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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2663-21**

**IN THE MATTER OF THE
REVOCATION OF M.L.'S¹
FIREARMS PURCHASER
IDENTIFICATION CARD AND
COMPELLING THE SALE OF
HIS FIREARMS.**

Submitted April 24, 2023 – Decided May 3, 2023

Before Judges Whipple and Mawla.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. GPR-0016-20.

The Tormey Law Firm, attorneys for appellant M.L. (Travis J. Tormey, of counsel; Jeffrey A. Skiendziul, on the brief).

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

PER CURIAM

¹ Due to the discussion of M.L.'s medical and psychiatric condition, we refer to appellant by initials pursuant to Rule 1:38-3(a)(2).

Appellant M.L. appeals a March 25, 2022 order revoking his New Jersey Firearms Purchaser Identification Card (FPIC) and compelling the sale of his firearms. M.L. argues the trial court improperly concluded he was disqualified from firearms ownership and that N.J.S.A. 2C:58-3(c)(5) is unconstitutionally vague, overbroad, and violates the Second Amendment right to keep and bear arms. We find his arguments unpersuasive and affirm.

The facts are derived from testimony presented at a March 2022 trial. Adrianna Becote, a medical assistant to Dr. Michael Giuliano² at Mountainside Medical, testified on January 29, 2020, M.L. came to the office. According to Becote, there was an issue with his insurance, so his visit was not covered and he could not obtain the prescriptions he needed. He did not raise his voice, though he was visibly upset. She apologized for the inconvenience but told him they would work to resolve the issue.

Becote testified M.L. said, "he had come back from his third tour [in Iraq], he needed his prescriptions, he killed people so [he] need[ed his] medicine." Becote was not bothered by this statement. M.L. left the office right after he made the comments and did not return.

² Dr. Giuliano passed away in May 2020. The transcripts and the State's brief use the spelling "Juliano," but we use the name as spelled by M.L. in his brief.

Next, Linda Whitehead, Dr. Giuliano's receptionist, testified. She explained M.L. came in to see the doctor, who was not there at the time. When she informed him the doctor was not in and he would have to make an appointment, he became "a little bit irate." She described M.L. as "disgruntled, a little angry[,] and "very, very unhappy." She testified she and the other staff members felt uncomfortable "[b]ecause he kept reiterating that he did want to see the doctor[, that] he had PTSD,^[3] that he had a gun and needed to see the doctor."

Whitehead explained M.L. did not show her a gun, nor did she see a gun. She reiterated:

He said he had a gun. He said he had some . . . PTSD. He was in the military. And he had a gun. We did not see the gun, but he did say he had one. He just said he was going to leave and then come back. And if he came back, it would be an issue.

She testified he was "very calm," which is what unnerved her. She clarified his tone was calm, but his words were "stern" and his facial expressions indicated he was frustrated and irate. Whitehead did not call the police immediately, she said, because she wanted to tell the doctor what had transpired

³ Post-traumatic stress disorder.

first, and she "had to go through . . . management and let them know of the situation before" she could act. Then, the doctor called the police.

Officer Andrew Van Dorn of the Nutley Police Department was dispatched to Dr. Giuliano's office. He spoke with Dr. Giuliano, who told him M.L., a sergeant in the Marine Corps at the time, made a comment he had killed people. The doctor, though also concerned about the safety of his staff, "wanted to make sure that the patient himself was okay." This prompted a welfare check on M.L. Because M.L. lived in North Arlington, the Nutley Police contacted that police department to conduct the welfare check. Officer Van Dorn also looked up if M.L. had any firearms registered to him; he did not.

North Arlington Officer German Liranzo performed a welfare check on M.L. after receiving the call a patient at a doctor's office who possibly had PTSD had said "something [was] wrong with his head" He went to M.L.'s residence, contacted the county's psychiatric health services—Care Plus—to perform an evaluation, and asked M.L. if he had any firearms. M.L. had one handgun, which he voluntarily surrendered.

M.L. told Officer Liranzo he had been going through a lot with his family and dealing with "mental issues" at the time. M.L. admitted he made a comment

he had "killed for his country" in the doctor's office. The psychiatric evaluation, however, indicated he was not a danger to himself or others.

M.L. testified. He was a sergeant in the Marine Corps and, as part of his job, he underwent extensive firearm training. He had no criminal record or history of domestic violence. He recounted he had been undergoing treatment for an issue with his ear and went to Dr. Giuliano's office for a referral, which was necessary for his insurance to cover his treatment—not a prescription. According to him, "this was the third time that they messed it up"

M.L. denied telling the doctor's staff he had a gun, saying "[t]hey are 100 percent lying. I never said that." When he was denied a referral, he tried to obtain his medical records from the office, which the staff refused to give him. He was frustrated and said, "I'm willing to fight and kill for my country and this is how I get treated[,] then walked out. He did not remember seeing Whitehead at all.

M.L. recounted several stressful things going on in his life at the time: his three-year-old daughter was in a "cast from her ankles to her chest" and had autism; his wife was on bed rest; and he worked and went to school full time. When the North Arlington officers came to conduct a welfare check on him, he told them he had a firearm—an unregistered pistol he bought in North

Carolina—which he had locked up. He told them, "I don't take it out. I don't use it."

He denied ever seeing a mental health professional and being diagnosed with PTSD. M.L. averred the psychiatric evaluation conducted by Care Plus revealed he was "perfectly . . . okay." When questioned further about the statements he made in the doctor's office, he insisted he never said there was something wrong with his head, but rather his ear.

The court granted the State's motion to revoke M.L.'s FPIC and compel the sale of his firearm. It acknowledged Becote's and Whitehead's testimonies differed, but gave more weight to Whitehead's. It credited her testimony that M.L. said he had PTSD, had a gun, and was going to leave, and—when he came back—"it was going to be an issue." The court said: "A reasonable person certainly can infer from that behavior concern and fear for one's safety under the totality of the facts and circumstances of that incident." The court dismissed Officer Van Dorn's testimony as hearsay.

Regarding M.L.'s testimony, the court said:

[I]t's perfectly understandable that any litigant or party or witness who appears before a court on any matter might be nervous, or might become emotional or upset. . . . I want to note for the record because it . . . corroborates the demeanor of the way [M.L.] conducted himself in Dr. [Giuliano]'s office that while the

testimony of . . . Whitehead in particular and throughout [M.L.]'s own testimony, he was visibly upset, at times angry, particularly speaking about his supposed . . . issue with Dr. [Giuliano]'s office[.] . . . [W]hat I'm focusing in on is [M.L.]'s demeanor, which was alternately very angry, emotional throughout his cross-examination On redirect, [M.L.]'s demeanor was not . . . nervousness, he was visibly upset, visibly emotional, crying, he was . . . quivering, his face red.

As to M.L.'s accusation the doctor's staff was lying, the court found no evidence to support it. The only motive they would have for doing so would be to cover themselves for some mishandling of his bills, and the court found this unlikely.

Additionally, the court found M.L.'s remark he was "willing to kill and fight for [his] country"—which M.L. admitted saying—in the context in which he said it, was very concerning. It also noted his remarks demonstrated a lack of self-control and "a very quick to anger[,] overly emotional behavior."

The court held:

[B]ased upon the totality of the evidence before me, I most certainly find that there would be a risk of public health, safety and welfare if [M.L.] were to continue [possessing] his FPIC and his firearm. The facts and circumstances of this case clearly [demonstrate] the situation of a lack of self-control.

Lastly, the court noted M.L. became emotional talking about his difficult personal circumstances, and added it was also in the interest of M.L. and his family to have the firearm removed and his FPIC revoked. This appeal followed.

N.J.S.A. 2C:58-3 governs the purchase of firearms, including the issuance and revocation of FPICs. Notably, subsection (f) says an FPIC "may be revoked . . . upon a finding that the holder thereof no longer qualifies for the issuance of the permit." N.J.S.A. 2C:58-3(f). At the time the Law Division heard and decided this case in March 2022, subsection (c) of the statute provided an FPIC would not be denied to a "person of good character and good repute in the community," unless one of the enumerated exceptions applied.⁴ L. 2021, c. 327,

⁴ While this appeal was pending, this portion of the statute was amended to read:

Except as hereinafter provided, a person shall not be denied a permit to purchase a handgun or a[n FPIC] card, unless the person is known in the community in which the person lives as someone who has engaged in acts or made statements suggesting the person is likely to engage in conduct, other than justified self-defense, that would pose a danger to self or others, or is subject to any of the disabilities set forth in this section or other sections of this chapter. . . .

. . . .

§ 6. Relevant to this appeal, subsection (c)(5) said an FPIC shall not be issued to "any person where the issuance would not be in the interest of the public health, safety or welfare[.]" Ibid.

Subsection (c)(5) is "[t]he broadest of the restrictions" In re Carlstrom, 240 N.J. 563, 570 (2020). It 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." In re Osworth, 365 N.J. Super. 72, 79 (App. Div. 2003) (quoting Burton v. Sills, 53 N.J. 86, 91 (1968), appeal dismissed, 394 U.S. 812 (1969)). "The Legislature's goal was to keep guns out of the hands of unfit persons." Burton, 53 N.J. at 91.

(5) To any person where the issuance would not be in the interest of the public health, safety or welfare because the person is found to be lacking the essential character of temperament necessary to be entrusted with a firearm[.]

[N.J.S.A. 2C:58-3(c)(5) (emphasis added).]

In In re The Appeal of the Denial of M.U.'s Application for a Handgun Purchase Permit, we held that these amendments do not apply retroactively. ____ N.J. Super. ____, ____ (App. Div. 2023) (slip op. at 51-53). Thus, we apply the law in effect at the time of the decision being appealed.

Additionally, as noted, "a judicial declaration that a defendant poses a threat to the public health, safety or welfare involves, by necessity, a fact-sensitive analysis." In re Forfeiture of Pers. Weapons & Firearms Identification Card belonging to F.M., 225 N.J. 487, 505 (2016) (quoting State v. Cordoma, 372 N.J. Super. 524, 535 (App. Div. 2004)).

