

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1457-20

IN THE MATTER OF THE  
DENIAL OF THE APPLICATION  
FOR ONE PERMIT TO  
PURCHASE A HANDGUN BY  
J.S.

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Argued January 5, 2022 – Decided May 3, 2022

Before Judges Gilson and Gummer.

On appeal from the Superior Court of New Jersey, Law  
Division, Burlington County.

Joshua I. Savitz argued the cause for appellant J.S.  
(Weiner Law Group, LLP, attorneys; Joshua I. Savitz,  
of counsel and on the briefs).

Jennifer B. Paszkiewicz, Assistant Prosecutor, argued  
the cause for respondent State of New Jersey (Scott A.  
Coffina, Burlington County Prosecutor, attorney;  
Nicole Handy, Assistant Prosecutor, of counsel and on  
the brief).

PER CURIAM

Appellant J.S. appeals an order upholding the denial of his application for  
a permit to purchase a handgun, requiring him to surrender his firearms, and

voiding his firearms purchaser identification card pursuant to N.J.S.A. 2C:58-3(c)(5) and (f).<sup>1</sup> Faulting the trial court for relying on police reports concerning investigations of domestic-violence complaints, appellant argues the trial court's order was not supported by admissible credible evidence and was arbitrary, capricious, unreasonable, and lacking in factual basis. Unpersuaded, we affirm.

## I.

In 2020, appellant applied to the Cinnaminson Township Police Department (the CTPD) for a permit to purchase a handgun. As part of its investigation in connection with appellant's application, the CTPD ran a search of a domestic violence registry. The search revealed appellant had been involved in two prior alleged domestic-violence incidents.

The first incident occurred in 2006. As set forth in a police investigation report, one of appellant's daughters told the investigating officer she and her sister had become involved in an argument between their parents. She advised the officer that during that argument, appellant had pushed her into a mirror hanging on a wall, causing a small abrasion on the back of her leg. The investigating officer also spoke with appellant's wife, who described appellant

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<sup>1</sup> We use initials because this appeal involves domestic-violence claims and records regarding those claims. See R. 1:38-3(d)(9) to (10).

as being "out of control." She told the officer appellant had pushed her against a wall and dresser during the argument. She confirmed appellant had pushed their daughter into a mirror. The officer described appellant's wife as being "very shaken" and "upset."

The officer spoke with appellant, whom he described as being "very agitated." Appellant told the officer he was "tired of dealing with all the assholes that lived in his house" and wanted his daughters out of the house. When the officer asked appellant if "there was a physical confrontation," appellant stated he had pushed his daughter "out of his way" when he was trying to leave the house and claimed his daughter's boyfriend then assaulted him. Appellant was charged with two counts of simple assault, in violation of N.J.S.A. 2C:12-1(a)(1), and a temporary restraining order (TRO) was issued, identifying appellant's wife as the victim. A family-part judge ordered the Burlington County Prosecutor's office to hold appellant's firearms until the resolution of the pending municipal-court charges. At the request of appellant's wife, the trial court dismissed the domestic-violence complaint and vacated the TRO. The charges were dismissed, and appellant's firearms were returned to him.

The second incident occurred in 2015. As set forth in a police investigation report, a police officer was dispatched to appellant's house "for a

physical domestic violence call" based on a report that a "female was struck by her husband." The officer found appellant's wife to be "visibly upset" and "shaking." He noted she was "physically disabled," using "a walker to get around," and unable to come to the door due to her disability. She told the officer she and appellant had been having a dispute about one of their daughters. She described appellant as being "loud and abusive" towards her and as becoming "irate" after she made a hand gesture. According to his wife, appellant hit her arm while she was sitting in a revolving chair, causing the chair to spin and her head to hit a metal railing. She sustained a large contusion on her head. Due to her disability, the officer asked Sergeant Richard Calabrese to transport her to the police station.

At the request of the police, appellant came to the station. Calabrese took him into custody and processed him for the assault. Appellant told Calabrese he had pushed his wife, causing her to hit her head. Appellant's wife did not want a restraining order to be issued at that time. Appellant was charged with simple assault and a no-contact order for twenty-four hours was put into place.

Six days later, appellant's wife died. Calabrese was one of the officers investigating her death. Her death certificate stated the "manner" of her death

was "natural" and the cause was "chronic renal failure." The assault charge was dismissed two days later.

Calabrese, who had become Chief of the CTPD in 2019, denied appellant's gun-permit application pursuant to N.J.S.A. 2C:58-3(c)(5), which prevents the issuance of a handgun permit to "any person where the issuance would not be in the interest of the public health, safety, or welfare." As set forth in his denial letter:

During my investigation of your application, I discovered an arrest in 2006 for Simple Assault related to a domestic violence incident, as well as another arrest in 2015 for Simple Assault in connection to a domestic violence incident. Due to the violent nature of these incidents, I do not think it is in the public interest o[r] safety that you be granted a Permit to Purchase or possess a NJ Firearms ID Card at this time.

Calabrese directed appellant to return his firearms purchaser identification card to the CTPD and that any firearms in his possession had to be surrendered for safekeeping. Appellant appealed the denial to the Superior Court.

The court conducted a hearing regarding appellant's appeal. At the beginning of the hearing, several exhibits, including the police reports and complaints regarding the two domestic-violence incidents, were entered into evidence without objection.

Appellant testified about the first incident, stating he and his daughter were having an argument. He admitted he had "pushed her out of the way" when she blocked his exit. He testified he was "not sure where [his] wife came into this incident" but nevertheless denied pushing her. He confirmed a TRO had been issued and later dismissed. As to the second incident, appellant testified he was "trying to mend problems between [his] wife and [his] daughter." According to appellant, he "went to take [his] daughter home," his wife "stuck her hand in [his] face," and he "pushed her arm out of the way." He conceded she was sitting in a swivel chair, the chair rotated, and her head hit a railing. He left when she told him she was going to call the police and took his daughter home. He confirmed he was asked to appear at the police station, that a twenty-four hour restraining order was issued, and that his wife had died days after the incident. He also confirmed his weapons had been seized from him in the first domestic-violence incident but not the second.

Calabrese testified he had been responsible for reviewing firearms applications for about three and a half years and had reviewed "well over a thousand" applications. He described the process the CTPD follows in obtaining and compiling information about the applications. Calabrese confirmed he

reviews the information gathered and makes the decision on whether to grant the application.

Calabrese testified the two domestic-violence incidents had stood out to him when he reviewed appellant's application. He testified about his involvement in the investigation of the second incident and appellant's wife's death. The two domestic-violence incidents concerned him because "this was physical and then when I see physical with a domestic, it . . . to me, that's a pattern." Calabrese was not concerned about anything else in appellant's background. Calabrese testified he ultimately denied defendant's application "for the safety and welfare of the people." He thought "the public in general" would be in danger if defendant had a permit to purchase a handgun. Calabrese believed appellant "could be in another dating relationship and it could happen again" and "[h]is anger could be towards somebody else not in a dating relationship." He testified he had included in the denial letter the requirement that appellant had to return his firearms purchaser identification card because "if I'm saying as the chief of police, I don't think you should have a permit . . . I want to secure your firearms ID card because with a firearms ID card, you can get a shotgun and rifle and ammunition without a firearms permit."

After hearing counsels' arguments, the court denied appellant's appeal, placing a decision on the record. The court "did not find [appellant] to be inherently believable in explaining those [domestic-violence] incidents," concluding appellant "did not have an accurate recollection when it came to the fine details in each [domestic-violence] incident as to what happened with . . . physical contact with his wife." The court found Calabrese "to be credible" and "extremely experienced in gun permit applications." The court believed it had to act with "appropriate regard" for "the local interest factor."

[I]n this case, we have a very good illustration of what is meant by the local interest factor. The local interest factor calls for deference to the chief's investigative experience, also deference to the chief's long-time presence in the community, his knowledge of local conditions and his discretion supported by the facts. Not only did the chief here have knowledge of local conditions, he had knowledge of this particular applicant.

The court found the two domestic-violence incidents to be "well-documented and they did occur and we know that the [c]ourt can consider the facts of what occurred each time." The court held the first incident involved "a physical altercation . . . that ended up [with appellant] pushing the daughter into a mirror causing [a] leg abrasion and pushing the wife into a wall and dresser." The court found the second incident was "reported to have been a loud and

abusive argument" in which appellant "struck his wife after she gestured to him," resulting in her hitting her head on a metal railing and suffering a large contusion. The court concluded appellant had "assaulted and injured his disabled wife again." The court believed the incidents "show[ed] a lack of self-control, poor judgment, and a propensity for violence" by appellant, with appellant showing no remorse after the second incident, according to the police report. The court held "[i]t's clear from the chief's testimony . . . that there's a pattern . . . of concerning behavior for domestic violence and it really is immaterial as to whether or not [appellant] lives alone or lives with a whole group of people . . . ." Based on its factual findings and credibility determinations, the court found Calabrese had shown by a preponderance of the evidence good cause for the denial of appellant's application for a handgun permit and denied the appeal.

The court subsequently issued an order memorializing its decision, finding "[i]t would not be in the interest of public health, safety or welfare, pursuant to N.J.S.A. 2C:58-3(c)(5) for [appellant] to be granted a [p]ermit to [p]urchase a [h]andgun due [to] his domestic violence history." The court ordered appellant to surrender to the CTPD any firearms he owned or possessed, found him to be "disqualified" pursuant to N.J.S.A. 2C:58-3(c)(5), and voided

his firearms purchaser identification card due to that disqualification pursuant to N.J.S.A. 2C:58-3(f).

This appeal followed.

## II.

The scope of our review of an order regarding a gun-permit application is limited. In re Z.L., 440 N.J. Super. 351, 355 (App. Div. 2015). "[A]n appellate court should accept 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 (1997). "[W]e do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly 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 & Firearms Identification Card Belonging to F.M., 225 N.J. 487, 506 (2016) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)). "Deference to a trial court's fact-findings is especially appropriate when the evidence is largely testimonial and involves questions of credibility." J.W.D., 149 N.J. at 117. A judicial finding that a defendant poses a threat to the public health, safety or welfare inherently requires a fact-sensitive analysis. F.M., 225 N.J. at 505; see also State v. Cordoma, 372 N.J. Super. 524, 535 (App.

Div. 2004). Thus, a trial court's finding, pursuant to N.J.S.A. 2C:58-3(c)(5), that it would not be in the interest of the public health, safety or welfare to grant someone a permit to purchase a firearm, especially one that follows a testimonial hearing, is entitled to our deference. We review de novo questions of law. F.M., 225 N.J. at 506.

A state's police power authorizes it to place "reasonable limitations" on the constitutional right to bear arms. Ibid. Our legislature requires a person seeking to own firearms to apply for an identification card and permit. Id. at 507; see also N.J.S.A. 2C:58-3(a), (b). N.J.S.A. 2C:58-3(c) presumes people of "good character and good repute in the community" can have a permit and identification card. People who are "statutorily 'unfit'" are not permitted to possess firearms. Cordoma, 372 N.J. Super. at 538; see also F.M., 225 N.J. at 507. The legislature determined no permit or identification card would 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).

The chief of police of the municipality in which the applicant resides makes the initial decision as to whether to grant or deny a permit. N.J.S.A. 2C:58-3(d). The police chief must grant the application "unless good cause for the denial" exists. N.J.S.A. 2C:58-3(f). A denied applicant may request a

hearing in the Superior Court. N.J.S.A. 2C:58-3(d); see also F.M., 225 N.J. at 508.

The Superior Court "hears the matter de novo," independently determining whether the applicant is entitled to a permit. Z.L., 440 N.J. Super. at 358. The police chief must prove by a preponderance of the evidence the applicant's disqualification. Ibid. "[I]n evaluating the facts presented by the [police chief], and the reasons given for rejection of the application, the court should give appropriate consideration to the [police chief's] investigative experience and to any expertise he [or she] appears to have developed in administering the statute." Weston v. State, 60 N.J. 36, 46 (1972); see also In re Application of Boyadjian, 362 N.J. Super. 463, 476 (App. Div. 2003).

N.J.S.A. 2C:58-3(c)(5) governs "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." F.M., 225 N.J. at 507 (quoting In re Osworth, 365 N.J. Super. 72, 79 (App. Div. 2003)). In those cases, the court may consider the underlying facts of a criminal charge, even if the charge was dismissed. Osworth, 365 N.J. Super. at 78; see also Z.L., 440 N.J. Super. at 358 (in appeal of denial of application for firearms purchaser identification card and permits by applicant who was the

subject of previously-dismissed domestic-violence complaints, court held "[e]ven 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").<sup>2</sup>

A court also may consider hearsay, although its decision "may not rest solely on hearsay." Osworth, 365 N.J. Super. at 78; see also Weston, 60 N.J. at 50-51 (in appeal of denial of an application for a firearms purchaser identification card, Court held a court in reviewing "an administrative official's decision" may consider "relevant hearsay evidence of a credible character – of the type which responsible persons are accustomed to rely upon in the conduct of their serious affairs"). Thus, "[h]earsay is admissible, but there must be sufficient legally competent evidence to support the court's findings." Z.L., 440 N.J. Super. at 358. In Z.L., a case in which the court relied on police reports about domestic-violence incidents, we affirmed a Law Division order upholding a denial of a firearms purchaser identification card and three permits, rejecting

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<sup>2</sup> Appellant faults the court for assuming the reason for the dismissal of the charges issued in connection with the first domestic-violence incident. That argument is of no import. The point is the law is clear the court could consider the facts and evidence underlying those charges.

the appellant's argument the order was based on "speculation and hearsay." Id. at 353.

We affirm because the trial court's decision to uphold the denial of appellant's application was supported by substantial, credible evidence in the record and was not based solely on hearsay, as appellant contends. In addition to the information contained in the police reports, which were admitted into evidence without objection from appellant, the trial court had before it appellant's and Calabrese's testimony. Like the appellant in Z.L., 440 N.J. Super. at 354, appellant confirmed core facts of the domestic-violence incidents contained in the police reports: in verbal disputes with family members, he had become physical with them. He conceded he had pushed his daughter in the first incident and had pushed his wife's arm, resulting in an injury to her head, in the second incident. He denied pushing his wife in the first incident, but the court did not find that testimony credible.

Calabrese not only reviewed the police reports as part of the review process; he had participated in the investigation of the second domestic-violence incident, interacting directly with appellant and his wife. He testified about his involvement in that investigation, including about how he drove appellant's wife to the police station after the incident. Given his involvement, he had the

opportunity to witness appellant's wife's disability, the head injury appellant had caused, and her demeanor following the incident. He heard appellant's confession that he had pushed his wife, causing her to hit her head, and was able to witness his demeanor. He had the ability to assess the accuracy of the police report. He was personally aware of and testified about the "physical" nature of the second incident. He testified about how appellant's "anger could be towards somebody else." Having interacted with appellant and his wife after the second incident, he had a factual basis to conclude that granting appellant a firearms permit was not in the public's interest or safety and he testified about why he had reached that conclusion.

Like the complaints in Z.L., the domestic-violence complaints involving appellant are "imbued with the potential for violent reaction." Id. at 358. That his wife is deceased and his daughter moved out of state does not diminish appellant's demonstrated potential for a violent reaction or the danger presented when a firearm is placed in the hands of someone with that potential. That his weapons were returned after the 2006 incident and not seized in the 2015 incident does not constitute a finding of statutory fitness or entitle appellant to the issuance of a permit. Appellant's status as a veteran or as a former government employee does not automatically entitle him to a permit. Calabrese

and the court acted within their discretion in giving more weight to the domestic-violence incidents than to appellant's employment and military history.

Appellant faults the court for finding credible Calabrese's testimony because, according to appellant, Calabrese insinuated appellant had caused his wife's death and was biased against him. The record discredits that assertion. In his testimony, Calabrese did not blame appellant for his wife's death and focused not on her death but the two domestic-violence incidents. The court expressly recognized renal failure as the cause of her death and confirmed "the chief's investigation also did not reveal anything untoward about the death. Otherwise, he would have told us . . . ." We see no reason to disturb the court's credibility or factual findings.

Appellant contends a procedural deficiency – specifically Calabrese's failure to apply to the court for authority to revoke appellant's firearms purchaser identification card – warrants reversal of the aspect of the order regarding the forfeiture of appellant's card. That argument lacks merit. N.J.S.A. 2C:58-3(f) provides, in relevant part:

A firearms purchaser identification card shall be valid until such time as the holder becomes subject to any of the disabilities set forth in subsection c. of this section, whereupon the card shall be void and shall be returned within five days by the holder to the superintendent, who shall then advise the licensing authority. . . . Any

firearms purchaser identification card may be revoked by the Superior Court of the county wherein the card was issued, after hearing upon notice, upon a finding that the holder thereof no longer qualifies for the issuance of the permit.

That is exactly what happened here. Calabrese denied appellant's application, finding he was disqualified from having a permit for a handgun pursuant to N.J.S.A. 2C:58-3(c)(5). That finding, which was upheld by the trial court on appeal after the court had conducted a hearing on notice to appellant, rendered appellant's firearms purchaser identification card void pursuant to N.J.S.A. 2C:58-3(f). Calabrese in his denial letter and the trial court in its order relied expressly on N.J.S.A. 2C:58-3(f) in ordering appellant to surrender his identification card. Because appellant's identification card was void on a finding he was disqualified from having a permit due to the public health, safety, and welfare under N.J.S.A. 2C:58-3(c)(5), the forfeiture of his identification card was proper under the statute, as was the surrender of his firearms. See J.W.D., 149 N.J. at 116 (finding legislature intended courts to have "the power and the responsibility" to retain weapons when owner is found to be a threat to the public health, safety, or welfare pursuant to N.J.S.A. 2C:58-3(c)).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION