're talking about, that

> application. And basically, on public health and welfare I denied the application for the change of address and the permits because of the extensive domestic violence history as well as -- if you look in the firearms guide, you can as well take into consideration PTI from the past, as well as other charges. (T9-2 to 10).

The Chief elaborated on the denial "based on public health and welfare." (T9-2 to3). First, he found nine (9) entries in the domestic violence registry "involving approximately five (5) different victims in three (3) different counties. (T11-5 to 8). He believed they were all TRO's and had all been dismissed. (T11-10 to 11). He could provide no details about any of these entries, for he called no one involved in any of the incidents. (T15-1 to 2).

Reviewing a "list" of domestic violence marked for identification but not entered in evidence, the Chief acknowledged the first incident occurred in 1998, twenty-seven years before the hearing. (T15-8 to 18; T16-23 to T17-2). He could not recall if the only allegation was harassment, but he acknowledged the complaint was dismissed and there were no criminal charges filed. (T17-9 to 16). He also acknowledged the domestic violence complaint was merely an accusation (T16-17 to 19) and that each complaint had been dismissed. (T16-25).

The Chief saw registry entries for the additional years 1997, 2000, 2001, 2007, 2014, 2018, 2019 and 2021. (T17-14 to 21). He conceded Applicant was the victim in some of them. (T17-18 to 21). He further conceded the registry just lists them but provides no specific information. (T18-1 to 8). He spoke to none of the parties

involved with the domestic violence complaints, including YB, who was involved in the 2021 incident. (T18-12 to 20). In short, he knew no facts about the domestic violence allegations against Applicant.

Next, the chief elaborated on the "weapons history." He became aware of two encounters between Applicant and police officers concerning weapons. The first involved "a possession of a weapons charge which he received PTI for some years before." (T11-14 to 16). This occurred in 1996, twenty-nine years before the hearing. (T21-5 to 7). Once again, the chief was unaware of any details about the specific incident. He knew nothing about it. (T21-25 to T26-1). He was aware, however, that when this incident occurred in 1996 Applicant had held a valid FPIC since 1992. (T21-3 to 8).

The second involved two (2) magazines Applicant kept in his home. The Chief recalled that when firearms were seized from Applicant's home in 2021, two (2) magazines were also seized. They "were 20-round mags" that would not have been legal under the 2018 statute according to the Chief. (T22-5 to 19; Pa21). The prosecutor moved into evidence a "supplemental report" prepared by the officer who had examined the magazines. (Pa21). That officer noted the magazines had been "pinned" and could hold only fifteen rounds, but the law had changed from fifteen rounds to ten rounds in 2018, and this case originated in 2021. (Pa21).

B. Applicant Testifies and Completes the Details.

1. Background.

Applicant, age fifty-five, a lifelong New Jersey resident, has resided in Cape May and Atlantic counties his entire life. (T27-14 to 22). He lives in Absecon with four (4) others; his mother, his daughter, YB, and YB's daughter. (T28-4 to 10). After attending High School and a trade school, Applicant got a commercial driver's license in 1999 and has since made a living driving tractor-trailer trucks. (T29-1 to 13). He currently drives gasoline trucks and delivers fuel. (T29-17 to 21).

Because delivering fuel requires him to enter refineries, Applicant had to obtain what he called a TWIC card issued through Homeland Security. (T31-17 to 24). To obtain the card and the clearance, he underwent an extensive background check. During his background check, Applicant was questioned about his domestic history and the TRO's that has issued. He explained them. (T40-13 to 19). He qualified. His current TWIC card is good through 2026. (T32-3 to 6).

2. The Domestic Violence Allegations.

Addressing the domestic violence allegations, Applicant confirmed, as had the Chief, that he was the victim in some of them. (T35-14 to 17). In none of the complaints was he charged with any crime of violence, nor was it ever alleged he engaged in assault, stalking, or conduct that would constitute a felony, a burglary, or any similar offense. (T36-4 to 16). As best he could recall, every complaint alleged

only harassment. He never received a criminal complaint for harassment. (T36-20 to 24). Applicant went to court for every restraining order, and every restraining order was dismissed. (T36-25 to T37-4). No Court ever found that Applicant was a danger to other persons or that other persons should fear him. (T37-5 to 8).

In all, Applicant recalled four Temporary restraining orders had been filed against him, the most recent occurring in 2021. All were dismissed. His weapons were seized and returned each time, with the exception of the 2021 incident. (T40-24 to 41-16).

3. Weapons Allegations.

Applicant's FPIC was issued to him in 1992 and thereafter he legally purchased guns. (T20-10 to 14; T32-15 to 18). He owned a gun in 1996 when he was the subject of a traffic stop. (T32-19 to 25). The officer asked if he had any weapons in the car. Applicant cooperated with the officer, explained he was just leaving the gun range, told him his gun was locked in his trunk and his bullets were separated in the glove box. (T33-2 to 13). The officer nonetheless charged him with a weapons possession offense. Following his attorney's advice, Applicant successfully applied for PTI and the charge was dismissed. (T33-14 to 23).

Concerning the magazines mentioned by the Chief, Applicant purchased them approximately twenty years ago from a retail gun dealer, Gun World, who would sell him nothing illegal. (T34-5 to 13). He had to wait for the magazines because the

dealer had to "pin" them to fifteen rounds, the legal limit at the time. (T34-19 to 24). During the intervening years he didn't use the magazines much because his trucking duties gave him little recreational time. (T35-5 to 7). He was unaware when the law changed to limit the magazines to 10 rounds. He received no notice of the change. (39-22 to 40-1).

While the decision concerning the return of his firearms was pending, Applicant frequently spoke with representatives of the Atlantic County Prosecutor's Office. The representatives verified his account concerning the magazines with personnel at Butch's Gun World, where he purchased them. They were not going to charge him. (T42-11 to T43-2).

During cross-examination, the prosecutor asked Applicant whether police had once seized a pair of brass knuckles from his home. He explained the police did not seize them; rather, they saw them and asked about them. He explained they were a collector's item. They saw no problem. They did not take them. (T39-4 to 13).

C. YB and her TRO's.

YB[2] and Applicant have lived in Absecon for the past two years. (T45 9-12). They have been in a constant fourteen-year dating relationship. (T45-14 to 22). She

[2] Initials are used to protect the privacy of parties and witnesses and because the trial record includes the names of alleged victims of domestic violence. See R.1:38-3(c)(12).

sees him daily, has always known him to secure his guns in a locked cabinet, and believes he is a responsible person. (T46-1 to 19). He has never struck her, pushed her, threatened her with violence, or gotten physical with her in any way. (T47-2 to 8).

YB has twice filed for restraining orders against Applicant. The event leading up to the first one involved nothing physical. (T46-20 to T47-11). She told the police she threw a slipper at him but that didn't really happen. (T47-22 to T48-8). The event leading up to the second one occurred when they were arguing. Applicant said he was going to kick down a door, but he made the statement during a heated argument while he was upset, according to YB. (T49-5 to 16). During their fourteen years together, they have mostly argued over television shows, but once they argued about her taking their kids to Florida. (T50-9 to 24).

D. The Court's oral opinion.

The court prefaced its opinion by noting it had considered all the exhibits, all the reports provided to the court, and the application by the State. (T60-6 to 9). As noted previously, only one exhibit was admitted into evidence. After announcing it found the Chief credible, Applicant mostly credible, and YB not very credible, the court recounted the testimony. The court again referenced documents that had not been admitted in evidence (T66-12 to 22). The court ultimately determined:

> In the current case, the Court finds the Applicant's prior conduct poses a threat to public safety, health and welfare,

> pursuant to N.J.S.A. 2C:58-3(c)(5) and he is, per se, disqualified under N.J.S.A.2C:58-3(c)(8) as the Applicant is a person whose firearms have been seized pursuant to the Prevention of Domestic Violence Act of 1991. The Applicant has both a criminal history and a domestic violence history. Upon review of this history, it seems the Applicant has a penchant for resolving disputes with domestic violence as he has a history spanning from 1997 to 2021with at least five different victims. (T74-5 to 15).

The prosecutor had requested before the hearing that if the court denied Applicant's appeal, to prohibit the return of his firearms. Given the court's ruling on Applicant's FPIC appeal, it determined Applicant's weapons should not be returned and should be sold. The court so ordered. The court amplified its determination in a supplemental opinion filed after Applicant filed his notice of appeal to this court. The rationale for the court's decision did not change.

LEGAL ARGUMENT

POINT I. THE EVIDENCE THE STATE AND THE CHIEF PRESENTED AT THE HEARING BEFORE THE TRIAL WAS INSUFFICIENT TO SUSTAIN EITHER HIS BURDEN OF PROOF OR THE COURT'S DETERMINATION THAT APPLICANT WAS A THREAT TO PUBLIC SAFETY, HEALTH, AND WELFARE. (Raised Below. (T55 To T59)).

A. Hearing Procedure and Standards of Review.

N.J.S.A. 2C:58-3(d) directs the "chief police officer of an organized full-time police department of the municipality where the Applicant resides . . . to issue" a FPIC or HPP to any qualified Applicant. However, "the informality of a chief of police's initial consideration of an application for a gun permit requires an evidentiary hearing when an Applicant appeals a denial to the . . . Law Division[.]" In re Dubov, 410 N.J. Super. 190, 200 (App. Div. 2009) (quoting Weston v. State, 60 N.J. 36, 45 (1972). Our appellate courts have detailed the procedure that must be followed during the Law Division hearing:

> At the outset of the . . . hearing orderly and logical procedure calls for introduction through the testimony of the Applicant of his application for the identification card, the rejection thereof and the reasons given by the Chief, if any. At this point he may be subjected to cross-examination by counsel for the Chief. Thereafter, the Chief should proceed with the evidence on which his denial was predicated. Ordinarily, this would include presentation of his own testimony, that of the members of the police department who made the investigation and furnished reports to the Chief, any available lay or professional persons who furnished information which influenced the action taken by the Chief, and any

> admissible documentary evidence which played a part in the adverse decision. Upon completion of the Chief's proof, the Applicant may offer relevant rebuttal testimony. [Dubov, 410 N.J. Super. at 200 (quoting Weston, 60 N.J. at 46) (emphasis added)].

The trial court's review is de novo. In re Osworth, 365 N.J. Super.72, 77 (App. Div. 2003). The Chief has the burden of proving the existence of good cause for the denial by a preponderance of the evidence. Ibid. Hearsay may be admissible if "of a credible character—of the type which responsible persons are accustomed to rely upon in the conduct of their serious affairs." Weston, 60 N.J. at 51.

The appellate standard of review requires acceptance of "a trial court's findings of fact that are supported by substantial credible evidence." In re Return of Weapons to J.W.D., 149 N.J. 108, 116-17 (1997). Such deference is not afforded, however, if such findings are "unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." In re Forfeiture of Pers. Weapons and Firearms Identification Card Belonging to F.M., 225 N.J. 487, 506 (App. Div. 2016). The trial court's conclusions of law are reviewed de novo. Allstate Ins. Co. v. Northfield Med. Ctr., P.C., 228 N.J. 596, 619 (2017).

B. The domestic violence allegations are unsupported by substantial credible evidence.

Substantial credible evidence did not support the trial court's finding Applicant had a "penchant for resolving disputes with domestic violence" (T74-13 to 16). Recall that the Chief knew nothing more than what was on a registry—which

appeared to be the names of the parties and the dispositions of the TRO's. All the complaints alleged the underlying offense of harassment but included no specifics of what constituted the harassment. In short, the evidence demonstrated nothing more than accusations had been made against the Applicant. No reasonable inferences could be drawn from the mere existence of the TRO's; certainly, no inferences that could be characterized as "substantial credible evidence" and thus support a "not in the interest of the public health safety or welfare conclusion."

Only speculation can be drawn from the mere existence of the TRO's. This is aptly illustrated by YB's testimony, in which she acknowledged telling the police Applicant threw a slipper at her, even though it didn't really happen.

That is not to say the facts underlying dismissed charges cannot be considered. See Osworth, 365 N.J. Super. at 77-79 ("The dismissal of criminal charges does not prevent a court from considering the underlying facts in deciding whether a person is entitled to purchase a firearm or recover one previously taken by the police.") (Emphasis added). Accord, In Re Z.L., 440 N.J. Super. 354, 358-59 (upholding denial of gun permits based on history of domestic violence though Applicant never subject to restraining order but admitted the core underlying facts), certif. den., 223 N.J. 280 (2015). Here, however, no underlying facts were presented. Only speculation remained possible. The evidence simply did not support the court's conclusions.

B. The Court's determination concerning the severity of Applicant's possession of the gun, the magazine, and the knuckles—and consequent disqualification—is so inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.

The trial court placed great emphasis on Applicant's twenty-nine-year-old arrest for possessing a gun. From that incident, along with the incidents involving the magazine and the brass knuckles, the court concluded he was unfit to possess a firearm. As previously noted, however, "[t]he dismissal of criminal charges does not prevent a court from considering the underlying facts in deciding whether a person is entitled to purchase a firearm or recover one previously taken by the police." Osworth, 365 N.J. Super. at 78. Here the court overlooked the underlying facts, facts inconsistent with her conclusion concerning Applicant.

It is undisputed that when the traffic stop of Applicant occurred in 1996 he possessed a valid FPIC. He testified he was returning from the firing range, his gun was locked in a box in the trunk of his car, and the bullets were separated from the gun and stored in his glove compartment. But for his not having taken a firearms training course, he would have been exempt from the statue prescribing his unlawful possession of a weapon. He had otherwise complied with the requirements of the exemption statute, N.J.S.A. 2C:39-6g. This is likely why he was given PTI for a second-degree crime, N.J.S.A. 2C:39-5.

Similarly, the trial court seemed to overlook the underlying circumstances of the magazine and brass or "metal" knuckles. As to the magazine, Applicant's

testimony was consistent with the report admitted into evidence; that the magazine had been "pinned" to reduce it from twenty rounds to fifteen long before the law changed requiring it to be pinned to reduce its capacity to ten rounds. How Would Applicant possibly know years later the law changed to require the further reduction? And the court appeared to have overlooked that the brass knuckles were a collector's item. Thus, the court's conclusion that possessing the brass knuckles was incorrect, as N.J.S.A. 2C:39-3(e) prohibits such possession only if the device is. "without any explainable lawful purpose." Of course, the Chief presented no reports as to any of these items, a suggested procedural requirement that would have avoided the court from reaching a conclusion about Applicant's fitness unsupported by and contrary to the facts surrounding Applicant's possession of these items.

D. Conclusion.

The Chief did not present the witnesses and reports to establish the facts underlying the unfounded, dismissed TRO's filed periodically against Applicant; a procedural requirement. Weston, 60 N.J. at 46. This resulted in the court reaching conclusions inconsistent with the credible evidence; conclusions contrary to the interest of justice. The trial court's determination should thus be reversed.

POINT II. APPLICANT HAD NO NOTICE THE CHIEF AND PROSECUTOR WOULD SEEK DISQUALIFICATION UNDER N.J.S.A. 2C:58-3(c)(8) AND WAS THUS DEPRIVED OF DUE PROCESS. (Not Raised Below).

As previously discussed, our appellate courts have established requirements to assure the hearing conducted by the Law Division conforms with the essential requirements of procedural due process. Dubov, 410 N.J. Super. at 200. Those requirements include:

> At the outset of the County Court hearing . . . orderly and logical procedure calls for introduction through the testimony of the Applicant of his application for the identification card, the rejection thereof and the reasons given by the Chief, if any. At this point he may be subjected to cross-examination by counsel for the Chief. Thereafter, the Chief should proceed with the evidence on which his denial was predicated.
>
> [Dubov, 410 N.J. Super. at 200 (quoting Weston, 60 N.J. at 46) (Emphasis added).]

Here, the Chief's denial—set forth in his denial letter to Applicant—was based on "Public Health Safety and Welfare"; "Extensive Domestic Violence and weapon seizure history." At the hearing, he elaborated:

> I denied the application based on public health and welfare. And that is explained in page 3 of that report you're talking about, that application. And basically, on public health and welfare I denied the application for the change of address and the permits because of the extensive domestic violence history as well as -- if you look in the firearms guide, you can as well take into consideration PTI from the past, as well as other charges. (T9-2 to 10).

The Chief thereafter proceeded with evidence to support his disqualification under "Public Health Safety and Welfare." Applicant's first notice the court might rely on

N.J.S.A. 2C:58-3(c)(8) came when the court announced its decision. Applicant was thus deprived of developing rebuttal, such as the circular deprivation of Applicant's Second Amendment Right to bear arms: he could not update his FPIC because his guns weren't returned by the Chief when the prosecutor directed he do so, but he could not get the guns because he did not have an updated FPIC.

For these reasons, this issue should not be deemed waived, but rather this ground for disqualifying Applicant from obtaining a FPIC should be reversed.

CONCLUSION

The police chief failed to present competent evidence to support the court's determination Applicant was disqualified from holding an FPIC because its issuance would not be in the interest of the public health, safety and welfare. Compounding this error, the trial court also determined that Applicant was disqualified because his firearms had been seized under the Prevention of Domestic Violence Act of 1991—even though the police had been directed to return the firearms and even though Applicant had not been given notice and an opportunity to develop proofs and be heard on this issue.

For these reasons, the Law Division's order should be reversed and the matter remanded for the return of Applicant's weapons and issuance of a FPIC.

LIPARI & DEITER, P.C.

Dated: July 9, 2025

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LETTER IN LIEU OF BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

Honorable Judges of the Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625

Re: IN THE MATTER OF ELWOOD BELL'S APPLICATION FOR A FIREARM PURCHASER'S IDENTIFICATION CARD
(Plaintiff-Appellant)
Docket No. A-002057-24 T1

Quasi-Civil Action: On Appeal From An Order of the Superior Court of New Jersey, Law Division, Atlantic County Affirming Denial of a Firearm Purchaser's Identification Card

Sat Below: Hon. Pamela D'Arcy, J.S.C.

Honorable Judges:

Pursuant to Rule 2:6-4(a), this letter is submitted in lieu of a formal brief on behalf of the State of New Jersey.

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STATEMENT OF PROCEDURAL HISTORY

On January 24, 2024, Absecon Police Department Chief James R. Laughlin, Jr. denied the firearm purchaser's identification card (FPIC) application of Elwood Bell (hereinafter Appellant), citing the public safety and welfare exception as well as an extensive domestic violence/weapons seizure history. (Pca[1] 6). On May 15, 2024, the Appellant, through counsel, filed an out-of-time appeal in Superior Court with the State's consent. (Pca 5). On January 31, 2025, a plenary hearing was held before the Hon. Pamela D'Arcy, J.S.C. (1T[2] 4:1-3).

At the conclusion of the hearing the court affirmed the denial of the Appellant's FPIC and ordered that his firearms not be returned to him. (1T 78:4-24). On April 1, 2025, the court issued a written opinion. (Pa[3] 7-20). The instant appeal follows.

COUNTERSTATEMENT OF FACTS

The Appellant was first issued an FPIC in Atlantic City in 1992. (1T 20:7-14). In 1996, the Appellant was stopped for speeding in Hamilton

[1] "Pca" refers to Plaintiff/Appellant's Confidential Appendix.
[2] "1T" refers to the hearing transcript dated January 31, 2025.
[3] "Pa" refers to Plaintiff/Appellant's Appendix.

Township with a handgun in his trunk and subsequently applied to PTI. (1T 32:19-25; 33:1-19). The Appellant then, at some point, moved to Pleasantville and obtained a Pleasantville FPIC. (1T 61:13-14). In 2021, the Appellant applied for an FPIC for a change of address in 2021, but that application was removed. (1T 61:14-15). At the time it was removed, the Appellant had been served with another restraining order, and his weapons had been seized. (1T 41:13-16; 43:3-7). After it was dismissed, the Appellant was advised he could have his guns returned, with the exception of the illegal extended capacity magazines he possessed. (1T 42:24-25; 43:1-2).

Over the course of several decades and culminating in 2021, the Appellant had allegations of domestic violence levied against him by at least five victims. (1T 63:11-12). The Appellant estimated that during that time, he had his weapons seized pursuant to domestic violence search warrants at least four times. (1T 41:1-5). On one occasion, the police located brass knuckles. (1T 39:11-13).

LEGAL ARGUMENT

POINT I:

THE COURT'S DECISION WAS SUPPORTED BY SUFFICIENT CREDIBLE EVIDENCE.

The Appellant alleges that the trial court's decision was not supported by sufficient evidence. For the following reasons the State would submit that

sufficient evidence was before the court for a finding under the applicable preponderance standard. "The dismissal of criminal charges does not prevent a court from considering the underlying facts in deciding whether a person is entitled to purchase a firearm or recover one previously taken by the police." In re Osworth, 365 N.J. Super. 72, 78 (App. Div. 2003) (citing In re Return of Weapons to J.W.D., 149 N.J. 108, 110 (1997)). The public health, safety, and welfare statute is meant to address issues that, although not specifically enumerated, appear to be contrary to the public interest. Burton v. Sills, 53 N.J. 86, 91 (1968) (citing State v. Neumann, 103 N.J. Super. 83, 87 (Monmouth County Ct. 1968)). The Court's review of the denial is de novo and an independent determination by the Court is required. In re Z.L., 440 N.J. Super. 351, 357 (App. Div. 2015) (citing Osworth, 365 N.J. Super. at 77-88). In making that determination, the Chief need only meet his burden by a preponderance of the evidence. Id. at 358. "Although the decision may not rest solely on hearsay, '[t]his is not to say ... that in such a proceeding, whether administrative or on judicial review, the usual rules of evidence barring hearsay testimony should be regarded as controlling'" Osworth, 365 N.J. at 78 (quoting Weston v. State, 60 N.J. 36, 50 (1972)).

A. Domestic Violence History

Here, the court heard from three witnesses. Chief Laughlin testified that he considered, in part, the Appellant's extensive domestic violence history. Notably, these were not just instances of police contact or calls for service, but temporary restraining orders issued against the Appellant. Specifically, the Chief testified that he recalled nine entries in the DV registry, concerning five victims spanning three counties. (1T 11:1-8).

While the Chief mentioned weapons being seized, the Appellant himself testified that as a result of the TRO's, he had his weapons seized at least four times. (1T 41:3-4). The third witness, the Appellant's partner Y.B., was called by the Appellant himself. On cross-examination, she testified that she had reported to the police that the Appellant threw a sandal at her (1T 47:22-25; 48:1-3). She further testified that on another occasion she called the police while at a hotel because they were arguing and that the Appellant threatened to kick the door down, claiming it was "an upset thing, like a heated argument." (1T 49:1-16). In fact, when asked what happened, the witness testified "we had an argument, like we always do." (1T 49:4). On re-direct, the witness testified that they argue over TV shows, or maybe her saying something and the Appellant taking it the wrong way. (1T 50:11-15). On re-cross, the witness conceded what was contained in yet another police report, namely that they

had argued over a trip the witness wanted to take to Florida with her children. (1T 50:21-24). While the Appellant testified that some entries in the registry pertained to him as a victim, he conceded on cross-examination that in those cases, he was also listed as a defendant. (1T 38:14-23).

The State argued then, as it does now, that the acts of domestic violence are not fleeting or aberrational, but rather a continued course of conduct spanning decades. The court seemed to agree. While the Appellant contends that the finding must be made purely out of speculation, the State would submit that it is instead a reasonable inference. For one, it is rather strange for a person to accumulate, as the Chief put it, nine registry entries concerning five victims spanning three counties. The odds of that happening with no basis in fact and with the Appellant having never conducted himself in such a fashion warranting a complaint are likely astronomical. For another, the Appellant presented one of the victims as a witness, and she herself testified to some of the relevant facts. While it is true that on the stand at the hearing she claimed to have made false statements to law enforcement, it is equally true that it is a common feature of the cycle of domestic violence, and the court acknowledged as much. Further, Y.B. did concede frequent arguments and admitted that the Appellant threatened to kick the hotel room door down. (1T 49:1-16).

The court agreed with the State, holding that he had a propensity for domestic violence spanning from 1997-2021, and that his obtaining an FPIC would present a danger to the public and similarly situated women. (1T 74:15-25; 75:1-2). Yet, the basis for the decision did not stop there.

B. Violations of Weapons Statutes.

The facts presented to the court included three violations of the weapon laws of this State. In the most recent instance, the Appellant admitted to possessing extended capacity magazines in violation of N.J.S.A. 2C:39-6(j). (1T 39:18-21). Specifically, the Appellant possessed magazines that held fifteen rounds each, or five rounds more than the law permits. The Appellant later agreed that he found it important for firearm owners in New Jersey to be aware of the laws of the State. (1T 43:14-17). While the Appellant was not charged, his magazines were seized as contraband and not returned to him.

In 2018, the police seized firearms from the Appellant. The Appellant was questioned regarding brass knuckles being seized. The Appellant testified that he possessed them, but that police allowed him to keep them after he advised that they were "a collector's item." (1T 39:4-10). First, the Appellant's statement contradicts evidence in discovery, which consisted of a police report

citing a pair of brass knuckles as "confiscated." Second, even if the police did not seize them, their mistake does not render the possession legal.

The court correctly considered the violations of the weapons statutes, including the brass knuckles. (1T 69:12-20). The Appellant now argues that the court was incorrect as it pertains to the knuckles, because the statute contains the language "without any lawful purpose." (App. Brief, 15). The State would submit that the Appellant is mistaken, as the law is clear that possessing the items is an offense, and that those words merely shift the burden to the defendant as an affirmative defense. State v. Lee, 96 N.J. 156, 160 (1984). In other words, the items are presumptively illegal, and the defendant must provide evidence of a lawful purpose. One would think that—as opposed to a kitchen knife—the utility or usefulness of brass knuckles might be a rather narrow category. Further, because he was not charged, he could not assert an affirmative defense and so the presumption, or at the very least probable cause, existed to demonstrate a violation.

Finally, the third and oldest instance came by way of the violation of the firearm statute for which the Appellant entered PTI. While the Appellant testified that he had the handgun in the back of his car and the magazines in the glovebox when he was stopped, he also testified that he applied to PTI. (1T 33:1-25). He was also asked by his counsel whether he had his FPIC at the

time. (1T 32:15-18). He was, however, not asked whether he had a pistol permit.

"Clearly a finding that the defendant has violated the gun laws such as to be a basis for forfeiture under 2C:25–21(d), would constitute a basis for finding that his continued possession of weapons or his firearms ID card would not be in the interest of public health, safety or welfare." State v. 6 Shot Colt .357, 365 N.J. Super. 411, 418 (Ch. Div. 2003).

> Since a criminal conviction for either of those offenses would be an automatic bar to obtaining a permit to purchase a handgun, *N.J.S.A.* 2C:58–3c(1), the fact of their commission, even absent conviction, warranted denial of the permit in this case under subsection c(5). In short, it does not serve public safety to issue a handgun purchase permit to someone who has demonstrated his willingness to disregard the gun laws of this State.

In re Osworth, 365 N.J. Super. 72, 81 (App. Div. 2003). The Appellant was shown to have violated the weapons laws not just once, but three times. Once he entered PTI for an unlawful handgun possession charge, and twice during the execution of a DV search warrant when he was found to be in possession of contraband—including extended capacity magazines. The magazines alone, under Osworth, would be enough to affirm a denial. The fact that the Appellant managed to avoid a criminal conviction or charges several times has no bearing

on what the court may consider when determining whether the issuance of an FPIC serves public safety.

C. Due Process

The State would submit that reliance upon N.J.S.A. 2C:58-3(c)8 would be misplaced, as this Petitioner's firearms were not withheld due to a forfeiture order. Rather, the firearms were to not be returned as the Petitioner does not possess a valid FPIC. To the extent that the court cited that statute, the State would insist that the pertinent grounds for denial are under the public safety exception.

In short, there was sufficient evidence before the court for it to find that the Petitioner would not abide by the weapon laws of this state, and that his DV history indicated a public safety concern.

CONCLUSION

For the reasons expressed, the State respectfully requests that the Appellate Division affirm the Law Division's order affirming the Chief's denial.

Respectfully submitted,

/s/ Matthew T. Mills
Matthew T. Mills
Assistant Prosecutor

IN THE MATTER OF ELWOOD BELL APPLICATION FOR A FIREARMS PURCHASER IDENIFICATION CARD	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A – 002057-24 T1 Civil Action ON APPEAL FROM SUPERIOR COURT OF NEW JERSEY LAW DIVISION – ATLANTIC COUNTY DOCKET NO.: A-0020057-24-T1 SAT BELOW: Hon. Pamela D'Arcy, J.S.C.

APPELLANT'S REPLY BRIEF

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PRELIMINARY STATEMENT

Appellant appeals an order upholding a municipal police chief's denial of appellant's application for a firearms purchaser identification card (FPIC) and permit to purchase a handgun (PPH). The court gave two reasons for its decision: appellant was disqualified because granting the FPIC and PPH would be contrary to the public health, safety and welfare, N.J.S.A. 2C:58-3(c)(5); and, appellant was disqualified under N.J.S.A. 2C:58-3(c)(8) because his firearms had been seized under the Prevention of Domestic Violence Act of 1991—a conclusion the court reached even though the Atlantic County Prosecutor had directed the police chief to return the firearms, and even though appellant had not been given notice and an opportunity to develop proofs and be heard on this issue.

The State concedes the court's second reason was wrong. The State acknowledges "reliance upon N.J.S.A. 2C:58-3(c)8 would be misplaced, as [appellant's] firearms were not withheld due to a forfeiture order. . . ."

Concerning the trial court's first reason, the court's opinion concerning the public health, safety and welfare disqualification is not supported by competent evidence presented at the hearing. During the hearing, the State presented no evidence of the facts underlying the domestic violence complaints it referenced but did not produce at the hearing, nor did it produce facts underlying the sole criminal offense for which a charge was lodged but later dismissed. As this court will see,

absent these underlying facts the trial court's inferences were supported mostly by speculation rather than competent credible evidence.

PROCEDURAL HISTORY

The procedural history is set forth in appellant's moving brief and is incorporated herein by reference. Appellant emphasizes that prior to the municipal police chief acting on appellant's applications, the Atlantic County Prosecutor's Office had directed the chief return appellant's guns.

STATEMENT OF FACTS

The statement of facts is set forth in appellant's moving brief and is incorporated herein by reference. Appellant emphasizes two facts. First, the following were the only exhibits either marked for identification or admitted into evidence at the hearing:

EXHIBITS MARKED:	IDENT.	EVID.
S-1 Supplemental Report 6/11/24		12
D-1 List of Domestic Violence	15	
D-2A Firearms I.D. Card (Front)	19	
D-2B Firearms I.D. Card (Back)	19	
D-3 TWIC Card	31	

(T2).[1]

1. T2 refers to the hearing transcript, page 2.

Second, nothing in the record suggests the municipal police chief had any information the Atlantic County Prosecutor's office did not have when it directed the chief to return appellant's guns.

LEGAL ARGUMENT

POINT 1.

THE STATE CONCEDES THE TRIAL COURT ERRED WHEN IT DETERMINED APPELLANT WAS DISQUALIFIED UNDER N.J.S.A. 2C:58-3(C)(8) BECAUSE HIS FIREARMS HAD BEEN SEIZED UNDER THE PREVENTION OF DOMESTIC VIOLENCE ACT OF 1991.

(Raised in State's Brief, Point 2, Db 9)

The State concedes this point in its brief, explaining: "[R]eliance upon N.J.S.A. 2C:58-3(c)8 would be misplaced, as [appellant's] firearms were not withheld due to a forfeiture order. . . . To the extent that the court cited that statute, the State would insist that the pertinent grounds for denial are under the public safety exception." For this reason, as well as the reasons explained in appellant's initial brief, appellant presumes there is no need for further discussion.

POINT 2.

THIS COURT SHOULD REVERSE THE TRIAL COURT'S ORDER AND ORDER APPELLANT'S GUNS RETURNED BECAUSE THE TRIAL COURT'S DETERMINATION WAS NOT SUPPORTED BY SUFFICIENT CREDIBLE EVIDENCE IN THE RECORD.

(Raised Below. (T55 To T59).

The State's arguments and the trial court's decision were based essentially on two sets of suppositions: those drawn from domestic violence complaints which

were not introduced into evidence, for which the State presented no underlying facts, and which were all dismissed; and those drawn from alleged violations of the criminal law that were either not violations or that the State could not prove defendant knowingly violated.

A. The State Presented Neither the Domestic Violence Complaints Nor the Facts Underlying the Complaints.

The sole evidence the municipal chief police presented concerning appellant's domestic violence history was a "list" of domestic violence marked for identification but not entered in evidence. (T15-8 to 18; T16-23 to T17-2). He did not present the domestic violence complaints. Of those complaints on the "list," the chief acknowledged that in some appellant was the victim. He conceded the registry lists the complaints but provides no specific information underlying them. (T18-1 to 8). The chief spoke to none of the parties involved with the domestic violence complaints, including appellant's partner, who was involved in the 2021 incident. (T18-12 to 20). In short, he knew no facts about the domestic violence allegations against Appellant.

In none of the complaints was appellant accused of a crime of violence. (T36-4 to 16). The complaints alleged only harassment. Appellant never received a criminal complaint for harassment. (T36-20 to 24). He went to court for every restraining order, and every restraining order was dismissed. (T36-25 to T37-4). No

court ever found that Applicant was a danger to other persons or that other persons should fear him. (T37-5 to 8).

One person named in the list of domestic violence complaints was appellant's fourteen-year domestic partner. (T45-14 to 22). She testified he never struck her, pushed her, threatened her with violence, or got physical with her in any way. (T47-2 to 8). She testified the circumstances underlying the complaint involved nothing physical. (T46-20 to T47-11). She did tell the police he threw a sandal at her but that didn't really happen. T47-22 to T48-8.

Appellant's partner also testified appellant once said he was going to kick down a door, but he made the statement during a heated argument while he was upset. T49-5 to 16. During their fourteen years together, she and appellant mostly argued over television shows, but once they argued about her taking their kids to Florida. (T50-9 to 24).

The State presented no evidence of any facts underlying the other domestic violence complaints, all of which were dismissed. Although the State asserts appellants' guns were seized following the filing of four complaints—the trial court thought five—it is undisputed the weapons were always returned, except in the latest instance when the Atlantic County Prosecutor's Office directed they be returned.

B. Of the Three Criminal Violations Alleged by the State, The State Did Not Present the Underlying Facts of the Only One Resulting in a Criminal Charge, Which Was Dismissed. As to the Other Two, Neither of Which Involved

Criminal Charges, the State Either Did Not Prove Defendant Committed a Crime or Did Not Prove Defendant Knowingly Committed a Crime.

The State alleges, and the trial court considered, that appellant violated criminal statutes on three occasions; once when he possessed a gun in the trunk of his car, a second time when he possessed gun magazines, and a third time when he possessed brass knuckles. Appellant possessed the gun in the trunk of his car in 1996. He had held an FPIC for four years and he had legally purchased his guns. (T20-10 to 14; T32-15 to 25). When stopped by an officer for a traffic violation, appellant was just leaving the gun range. His gun was locked in his trunk and his bullets were separated in the glove box. (T33-2 to 13). The officer nonetheless charged him with a weapons possession offense. Following his attorney's advice, appellant successfully entered PTI and the charge was dismissed. (T 33-14 to 23).

Appellant purchased the gun magazines approximately twenty years ago from a retail gun dealer, Gun World, who would sell him nothing illegal. (T34-5 to 13). He had to wait for the magazines because the dealer had to "pin" them to fifteen rounds, the legal limit at the time. (T34-19 to 24). During the intervening years he didn't use the magazines much because his trucking duties gave him little recreational time. (T35-5 to 7). He was unaware when the law changed to limit the magazines to ten rounds. He received no notice of the change. (39-22 to 40-1).

While the decision concerning the return of his firearms was pending, Applicant frequently spoke with representatives of the Atlantic County Prosecutor's

Office. The representatives verified his account concerning the magazines with personnel at Butch's Gun World, where he purchased them. They were not going to charge him. (T42-11 to T43-2).

Concerning the brass knuckles, appellant explained they were a collector's item. The police saw no problem with them. (T39-4 to 13). He was not charged with a crime.

C. In View of the of the Absence of Facts Underlying the Domestic Violence Complaints and Alleged Criminal Violations, the State's Arguments and the Trial Court's Decision are Based on Speculation, Not on Competent Credible Evidence. The Trial Court's Decision Must Therefore be Reversed and Appellant's Guns Returned to Him.

The trial court and the State cite In re Osworth, 365 N.J. Super. 72, 78 (App. Div. 2003) for the proposition, "[t]he dismissal of criminal charges does not prevent a court from considering the underlying facts in deciding whether a person is entitled to purchase a firearm or recover one previously taken by the police." Appellant agrees. Accord, In re Z.L., 440 N.J. Super. 351, 358 (App. Div. 2015) ("Even if an applicant was previously charged with an offense but not convicted, in a later permit hearing the chief may still present to the court the evidence underlying the charges.").

In Osworth, the State presented evidence of the police report documenting the relevant charges. 365 N.J. Super. at 76. In contrast, here the State presented no evidence of the facts underlying the domestic violence complaints. For those that

did not involve appellant's current domestic partner, the State's arguments and the trial court's findings concerning them were not based on competent evidence but were merely speculative. For example, the State argues that "the acts of domestic violence are not fleeting or aberrational, but rather a continued course of conduct spanning decades. The [trial] court seemed to agree." (State's Brief, DB5). What acts? The State presented no acts of domestic violence "spanning decades." The State did not even present any domestic violence complaints. And though the State and the trial court knew all the domestic violence complaints had been dismissed, they had no knowledge of whether they were dismissed on the merits or otherwise, or why they were dismissed. They didn't even have the information contained in the complaints.

Nor does appellant's domestic partner's testimony support either the State's arguments or the trial court's conclusions. In fact, the partner admitted information attributed to her by police was not true. Nor does an argument about a TV show nor an argument about a vacation constitute domestic violence.

Absent any evidence of the facts underlying the domestic violence complaints, the trial court's opinions—predicated on no more than the fact the complaints were filed (and subsequently dismissed)—can be nothing but speculative.

The same is true of the trial court's opinions concerning the alleged criminal violations. The State presented no evidence concerning the facts underlying the

1996 gun possession charge, which was dismissed after appellant successfully completed PTI. Moreover, appellant was leaving a gun range when stopped by police. His gun was locked in his trunk and his bullets were separated in the glove box. (T33-2 to 13). Under these circumstances, appellant was exempt from the prohibitions of N.J.S.A. 2C:39-5 concerning gun possession offenses. N.J.S.A. 39:6f(3)(b) (exempting from N.J.S.A. 2C:39-5 persons transporting a firearm to or from any target range provided the firearms are properly carried).[2] Thus the State's proofs—and lack of proofs of facts underlying the charge—did not establish appellant had committed a possessory firearms offence.

In its brief—apparently in an attempt to fortify this deficiency and to suggest the charge was supported, even in the absence of any underlying facts supporting it—the State asserts "[appellant] was, however, not asked [when he testified at the hearing] whether he had a pistol permit." (State's Brief, Db8). This supposition is refuted by appellant's testimony that he lawfully purchased his firearms. Of greater significance, it overlooks that the police chief, not appellant, had the burden of proof at the hearing before the trial court.

Because the State and municipal police chief failed to present any facts underlying the 1996 firearms charge, and because the only facts presented did not

2. Appellant's initial brief inadvertently refers to a firearms training course, which is not a requirement of N.J.S.A.

prove appellant had committed an offense—only that he was charged—the inferences the trial court drew from the mere fact appellant was charged are unsupported by credible evidence in the record. Specifically, the trial court took into account "the severity of the 1996 unlawful possession of a handgun charge as, although it is remote, it is a violation of New Jersey gun laws." (Trial court's supplemental opinion, PA7, p.11). The trial court had no evidence of underlying facts to support this conclusion in view of the facts demonstrating appellant was exempt from the offense.

There is more. The firearms incident occurred in 1996. From the State's proofs, it appears the four occasions when appellant 's weapons were seized occurred in later years. On each such occasion, the prosecutor either returned the weapons or directed they be returned. Such was the case with the final incident. The prosecutors did not find the decades-old weapons incident disqualifying. This fact, along with the trial court drawing adverse inferences from the 1996 incident when the State did not prove through underlying facts that appellant even committed a crime, suggests the trial court's conclusion concerning the 1996 charge was arbitrary and capricious.

Concerning the gun magazines, it is not insignificant the trial court found they "had twenty rounds. You can only have – 10 is the max rounds in the State of New Jersey." (T62:6-10). That finding was wrong. When appellant purchased the magazines approximately twenty years ago from a retail gun dealer, Gun World, he

had to wait for the magazines because the dealer had to "pin" them to fifteen rounds, the legal limit at the time. (T34-19 to 24). During the intervening years appellant was unaware when the law changed to limit the magazines to ten rounds. He received no notice of the change. (39-22 to 40-1). Representatives of the Atlantic County Prosecutor's Office verified appellant's account concerning the magazines with personnel at Butch's Gun World, where he purchased them. After doing so they did not charge appellant with a criminal offense. (T42-11 to T43-2). In view of these facts, particularly the trial court's mistaken belief concerning the magazines' capacity and appellant's lack of knowledge of the change in the law restricting the capacity to ten from fifteen, the trial court's inferences about appellant knowingly violating the law are simply wrong.

The same is true concerning the brass knuckles. They were a collector's item, an explainable lawful purpose under the applicable statute, and thus not a violation. N.J.S.A. 39:3c. In its brief, the State asserts that having an explainable lawful purpose is an affirmative defense appellant could not assert because he was not charged. The argument overlooks both the State's burden of proof at the hearing before the trial court and the trial court's drawing adverse inferences about appellant's character from lawful—not unlawful—activity.

To summarize, because the State did not present the factual underpinnings of dismissed domestic violence complaints and alleged but not proven criminal

offenses, the trial court's opinion was not based on competent credible evidence. This Court should reverse the trial court's Order and order appellant's guns be returned to him.

CONCLUSION

The trial court erroneously determined, as the State concedes, appellant was disqualified under N.J.S.A. 2C:58-3(c)(8) because his firearms had been seized under the Prevention of Domestic Violence Act of 1991. That error requires reversal.

In addition, careful review of the hearing record can lead to a single conclusion: the trial court's decision that appellant was disqualified because granting the FPIC and PPH would be contrary to the public health, safety and welfare is unsupported by substantial credible evidence. It is predominantly based on speculation. Consequently, the trial court's order should be reversed and appellant's guns returned to him.

LIPARI & DEITER, P.C.

Dated: September 29, 2025

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