We have found unfitness under subsection (c)(5) in a variety of circumstances. For instance, the exclusion has been applied to those who have disregarded New Jersey's gun laws. See Osworth, 365 N.J. Super. at 80-81; State v. Cunningham, 186 N.J. Super. 502, 510-13 (App. Div. 1982). However, misusing a weapon is not required for a revocation or forfeiture under subsection (c)(5). F.M., 225 N.J. at 514. We have also applied the statute to people convicted of disorderly persons offenses. See In re Sbitani, 216 N.J. Super. 75, 76-78 (App. Div. 1987) (affirming denial of an FPIC because of the individual's conviction for possession of less than twenty-five grams of marijuana).

In State v. Freysinger, we applied the exclusion to someone who had been convicted of driving under the influence, refused to undergo chemical tests, and struck his girlfriend with his car before leaving her "unattended in the roadway." 311 N.J. Super. 509, 516-17 (App. Div. 1998). Individuals who have a history of domestic violence—whether documented or admitted—also have been found

unfit to purchase a firearm under subsection (c)(5), even though they had no convictions for domestic violence. F.M., 225 N.J. at 510-16; In re Z.L., 440 N.J. Super. 351, 356-59 (App. Div. 2015).

In M.U., we noted, after discussing this law, "the public health, safety or welfare provision has largely been applied in conjunction with the specific disabilities identified under various subsections of N.J.S.A. 2C:58-3(c), but where the facts do not quite rise to the level of those disabling conditions." ____ N.J. Super. at ____ (slip op. at 28) (citing Z.L., 440 N.J. Super. at 356).

M.L. argues his conduct was not the sort that should exclude him from gun ownership under N.J.S.A. 2C:58-3(c), asserting he did not destroy any property, commit any act of violence, make "threats to inflict harm," or otherwise engage in unlawful behavior. The interaction did not result in his arrest or being charged with a crime.

However, accepting the facts as the trial court found them, he did make a threat. As an initial matter, the judge's findings were supported by sufficient credible evidence. In re J.W.D., 149 N.J. 108, 116-18 (1997) (citing Bonnco Petrol v. Epstein, 115 N.J. 599, 607 (1989)). The judge offered specific and well-explained reasons to find Whitehead's testimony credible. The judge also

noted that M.L.'s conduct at trial supported Whitehead's version of events, because he was emotional and angry, even on the stand.

Given the totality of circumstances, it is not unreasonable to conclude this statement was intended to terrorize Dr. Giuliano's staff—with whom M.L. was frustrated. As the judge found, "a reasonable person could be placed in fear by" M.L.'s conduct. The judge also found this alleged conduct and M.L.'s demeanor at trial demonstrated a lack of self-control. Though he received a clean bill of mental health from Care Plus and claims to be "perfectly fine," this is not dispositive. The Supreme Court said in F.M., an individual not diagnosed with a mental illness "may nonetheless be disqualified under N.J.S.A. 2C:58-3(c)(5) because of, for example, elements of 'narcissistic, anti-social, or paranoid personality disorder'" 225 N.J. at 513. Here, M.L. exhibited signs the judge believed showed he had trouble controlling himself.

This determination is further supported by the current version of the statute, which provides an FPIC should not be issued if issuance "would not be in the interest of the public health, safety or welfare because the person is found to be lacking the essential character of temperament necessary to be entrusted with a firearm["]." N.J.S.A. 2C:58-3(c)(5) (emphasis added). The judge

observed M.L.'s behavior and found he did not have the necessary temperament to use a firearm safely due to his quickness to anger and lack of self-control.

We reject M.L.'s contention affirming the revocation of his FPIC would set a precedent that "any form of police interaction, even if it did not result in an individual's arrest[,] . . . could result in the extinguishment of an individual's Second Amendment [r]ights." The trial court's determination was not based solely on the fact police were involved, but rather the reason the police were called and the events leading to the call. Further, even if the police had not been called, someone still could have applied for the revocation of his FPIC. The ability to petition the court for revocation is not only given to the police and the county prosecutor; "any citizen may apply to the court at any time for the revocation of the [FPIC]." N.J.S.A. 2C:58-3(f). M.L.'s argument lacks legal support.

M.L. next argues N.J.S.A. 2C:58-3(c)(5) is unconstitutional due to vagueness and overbreadth. This issue was not raised at the trial level. Therefore, we need not address it. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (citation omitted).

Nonetheless, we recently rejected these arguments in M.U., ___ N.J. Super. at ___ (slip op. at 44) and "distinguish[ed] statutes requiring a showing

of 'justifiable need' for a handgun carry permit," which were deemed unconstitutional by the Supreme Court of the United States's decision in N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen, 142 S. Ct. 2111 (2022). The court also found the decision in Bruen did not render the statute overbroad; nor did any of the other Supreme Court decisions on the Second Amendment. M.U., ____ N.J. Super. at ____ (slip op. at 48).

To the extent we have not addressed M.L.'s remaining arguments, we are satisfied they are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION