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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3230-20**

**IN THE MATTER OF THE APPEAL
OF THE DENIAL OF EDWIN G.
ALVARADO'S APPLICATION
FOR A FIREARMS PURCHASER
IDENTIFICATION CARD.**

Submitted April 25, 2022 – Decided May 17, 2022

Before Judges Messano and Marczyk.

On appeal from the Superior Court of New Jersey, Law
Division, Bergen County, Docket No. GPA-0036-20.

Roberts & Teeter, LLC, attorneys for appellant
(Michael B. Roberts, on the briefs).

Mark Musella, Bergen County Prosecutor, attorney for
respondent (Edward F. Ray, Assistant Prosecutor, of
counsel and on the brief).

PER CURIAM

Edwin G. Alvarado appeals the June 3, 2021 Law Division order denying his application for a New Jersey Firearms Purchaser Identification Card (FPIC) because its issuance "would not be in the interest of public health, safety or

welfare." N.J.S.A. 2C:58-3(c)(5). Alvarado was issued an FPIC in 1990, however, in March 2020, he applied through the New Jersey State Police Firearms Application and Registration System (FARS) for a duplicate card reflecting a change of address to his current residence in Glen Rock. See N.J.A.C. 13:54-1.11(a) (requiring persons to apply for a duplicate FPIC when the original card is "lost, stolen, or . . . a change of residence" occurs).

The Glen Rock Police Department (GRPD) initiated an investigation as required under the regulations for any application for an FPIC or duplicate. See In re Application of Boyadjian, 362 N.J. Super. 463, 466 (App. Div. 2003) (explaining regulations require "full compliance review investigation" when a duplicate FPIC is sought after a change in residence). On October 6, 2020, Glen Rock Police Chief Dean Ackermann denied the application, citing Alvarado's "history of firearms violations, domestic violence, and . . . failure to account for the whereabouts of previously[-]owned firearms."

Alvarado appealed to the Law Division. See N.J.S.A. 2C:58-3(d). At the hearing, the judge heard the testimony of GRPD Detective Lucas Doney,

Alvarado, his son Edwin Alvarado, Jr. (Junior), and Alvarado's colleague Mark Trehwella.¹ We briefly summarize the testimony.

Alvarado was originally issued an FPIC in 1990 but abandoned it and his weapons in 1994 when he moved out of his marital home. In 1990, Alvarado was involved in a car accident in the parking lot of his brother-in-law's apartment complex in Parsippany after he and his brother-in-law had an argument. Police responded and seized a shotgun, knives, and ammunition from Alvarado's vehicle.

Although Alvarado testified the shotgun was not loaded, the police report indicated it was. It also indicated Alvarado had been drinking. Alvarado refused to comply with an order to get out of the vehicle, and police charged him with resisting arrest and unlawful possession of the shotgun because he did not have his FPIC with him. These criminal charges were dismissed after Alvarado successfully completed the Pretrial Intervention Program (PTI). Alvarado surrendered his shotgun as a condition of PTI, and the weapon was destroyed in 2002.

¹ To avoid confusion, because appellant and his son share the same name, we refer to his son as Junior. We intend no disrespect by this informality.

Alvarado left his marital home in 1994, the same year a Family Part judge in Morris County granted Alvarado's now ex-wife a temporary restraining order (TRO). Alvarado said he left his personal property, including his firearms, behind in the marital residence. The TRO directed police to seize "any and all" firearms from Alvarado.

Alvarado said he never received notice of the TRO and did not know whether police ever seized his firearms. During his investigation, Det. Doney was unable to verify whether police seized or destroyed Alvarado's firearms, or whether they remained in Alvarado's possession. Alvarado originally said he discovered the existence of the TRO in 2018 or 2019 when he travelled internationally. He later admitted, however, that he became aware of the TRO in 2004, when he was denied an FPIC by another municipality, Paterson, where he lived at the time. The TRO never became a Final Restraining Order, and the Family Part vacated the TRO in 2020.

Lastly, Alvarado acknowledged receiving several citations for violating the Fish and Game statutes, N.J.S.A. 23:4-1 to -64, in November 1995 while using his friend's rifle. Alvarado admitted he was hunting out of season, possessed a loaded firearm within 450 feet of a residence, and possessed a prohibited weapon.

Junior lived with his father and hunted with him annually. Alvarado used his son's firearms, and Junior never knew him to handle them inappropriately. Junior said his father did not abuse alcohol or drugs. Trewhella was Alvarado's friend and colleague for ten years and said Alvarado was of "great character" and "[v]ery responsible."

Det. Doney summarized the results of his investigation. He recommended Chief Ackermann deny Alvarado's application based on the above incidents. Further, because he could not verify if police seized Alvarado's weapons in 1994 as part of the TRO proceedings, Det. Doney was concerned Alvarado may have simply abandoned them in 1994 or 1995.

The judge rendered an oral decision following the testimony. He concluded Alvarado abandoned his FPIC and weapons in 1994, and, therefore, the application was seeking a new FPIC. The judge found Det. Doney's testimony was the "most direct and most credible." He recognized Junior and Trewhella testified favorably to Alvarado's character, but the judge noted Junior was biased in his father's favor.

The judge did not find Alvarado credible because his testimony was "contradictory and inconsistent in and of itself." Due to Alvarado's "disregard of the law, irresponsible and unsafe handling of firearms" and "lack of

truthfulness and candor and dishonesty before [the court]," the judge entered an order stating "issuance [of an FPIC] would not be in the interest of the public health, safety or welfare, [pursuant to] N.J.S.A. 2C:58-3(c)(5)." He further ordered Alvarado to "immediately surrender all firearms in his custody, control, and possession to the [GRPD]."

Before us, Alvarado argues in a single point that the judge's decision was against the weight of the evidence since Alvarado has not been arrested in twenty-six years and has no criminal convictions. We reject the argument and affirm.

The guideposts for our review are well known. "Because 'a judicial declaration that a defendant poses a threat to the public health, safety or welfare involves, by necessity, a fact-sensitive analysis,' 'an appellate court should accept a trial court's findings of fact that are supported by substantial credible evidence.'" In re Forfeiture of Pers. Weapons & Firearms Identification Card belonging to F.M., 225 N.J. 487, 505 (2016) (first quoting State v. Cordoma, 372 N.J. Super. 524, 535 (App. Div. 2004); and then quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 116–17 (1997)). "Deference to a trial court's fact-findings is especially appropriate when the evidence is largely testimonial

and involves questions of credibility." In re Z.L., 440 N.J. Super. 351, 355 (App. Div. 2015) (quoting J.W.D., 149 N.J. at 117).

An appeal from the denial of an FPIC is a "de novo" hearing in the Law Division at which "the judge must independently determine whether the applicant is entitled to a handgun permit." Id. at 357 (citing In re Osworth, 365 N.J. Super 72, 77 (App. Div. 2003)). "[T]he police chief has the burden of proving an applicant is not qualified to receive [an FPIC]." Ibid. (citing Osworth, 365 N.J. Super. at 77).

Our statute "recognizes that the right to possess firearms is presumed, except for certain good cause." Id. at 355 (citing N.J.S.A. 2C:58-3(c)). The statute lists a series of disqualifying circumstances, and specifically provides that no FPIC "shall be issued . . . [t]o any person where the issuance would not be in the interest of the public health, safety or welfare." N.J.S.A. 2C:58-3(c)(5). This provision "is 'intended to relate to cases of individual unfitness, where, though not dealt with in the specific statutory enumerations, the issuance of the permit or identification card would nonetheless be contrary to the public interest.'" Z.L., 440 N.J. Super. at 356 (quoting Osworth, 365 N.J. Super. at 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." Osworth, 365 N.J. Super. at 78 (citing J.W.D., 149 N.J. at 110). The judge may properly consider dismissed domestic violence complaints when making his or her determination. F.M., 225 N.J. at 510–11; see also Z.L., 440 N.J. Super. at 358–59 (holding forfeiture proper where police responded to five separate domestic disputes between the defendant and his wife, even though no temporary or final restraining order was ever issued).

Here, Alvarado did not dispute the events surrounding the charges leading to his entry into PTI, the order issued to seize his weapons pursuant to the TRO, or the violations of the fish and game statutes. His essential argument on appeal, however, is that all those events were in the distant past, and therefore, they cannot support the current denial of his FPIC application under N.J.S.A. 2C:58-3(c)(5).

This ignores, however, the importance of the judge's credibility determinations. For example, the judge rejected Alvarado's testimony that he did not resist arrest during the 1990 incident, or that the shotgun in his car was not loaded. The judge noted Alvarado was not a young man at the time, but rather "a mature adult handling firearms in an irresponsible[,] unsafe manner in disregard of the law." The judge also determined Alvarado knew of the TRO's

existence in 2004, although he initially denied knowing of its issuance until years later.

Rejecting the very argument Alvarado reprises before us, the judge succinctly framed the significance of Alvarado's incredible testimony:

[T]o say now . . . with the passage of time things have changed when Mr. Alvarado . . . clearly has not been fully truthful and forthcoming . . . , I disagree with counsel. I believe that there is a risk and it is not in the interest of the public health, safety and welfare to grant this appeal, not only for those multiple instances evidencing a disregard of the law, irresponsible and unsafe handling of firearms, but a lack of truthfulness and candor and dishonesty before this [c]ourt in Mr. Alvarado's selective memory . . . on this very date presently.

We find no reason to disturb the judge's factual findings, most of which were undisputed, nor do we see any legal error in his assessment of the standards governing disqualification under N.J.S.A. 2C:58-3(c)(5).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION