

No. \_\_\_\_\_

In the Supreme Court of the United States

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GREGORY GARCIA,

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE NEW JERSEY SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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Steve Kaflowitz, Esq.  
Caruso Smith Picini, P.C.  
60 Route 46 East  
Fairfield, NJ 07004  
Tel: (973) 667-6000  
Fax: (973) 667-1200  
kaflowitz@aol.com

## QUESTIONS PRESENTED

Whether a criminal defendant is entitled to a *Franks* hearing when he presents specific and concrete evidence that the government agent who presented the affidavit in support of a search warrant, had actual knowledge that the defendant is innocent of the crime alleged?

## RELATED PROCEEDINGS

There are no directly related proceedings.

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Caruso Smith Picini, P.C., on behalf of Gregory Garcia respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

**OPINIONS BELOW**

The order of the New Jersey Supreme Court denying the petition for certification (App. 105a) is reported at 260 N.J. 3 (2025).

The opinion of the New Jersey Appellate Division affirming the conviction (App. 1a-20a) is not officially reported, but is reported at 2024 WL 4429616.

The rulings of the Superior Court of New Jersey, Law Division, Criminal Part, Morris County (Indictment No: 18-10-00787), at issue in this case are not reported. (36a-63a & 64a-103a).



## **JURISDICTION**

The Order of the New Jersey Supreme Court denying the petition for certification was entered on January 31, 2025. (App. 105a) The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fourth Amendment to the United States' Constitution made applicable to the States thorough the Fourteenth Amendment provides that:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The New Jersey weapons statutes at issue in this case are reproduced in full at Pet.App. 167a–197a.

## **STATEMENT**

### **A. Background**

Petitioner Gregory Garcia petitions this Court to review his conviction for a single count of possession of a “large-capacity” magazine that resulted from an illegal search of his residence. (22a)

Gregory Garcia was a police officer employed by the Wharton Police Department. (2a, State v. Garcia, 2024 WL 4429616, at \*1.) As a police officer, he was authorized to use a variety of firearms including

“assault rifles” and has received specialized training in the use of such weapons. (97-99a) Specifically, Officer Garcia was certified as a SWAT (“Special Weapons and Tactics”) Team member and SWAT Team Leader. *Id.* Officer Gregory was also certified as a Multi-Assault Counter Terrorism Action Capabilities and Active Shooter Instructor, (119a, 132a)

In January 2017, Officer Garcia took time off from work voluntarily enter—and complete—inpatient therapy for “alcohol dependency.” (3a, 2024 WL 4429616, at \*1). On March 2, 2017, a psychologist performed an evaluation of Officer Garcia and clear him as fit for duty. *Id.* Despite this evaluation in May 2017, Internal Affairs for Wharton Police Department began to question Officer Garcia’s fitness for duty. (*Id.* & 41a) Officer Garcia admitted that he previously had a drinking problem but he explained that he had obtained counseling and overcome the problem. *Id.*

In December 2017, Officer Garcia applied for a replacement firearms purchaser identification card (FPIC) based on a change of address. *Id.* Several questions on the form relate to drugs and mental health. (159a) Question twenty-three on the FPIC application asks “(23) Are you an alcoholic?” *Id.* This is clearly present tense. The applicant must check either yes or no. Officer Garcia checked “no.” *Id.*

Morris County Prosecutor's Office and New Jersey State Police began investigating Officer Garcia for potentially lying on the application for his FPIC. (67a-68a). The specific unit of the Morris County Prosecutor's Office that was involved was the Professional Standards Unit. (67a). In other words, the focus of the investigation was whether Officer Garcia had violated professional standards as a police officer. New Jersey State Police worked directly with Wharton Police Department. (44a, 71a).

On June 15, 2018, a search warrant was issued for Officer Gacia's residence based on suspected violations of N.J.Stat. 2C:39-10(c) (giving false information in connection with an application for a permit to purchase handgun) and N.J.Stat. 2C:39-5(f) (unlawful possession of an assault firearm). (4a-5a) New Jersey Stat. 2C:39-5(f) has since been held to be unconstitutional. Assn. of New Jersey Rifle & Pistol Clubs, Inc. v. Platkin, (D.N.J. 2024). Nevertheless, New Jersey's assault weapons ban explicitly exempted law enforcement officers such as Officer Garcia.

N.J.Stat. 2C:39-6 ("Exemptions") states

a. Provided a person complies with the requirements of subsection j. of this section, N.J.S.2C:39-5 does not apply to:

...

(7)(a) A regularly employed member, including a detective, of the police department of any county or municipality, or of any State, interstate, municipal or county park police force or boulevard police force, at all times while in the State of New Jersey;

...

j. A person shall qualify for an exemption from the provisions of N.J.S.2C:39-5, as specified under subsections a. and c. of this section, if the person has satisfactorily completed a firearms training course approved by the Police Training Commission.

As noted above, Officer Garcia had completed multiple firearms training courses approved by the Police Training Commission. (97a-99a, 132a). Accordingly, Officer Garcia could not have been in

violation of N.J.Stat. 2C:39-5(f) when investigators applied for a search warrant to search Officer Garcia's residence for violations of 2C:39-5(f). Moreover, Wharton Police Department officers and New Jersey State Police appear to have had actual knowledge that Officer Garcia had completed approved firearms training courses and thus could not be in violation of 2C:39-5(f). However, even if we assume, *arguendo*, that the officer who applied for the search warrant did not have actual knowledge of completion, the officer indisputably had access to all of Officer Garcia records, and could have verified this fact with minimal effort.

Nevertheless, when Morris County Prosecutor's Office Detective Janine Buchalski applied for a search warrant to search Officer Garcia's residence for evidence of violation of the assault weapon statute she omitted any reference to the fact that Officer Garcia had completed approved training courses. (132a-136a) In the application, Detective Buchalski stated explicitly that she was investigating Officer Garcia for violation of 2C:39-5(f). (141a). Furthermore, in the application, Detective Buchalski stated that she was familiar with Officer Garcia's service record including the facts that Officer Garcia was authorized to carry a firearm while on duty but that the department "required that P.O. Garcia's service weapon remain secured at the police department when not on duty." (144a). Detective Buchalski went on to discuss the internal affairs investigation of Officer Garcia and some of the findings of that investigation. (145a).

Moreover, Detective Buchalski stated that she is a certified firearms instructor and thus had to be aware of the exceptions found in 2C:39-5 for officers such as herself and Officer Garcia. (149a). Detective Buchalski claimed to have special expertise in firearms. *Id.*

Throughout the affidavit in support of the warrant application, Detective Buchalski insinuated, falsely, that Officer Garcia might have possession of an illegal assault rifle. (141a-155a). Even the idea that Officer Garcia possessed any assault rifle was purely speculation and based on half-truths. For example, Detective Buchalski testified that Officer Garcia may have had ammunition (such as .308 caliber) that might be usable in an assault rifle:

I am a certified firearms instructor and I am familiar with the different calibers of ammunition to which each **might** correspond. Based on the photograph (attached as Exhibit D). I have probable cause to believe P.O Garcia **maybe** in possession of a weapon that **might** be assault-style firearm.

149a (emphasis added).

Yet Detective Buchalski failed to note that such ammunition is usable in many firearms including many that do not qualify as assault rifles. (149a, 165a). This helps to illustrate the, at least, reckless disregard for the truth exhibited by Detective Buchalski. But the most important point is that as a matter of law Officer Garcia could not be guilty of illegal possession of an “assault rifle” because he was a police officer who was certified to use such weapons.

In addition to searching for violations of the assault weapon statute, the warrant also sought to look for evidence of making false statements on an application for a firearm purchaser card, FPIC. (153a).

Although this point is noted, almost the entire affidavit in support of the application focused on the allegedly illegal possession of an assault weapon.

Moreover, the affidavit is entirely lacking an explanation of what evidence was likely to be found that would help show that Officer Garcia had lied about being alcohol dependent on the dates he purchased the firearms that the State was already aware he had purchased. So for example, Detective Buchalski requested authorization to search for and seize firearms and:

Any and all documents relating to the purchase of handguns , including but not limited to bills of sale, receipts, credit card statements, debit cards statements as to be relevant to proof of ownership, ... or any other contraband or evidence that a thorough and complete search would reveal.

153a.

The Warrant Application entirely failed to explain why such documents were needed, and failed to even assert in a general way that such documents were likely to be found at the residence. 141a-154a). Indeed when the trial court later reviewed the warrant application the trial court upheld it the court focused entirely on the weapons and barely mentioned the issue of documents to be seized. (38a-52a).

Neither the application nor the Search Warrant itself mentioned magazines or accessories, and the Warrant did NOT authorize the seizure of magazines or accessories. (137-140a).

On June 18, 2018, police executed the warrant, finding and seizing various weapons, ammunition, and firearm accessories. (4a). All of the weapons and ammunition found were ultimately deemed to be legal for Officer Garcia to possess. (59a-69a). However, he was found to be in possession of a “high capacity” magazine. (2a).

New Jersey Stat. § 2C:39-3(j) provides that “Any person who knowingly has in his possession a large capacity ammunition magazine is guilty of a crime of the fourth degree.’ However, N.J. Stat. § 2C:39-3(g) (“Exceptions) subsection (1)(b) further provides:

(b) Nothing in subsection j. of this section shall apply to a law enforcement officer who possesses and carries while off-duty a large capacity ammunition magazine capable of holding not more than 17 rounds of ammunition

Officer Garcia was found to have a magazine that was able to hold 30 rounds. (22a). Officer Garcia was charged with twenty-seven different offenses, but most counts were dismissed. (21a-35a).

## **B. Procedural History**

### **1. Trial Court**

In the trial court, inter alia, Garcia moved to suppress all of the fruits of the search of his residence because the search warrant should not have been issued. In particular, Garcia argued that 1) the Buchalski affidavit did not provide probable cause for a search and 2) Detective Buchalski had knowingly misled the court, or at very least had made statement with reckless disregard of their truth. 135a.

The motion included an affidavit from an expert John Delesio (a 29-year veteran of the state police) describing in detail why the warrant application was misleading and also lacked probable cause. 163a-166a.

The trial court denied the motion ruling that there was probable cause and that “Defendant did not present a prima facie showing to warrant a *Franks*

hearing.” (51a). Garcia filed a motion for reconsideration adding additional argument, but the trial court ruled that “the Court will not relegate the Issue of the Franks hearing.” (52a).

Eventually, Garcia pled guilty to a single count of possession of a high capacity magazine while preserving his right to appeal the court refusal to suppress the fruits of the search warrant. (22a, 2024 WL 4429616, at \*6). The sentencing court found significant mitigating factors for this single infraction. (32a). The sentencing court found that other than this single infraction, Garcia “has led a law-abiding life?” *Id.* The court further noted that this was a technical offence that neither harmed nor threatened harm to anyone and there “were substantial grounds tending to excuse or justify the defendant's conduct.” *Id.*

## 2. Appellate Division

Garcia then appealed his conviction to the New Jersey Superior Court Appellate Division. Although he appealed the constitutionality of the large capacity magazine ban as well as the denial of the Franks hearing, the Appellate Division held that magazine ban issue had not been preserved. (19a).

The Appellate Division held that Garcia had preserved the Franks issue for appeal but denied that in the merits. First the Appellate Division following state precedent held that there was a “high” bar to a defendant making a showing of being entitled to a *Franks* hearing:

And as our Supreme Court recently reaffirmed, a “defendant's burden under *Franks* and *Howery* is high[.]” *State v. Desir*, 245 N.J. 179, 198 (2021).



14a, 2024 WL 4429616, at \*5

The Appellate Division went on to hold that Garcia did not meet this “high” burden because:

An ex parte affidavit for a search warrant is not the appropriate forum in which to interpret a criminal statute or consider legal defenses. ... Articulated another way, in establishing probable cause, the State is not obliged in a search warrant application to rebut legal defenses that might be raised following indictment.

*Id.*

Finally, the Supreme Court of New Jersey denied the petition for certification without commenting on the merits. 104a, 260 N.J. 3; 329 A.3d 386 (NJ 2025).

## REASONS FOR GRANTING THE PETITION

### **1. State and federal Courts are divided on both the showing required to trigger a *Franks* Hearing as well as the standard of review on appeal**

Prior to this Court’s landmark decision in *Franks v. Delaware*, 438 U.S. 154 (1978) most states did not allow a criminal defendant to attack the veracity of an affidavit made in support of a warrant application. *Id.* at 60. This Court gave many compelling reasonings why a defendant must be permitted to challenge a false affidavit noting as the first reason that:

[A] flat ban on impeachment of veracity could denude the probable-cause requirement of all real meaning. The

requirement that a warrant not issue “but upon probable cause, supported by Oath or affirmation,” would be reduced to a nullity if a police officer was able to use deliberately falsified allegations to demonstrate probable cause, and, having misled the magistrate, then was able to remain confident that the ploy was worthwhile.

*Id.* at 168.

This Court went on to hold that a defendant is required to make “a substantial preliminary showing” of a deliberately or recklessly false statement to obtain a subpoena. *Id.* at 170.

As to the test for making a “substantial preliminary showing” this Court explained

To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons.

*Franks v. Delaware*, 438 U.S. 154, 171 (1978).

This seems to say that to trigger a *Franks* hearing, there only need be specific and credible allegations of deliberate falsehood or of reckless disregard for the truth. The defendant certainly is not required—at this stage—to have definitive proof.

This test was met in Garcia’s case. Officer Garcia pointed out that Detective Buchalski was working “hand in glove” with Wharton Police Department and had access to Officer Garcia’s service records. Accordingly, Detective Buchalski must have known that Officer Garcia could lawfully possess an “assault weapon.” This allegation is very specific and could have been proved at an evidentiary hearing had Garcia been allowed to examine Detective Buchalski and other members of her team. Nevertheless, the trial court refused to allow a *Franks* hearing that would have given him the opportunity to prove his case.

The Ninth Circuit has long held that a “substantial preliminary showing” is less than “the more demanding standard of a preponderance of the evidence.” *U.S. v. Romero*, 382 F. Supp. 3d 966, 976 (E.D. Cal. 2019). The Ninth Circuit has held that “[c]lear proof is not required” to be entitled to a *Franks* hearing, instead “it is at the evidentiary hearing itself that the defendant, aided by live testimony and cross-examination, must prove actual recklessness or deliberate falsity.” *U.S. v. Chesher*, 678 F.2d 1353, 1362 (9th Cir. 1982) (citing *Franks*, 438 U.S. at 171-72).

Similarly, the Seventh Circuit has held that a defendant need only present information that leads to a reasonable inference (not proof) that an affidavit was deliberately or recklessly false:

The defendant made a sufficient preliminary showing under *Franks* by offering two police officers’ affidavits. On the critical issue of which of two houses should be searched, the affidavits contradicted each other. The affidavits also indicated that each officer previously had contradicted himself in the information he had provided to the other officer. That evidence was

sufficiently specific to support (though not require) a reasonable inference that the affidavit submitted to support the search of the defendant's home was deliberately or recklessly false.

*U.S. v. McMurtrey*, 704 F.3d 502, 505 (7th Cir. 2013).

One of the leading State cases on *Franks* is *People v. Lucente*, 116 Ill. 2d 133, 149 (Ill. 1987). The basic facts are as follows:

The affidavit stated, in pertinent part, that a reliable, unnamed informant had told Rewers that at approximately 8:30 p.m. on the previous evening, August 23, 1984, the informant went to 3010 South Princeton, to a second-floor apartment on the south side of the hallway, and knocked on the door. The door was opened by a person known to the informant to be the defendant. The informant was admitted into the apartment, where the purchase of marijuana was made. Thereafter, the informant was let out of the apartment.

*Id.* at 139.

The defendant attacked the truth of these allegations by presenting affidavits of family members “that he was not present at his apartment during the hours the informant stated he had made the purchase.” *Id.* at 140. The court held that this was sufficient to call into doubt the veracity of the allegations and entitle the defendant to a *Franks* hearing to establish whether this falsehood was deliberate:

While it is true that the defendant's *ultimate* burden is to show by a preponderance of the evidence that the affiant-officer made deliberate or reckless false statements, *Franks* does not require that the defendant disprove every other possibility at the preliminary stage. If an informant's identity—or very existence—is unknown, a defendant obviously lacks the very information necessary to determine the source of the false statements. If such a preliminary showing were demanded, no hearing could ever result in cases in which all the information to establish probable cause came from an unnamed informant. One need not be overly cynical to realize that such a rule would enable the police to insulate perjury from discovery by the simple expedient of a fabricated informant, and thereafter “remain confident that the ploy was worthwhile” (*Franks v. Delaware* (1978)[.]

*Id.* at 149.

The Illinois Court went on to note that setting the threshold too high for a hearing “would permit the very evisceration of the probable-cause requirement which *Franks* seeks to prevent.” *Id.* at 150.

The information provided by Garcia was comparable to the information in *Lucente* and *McMurtrey*. Under the standard articulated by these cases Garcia was entitled to a *Franks* hearing to prove his case.

However, without even explicitly explaining what level of proof is necessary at this preliminary stage, the Appellate Division held that a “defendant's burden under Franks ... is high[.]” 14a. This seems to put the burden on defendant at this stage to

definitively prove recklessness or deliberate falsity. This “high” bar makes it all but impossible for most defendants to even reach the level of a *Franks* hearing to try to prove their case. That is surely not what this Court intended in *Franks*.

Yet, several circuits and a number of states, including New Jersey have interpreted “substantial preliminary showing” to be a very high bar. *U.S. v. Sandalo*, 70 F.4th 77, 86 (2d Cir. 2023); see also *United States v. Tibolt*, 72 F.3d 965, 973 n.7 (1st Cir. 1995); *United States v. Tate*, 524 F.3d 449, 454 (4th Cir. 2008); *United States v. Lopez*, 769 F. Appx. 288, 288 (6th Cir. 2019) (per curiam); *United States v. Hively*, 61 F.3d 1358, 1360 (8th Cir. 1995).

Moreover, the Seventh Circuit in *McMurtrey* authorized something called a pre-*Franks* hearing because “it can be difficult to delineate between sufficient and insufficient showings.” *U.S. v. Sanford*, 35 F.4th 595, 598 (7th Cir. 2022) (citing *McMurtrey*). Some State courts have also followed this policy of pre-*Franks* hearing in borderline cases. *State v. Thompson*, 2017 ME 13, ¶¶ 22-23 (Me 2017) (citing *McMurtrey*).

The fact that some courts are using pre-*Franks* hearings to try to bridge the gap in difficult cases shows the confusion over the proper standard for “substantial preliminary showing.” This calls out for this Court to get involved and help resolve this confusion, as so many lower courts are struggling with how to implement *Franks*. We urge this Court to adopt the standard that as a matter of federal constitutional law, once a Defendant has raised specific credible allegations of reckless or deliberate falsity a court must hold a *Franks* hearing to allow the Defendant to prove it.

## **2. State and federal Courts are also divided on the standard of review used to evaluate the trial court's denial of a *Franks* Hearing**

The confusion over the proper standard of when to grant a *Franks* hearing is further complicated by the additional problems of the standard of review.

The Ninth Circuit has long held that:

Whether a defendant is entitled to a *Franks* hearing is a mixed question of law and fact subject to de novo review. *United States v. Dicesare*, 765 F.2d 890, 895 (9th Cir.), *amended*, 777 F.2d 543 (9th Cir.1985); *United States v. Ritter*, 752 F.2d 435 (9th Cir.1985).

The scope of the evidentiary hearing provided is reviewed de novo as well because the decision to limit the hearing to investigation of certain portions of the affidavit or to the testimony of particular officers involves a determination of which challenged portions of an affidavit are material to the determination of probable cause.

*U.S. v. Dozier*, 844 F.2d 701, 704 (9th Cir. 1988); see also *Sandalo*, 70 F.4th at 86 (noting an enduring circuit split on this issue of standard of review).

In New Jersey, as in this case, New Jersey courts apply a highly deferential standard of review.

The Appellate Division in Garcia's appeal stated: "The scope of our review of a search warrant is limited." 2024 WL 4429616, at \*3 (citing *State v. Chippero*, 201 N.J. 14, 32-3 (2009). *Chippero* does not mention *Franks* but states:

[A]s a reviewing court we “should pay substantial deference to the issuing court's finding of probable cause.” *State v. Perry*, 59 N.J. 383, 393, 283 A.2d 330 (1971) (citation omitted).

*Chippero*, 201 N.J. at 33.

In other cases, New Jersey has reviewed denial of a *Franks* hearing for abuse of discretion. *State v. Anaya*, No. A-1171-19, 2022 WL 3010985, at \*2 (N.J. Super. App. Div. July 29, 2022).

Other States follow this abuse of discretion standard as well. *See, e.g., Kaatz v. State*, No. 03-23-00081-CR, 2024 WL 4333084, at \*12 (Tex. App.--Austin Sept. 27, 2024); *see also People v. Chambers*, 2014 IL App (1st) 120147, ¶ 13 (Ill App 2014).

Until recently, Wyoming applied an “abuse of discretion” standard to denial of a *Franks* hearing. *Garcia v. State*, 2025 WY 17 (Wyo. Feb. 10, 2025). However the Wyoming Supreme Court just clarified that:

However, our modern suppression cases have applied a standard of review that calls for a clear error review of a district court's findings of fact, and a de novo review of conclusions of law including “the ultimate determination regarding the constitutionality of a particular search or seizure.” *Kobielusz v. State*, 2024 WY 10, ¶ 30, 541 P.3d 1101, 1109-10 (Wyo. 2024)[.]

*Id.*

A *Franks* hearing, in most jurisdictions has become a rare event. As one court has noted:



Successful attempts to challenge the validity of a warrant through a *Franks* hearing are “rare and extraordinary” and “will not be indulged unless rigorous threshold requirements have been satisfied.” *Fitzgerald v. State*, 153 Md. App. 601, 642 (2003).

*Funkhouser v. State of Maryland*, No. 367, SEPT. TERM, 2023, 2023 WL 8915275, at \*3 (Md. Spec. App. Dec. 27, 2023). But *Franks* hearings should not be rare and extraordinary events.

This Court in deciding *Franks* noted the need to have a procedure to review warrant affidavits to deter perjury by government agents:

The requirement that a warrant not issue “but upon probable cause, supported by Oath or affirmation,” would be reduced to a nullity if a police officer was able to use deliberately falsified allegations to demonstrate probable cause, and, having misled the magistrate, then was able to remain confident that the ploy was worthwhile.

*Franks*, 438 U.S. 168.

Few people would dispute that there is far less respect for the truth in American society today than there was in 1978. Yet the bar for a *Franks* hearing has been set so high, and the standard of review so low, that government agents know the chances of them ever get caught in a lie are vanishingly small. This Court should take this case to help clarify these standards and make *Franks* meaningful again.

**3. The Appellate Division erred in ruling that an affidavit for a search warrant can ignore “legal defenses.”**

As noted above, the Appellate Division went on to hold that Garcia did not meet his “high” burden because:

An ex parte affidavit for a search warrant is not the appropriate forum in which to interpret a criminal statute or consider legal defenses. Cf. N.J.S.A. 2C:1-14(i) (defining the term “material element of an offense”) and N.J.S.A. 2C:1-13(b) (discussing defenses and affirmative defenses in the context of proving guilt beyond a reasonable doubt). Articulated another way, in establishing probable cause, the State is not obliged in a search warrant application to rebut legal defenses that might be raised following indictment.

16a, 2024 WL 4429616, at \*5.

This is completely wrong. The fact that the statute did not apply to Officer Garcia was known very well to investigators. This was not some obscure “affirmative defense.” Quite the contrary the exception for law enforcement officers is written into the statute in numerous places—including for both weapons and magazines.

The instant case is no different than if an investigator applied for a search warrant for an unregistered weapon while omitting the fact (well known to the investigator) that the weapon actually was registered.

An additional point should be made about what the New Jersey Appellate Division characterized as a

“legal defense.” Of course, the question of whether an exception is an element of the offence or an affirmative defense is not always subject to an easy answer, and would be a matter of State law in the first instance. The Appellate Division called the exception for police officers a “legal defense.” The Appellate Division did not call N.J.Stat. 2C:39-6 an affirmative defense. Quite the contrary, in other cases New Jersey courts have characterized N.J.Stat. 2C:39-6 as a “normal defense” which raises a burden for the state to disprove. In *State v. West*, No. A-0649-13T1, 2016 WL 1063748, at \*3 (N.J. Super. App. Div. Mar. 18, 2016) the Appellate Division held:

*N.J.S.A. 2C:39–6(e)* is an ordinary defense in a prosecution for unlawful possession of a weapon. *State v. Moultrie*, 357 N.J.Super. 547, 555–56 (App.Div.2003).

*Moultrie* in turn explains the difference between affirmative defense and “ordinary defense” at greater length:

“Legal irregularity” is not an affirmative defense since the section of the Code under which it arises does not so provide. N.J.S.A. 2C:1-13(c)(1).<sup>5</sup> Thus, it is an “ordinary defense,” “as to which the defendant is neither explicitly given a burden of proof nor a burden of producing evidence.” Cannel, New Jersey Criminal Code Annotated, comment 3 on N.J.S.A. 2C:1-13 (2002). “Ordinary defenses must be disproved by the State with no requirement that the defendant adduce any evidence whatsoever in their support.” Ibid. Viewing the defense as “ordinary,” defendant had a clear right to

have the jury charged on legal irregularity, which the State bore the burden of disproving. “However, because there must be a rational basis in the facts before a defense will be charged to the jury, the distinction between ordinary and affirmative defenses is sometimes blurred.” Ibid.

Needless to say, if 2C:39–6(e) is an ordinary defense because the section of the Code under which it arises does not call it an affirmative defense, then 2C:39-6(a) must also be an ordinary defense. Both 2C:39–6(e) and 2C:39–6(a) (at issue in the instant case) are listed as “exemptions” and appear as subsections of the same part of the Code. In fact, N.J. Stat. § 2C:39-6e, provides (in relevant part:

Nothing in subsections b., c., and d. of N.J.S.2C:39-5 shall be construed to prevent a person keeping or carrying about the person's place of business, residence, premises or other land owned or possessed by the person, any firearm, or from carrying the same, in the manner specified in subsection g. of this section, from any place of purchase to the person's residence or place of business[.]

In comparison, N.J.Stat. 2C:39-6 (“Exemptions”) states for subsection a:

a. Provided a person complies with the requirements of subsection j. of this section, N.J.S.2C:39-5 does not apply to:  
...

(7)(a) A regularly employed member,  
including a detective, of the police  
department of any county or municipality,

If anything, N.J.Stat. 2C:39-6(a), at issue in the instant case, is even stronger than 2C:39-6(e). Subsection e is phrased as a rule of “Construction”—“Nothing ... shall be construed.” But 2C:39-6(a) says more emphatically that 2C:39-5 “does not apply to” police officers.

Accordingly, under New Jersey law, 2C:39-6(a) was an “ordinary defense” for which the State bore the burden of disproof in order to obtain a conviction.

In comparison, some “categories of affirmative defenses, such as duress, do not negate an element of the crime, but instead provide a justification sufficient to overcome or mitigate criminal liability.” U.S. v. Hartsock, 347 F.3d 1, 8 (1st Cir. 2003). But an “ordinary defense” is not like this at all.

The Appellate Division correctly styled 2C:39-6(a) as a “legal defense” but this incorrectly grouped together a variety of legal defenses including ordinary defenses. This was totally inappropriate.

When the applicant for a search warrant has actual knowledge that a person has an ordinary defense and fails to tell the issuing court, this should definitely be a violation of *Franks*. To use 2C:39-6(e) as an example, 2C:39-6(e) allows a person to legally transport a firearm from the place of purchase to his or her home. Let us imagine that an officer applies for a search warrant of the home telling the court that the suspect was found carrying a gun on the street—without bothering to mention that the transportation was between the gun store and the suspect’s home. That would be a dishonest application. But that is almost exactly the same thing that happened to Officer Garcia here.

This Court should take this case to clarify this important point of law that when an investigator knows that no crime has been committed due to an ordinary defenses that it is a violation of *Franks* to conceal this information.

#### CONCLUSION

The bar for a *Franks* hearing has been set so high that such hearings have become rare in most of the country. This is not what this Court intended when it issued *Franks*.

The petition for a writ of certiorari should be granted.

Steve Kaflowitz, Esq.  
Caruso Smith Picini, P.C.  
60 Route 46 East  
Fairfield, NJ 07004  
Tel: (973) 667-6000  
Fax: (973) 667-1200  
kaflowitz@aol.com

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**APPENDIX A**

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION**

DOCKET NO. A-1606-22

STATE OF NEW JERSEY,  
Plaintiff-Respondent,

v.

GREGORY GARCIA,  
Defendant-Appellant.

Submitted September 10, 2024 – Decided October 7, 2024 Before Judges Susswein and Perez Friscia.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Indictment No. 18-10-0787.



Caruso Smith Picini, attorneys for appellant (Wolodymyr Tyshchenko, of counsel; Thomas M. Rogers, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Lila B. Leonard, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

Defendant Gregory Garcia appeals from his guilty plea conviction for unlawful possession of a large capacity [firearm] magazine (LCM). He contends the trial court erred in denying his motion to suppress, claiming the affidavit in support of the search warrant for his residence did not establish probable cause and contained falsehoods or statements made with reckless disregard for the truth. He also contends the trial court erred by denying his motion to stay the proceedings pending the outcome of federal litigation challenging the constitutionality of New Jersey's LCM statute. Defendant argues the statute violates the Second Amendment. After carefully reviewing the record and arguments of the parties in light of the governing legal principles, we affirm.

I.

We discern the following pertinent facts and procedural history from the record. Defendant was a police officer employed by the Wharton Police Department. On December 16, 2016, he applied to the New Jersey Department of Labor and Workforce Development for Temporary Disability Insurance.

Defendant described his disability as "alcohol dependency treatment." Defendant began inpatient treatment on January 2, 2017 and was discharged on January 30, 2017.

Defendant subsequently submitted to a fitness-for-duty evaluation. On March 2, 2017, the psychologist who performed the evaluation opined that defendant "does not evidence a psychological condition or impairment that would be likely [to] interfere with his ability to effectively function as a police officer."

In May 2017, an Internal Affairs investigator questioned defendant regarding his truthfulness and fitness for duty based on "being absent from duty on November 4, 2016 and statements made in reference to [his] absence on that date." During the interview, defendant "admitted to having an alcohol problem" that required him to "seek inpatient treatment."

On December 4, 2017, defendant applied for a replacement firearms purchaser identification card (FPIC) based on a change of address. Question twenty-three on the FPIC application asks whether the applicant is an alcoholic. Defendant checked off the box labeled "no." The application also contained a certification that the answers given on the form are "complete, true and correct in every particular," with a written warning that any false answers would subject the applicant to punishment.

On February 20, 2018, the replacement FPIC card was issued to defendant. On April 11, 2018, he applied for a permit to purchase a handgun. Defendant again

responded to question twenty-three in the negative.

Police received information from a confidential FBI source that defendant "had become increasingly infatuated with firearms," had been "purchasing body armor and stockpiling ammunition," and had "a large amount of ammunition at his residence." The source also stated defendant "had recently purchased an Accuracy International rifle sometime after January 1, 2018."

On June 15, 2018, a search warrant was issued for defendant's residence based on suspected violations of N.J.S.A. 2C:39-10(c) (giving false information in connection with an application for a permit to purchase handgun) and N.J.S.A. 2C:39-5(f) (unlawful possession of an assault firearm). The warrant affidavit "contained specific information that Detective [Janine Buchalski]<sup>1</sup> is a Certified Firearms Instructor and she's familiar with different calibers of ammunition and types of firearms in which each might correspond based on a photograph." The affidavit specifically referred to a photograph of ammunition bins with markings that read "223, 556, 338, 300 WIN BLK 308" that "would be fired by a high-powered/high velocity long gun that . . . have a range of at least a thousand yards." On June 18, 2018, police executed the warrant and found various weapons, ammunition, and firearm accessories.

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<sup>1</sup> The trial transcript misspells the affiant's last name. The affidavit clarifies the affiant's surname is "Buchalski."

In October 2018, defendant was charged by indictment with third-degree false representation in applying for an FPIC, N.J.S.A. 2C:39-10(c) (count one); two counts of third-degree false representation in applying for a handgun purchase permit, N.J.S.A. 2C:39-10(c) (counts two and three); four counts of second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(f) (counts four through seven); second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a)(2) (count eight); fourth-degree child neglect, N.J.S.A. 9:6-3 (count nine); two counts of fourth-degree unlawful possession of a prohibited weapon or device, N.J.S.A. 2C:39-3(c) (counts ten and eleven); and sixteen counts of fourth-degree unlawful possession of a prohibited weapon or device, N.J.S.A. 2C:39-3(j), specifically, LCMs, (counts twelve to twenty-seven).

On July 13, 2020, defendant's motion to dismiss counts four through seven was granted without prejudice because grand jurors had not been provided relevant information.<sup>2</sup>

Defendant moved to suppress the evidence seized pursuant to the search warrant and asked for a *Franks*<sup>3</sup> hearing to challenge the truthfulness of the affidavit. On October 18, 2021, Judge Ralph E. Amirata convened a suppression hearing and ultimately denied both motions. In November 2021,

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<sup>2</sup> The State did not appeal the dismissal of those counts.

<sup>3</sup> *Franks v. Delaware*, 438 U.S. 154 (1978).

defendant moved for reconsideration. On May 27, 2022, Judge Amirata denied the reconsideration motion, issuing a twenty-one-page written opinion.

In September 2022, defendant moved for an order staying trial pending the disposition of *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Bruck*, 142 S. Ct. 2894 (2022).<sup>4</sup> Judge Amirata denied that motion.

On November 14, 2022, defendant pled guilty pursuant to a plea agreement to one count of unlawful possession of an LCM. The State agreed to dismiss all remaining counts and to recommend a non-custodial sentence. On January 13, 2023, Judge Amirata sentenced defendant in accordance with his plea agreement to one year of non-custodial probation.<sup>5</sup> This appeal followed. Defendant raises the following contentions for our consideration:

#### POINT I

---

<sup>4</sup> On June 30, 2022, the United States Supreme Court granted the petition for a writ of certiorari, ordering the "[j]udgment vacated, and case remanded to the United States Court of Appeals for the Third Circuit for further consideration in light of *New York State Rifle & Pistol Assn., Inc. v. Bruen*," 142 S. Ct. 2111 (2022). *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Bruck*, 142 S. Ct. at 2894. The Third Circuit remanded the matter to the United States District Court for the District of New Jersey for a decision under the standard set forth in *Bruen*. The District Court has issued an unpublished memorandum, and an appeal has been filed.

<sup>5</sup> On August 29, 2023, defendant was granted early release from probation.

THE TRIAL COURT ERRED IN FINDING THAT THE WARRANT IS SUPPORTED BY PROBABLE CAUSE AND DENYING [DEFENDANT'S] MOTION TO SUPPRESS.

A: NO PROBABLE CAUSE FOR EVIDENCE/VIOLATIONS OF N.J.S.A. 2C:10(C).

B: NO PROBABLE CAUSE FOR EVIDENCE/VIOLATIONS OF N.J.S.A. 2C:39- 5F (UNLAWFUL POSSESSION OF FIREARMS).

C: THE TRIAL COURTS RELIANCE UPON "CORROBORATING" FACTORS WAS IN ERROR AS SUCH FACTORS DO NOT SAVE PROBABLE CAUSE.

## POINT II

THE TRIAL COURT ERRED IN FINDING MOVANT DID NOT MAKE A SHOWING THAT THE AFFIDAVIT CONTAINED FALSEHOODS OR STATEMENTS MADE WITH RECKLESS DISREGARD FOR THE TRUTH.

## POINT III

IT WAS ERROR FOR THE COURT TO HAVE DENIED [DEFENDANT'S] MOTION TO STAY TRIAL PENDING DISPOSITION OF *N.J. Rifle & Pistol Clubs, Inc., et al v.*

*A.G. N.J., et al.*

POINT IV

[DEFENDANT'S] JUDGMENT OF  
CONVICTION SHOULD BE  
OVERTURNED BECAUSE THE  
CONVICTION IS BASED UPON  
UNCONSTITUTIONAL LAW.

A: THE PLAIN TEXT OF THE  
SECOND AMENDMENT COVERS  
[DEFENDANT'S] CONDUCT AND AS  
SUCH IT IS PRESUMPTIVELY  
PROTECTED BY THE SECOND  
AMENDMENT.

B: THE STATUTES AT ISSUE ARE  
NOT SUPPORTED BY A NATIONAL  
TRADITION OF FIREARMS  
REGULATION.

Defendant raises the following contentions in his  
reply brief:

POINT I

THE COURT ERRED IN DENYING  
[DEFENDANT'S] MOTION FOR A  
FRANKS HEARING.

POINT II

[DEFENDANT] HAS NOT WAIVED HIS

SECOND AMENDMENT CLAIMS.

POINT III

LCMs ARE ARMS WITHIN THE MEANING OF THE SECOND AMENDMENT AND ARE ENTITLED TO THE PRESUMPTIVE PROTECTIONS OF THE SAME.

POINT IV

THE STATE CANNOT SATISFY ITS BURDEN PURSUANT TO *BRUEN*.

II.

We first address defendant's contention that the search warrant was not supported by probable cause. To be valid, a search warrant "must be based on sufficient specific information to enable a prudent, neutral judicial officer to make an independent determination that there is probable cause to believe that a search would yield evidence of past or present criminal activity." *State v. Keyes*, 184 N.J. 541, 553 (2005).

The scope of our review of a search warrant is limited. *State v. Chippero*, 201 N.J. 14, 32-3 (2009). A search based on a warrant is presumed valid and the defendant has the burden of proving its invalidity. *State v. Sullivan*, 169 N.J. 204, 211 (2001). As our Supreme Court stressed in *State v. Andrews*, "reviewing courts 'should pay substantial deference' to



judicial findings of probable cause in search warrant applications." 243 N.J. 447, 464 (2020) (quoting *State v. Kasabucki*, 52 N.J. 110, 117 (1968)); *see also State v. Marshall*, 123 N.J. 1, 72 (1991) ("We accord substantial deference to the discretionary determination resulting in the issuance of the warrant.").

With respect to the search for records, Judge Amirata found:

In the present matter, while [defendant] maintains a search warrant was not necessary because the State already was in possession of regulatory paperwork, the [c]ourt finds a search warrant was necessary to attain additional evidence. Specifically, this search warrant application requested authority to seize any and all regulatory paperwork required under N.J.S.A. 2C:58-3, N.J.S.A. 2C:58-4, N.J.S.A. 2C:58-5. Additionally, this search warrant application requested seizure of any and all firearms, long guns and ammunition, as well as other items set forth in the affidavit and order. It's clear the affidavit set forth information to support that there was evidence of a crime of falsifying an application to purchase . . . a permit.

We agree with Judge Amirata's analysis with respect to the search for records relating to defendant's alcohol problem and his applications for an FPIC and handgun purchase permit. We also agree with Judge

Amirata's analysis and findings concerning probable cause to believe a search of defendant's residence would reveal evidence of a violation of N.J.S.A. 2C:39-5(f). The judge explained:

Probable cause was based on the factual information provided by law enforcement sources to Detective [Buchalski], as well as her own personal knowledge of the facts of this case.

....

Statements made by [defendant] during an Internal Affairs Administration interview [] in which he admitted he suffered from alcohol-related issues, [defendant's] . . . disability application in which he referred to his disability as alcohol dependency treatment, and a photograph of a large amount of ammunition stockpiled in [defendant's] household, and finally an anonymous tip that was forwarded to the Prosecutor's Office through the Federal Bureau of Investigation.

....

The anonymous tip was forwarded to the Prosecutor's Office by the FBI and was corroborated by independent information. Detective [Buchalski] already had reason to know defendant was purchasing body armor and stockpiling ammunition because she

observed the photograph which depicted a wall size shelf the contained ammunition cans with labels that corresponded to known calibers. In addition, Detective [Buchalski] was personally familiar with firearms and believed based on the ammunition in the photograph defendant may have been in possession of assault style firearms. Given the information known to her, there was a substantial basis for crediting the information provided in the tip from the FBI. Considering the totality of the circumstances this [c]ourt finds the affidavit sworn by Detective [Buchalski] is sufficient set forth in probable cause.

### III.

We next address whether the trial court erred in finding defendant did not make a substantial preliminary showing that the affidavit contained falsehoods or statements made with reckless disregard for the truth. Defendant contends the affiant "lied by omission by implying that [defendant's] service weapon was kept secured at the station due to alcoholism." Relatedly, defendant argues the affiant "intentionally made statements which purposefully omitted material facts about the treatment for 'alcoholism' that [defendant] had received."<sup>6</sup> He also

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<sup>6</sup> N.J.S.A. 2C:58-3(c)(3) provides in pertinent part that "a handgun purchase permit or firearms purchaser identification card shall not be issued . . . to any person with a substance disorder unless any of the foregoing persons produces a certificate

contends the affidavit omits that he was carrying and training with firearms, including a military grade assault weapon, in his capacity as a police officer from the time of his reinstatement until his arrest in June 2018.

In *Franks*, the United States Supreme Court imposed limitations on when a defendant may "challenge the truthfulness of factual statements made in an affidavit supporting [a search] warrant." 438 U.S. at 155. In *State v. Howery*, the New Jersey Supreme Court adopted the test and procedures announced in *Franks*, holding "New Jersey courts, in entertaining veracity challenges, need go no further than is required as a matter of Federal Constitutional law by [*Franks*]." 80 N.J. 563, 568 (1979).

Under the *Franks/Howery* standard, a "presumption of validity with respect to the affidavit supporting the search warrant" must be overcome before a defendant is entitled to an evidentiary hearing. *Franks*, 438 U.S. at 171; accord *Howery*, 80 N.J. at 566. "First, the defendant must make a 'substantial preliminary showing' of falsity in the warrant." *Howery*, 80 N.J. at 567 (quoting *Franks*, 438

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of a medical doctor, treatment provider, or psychiatrist licensed in New Jersey, or other satisfactory proof, that the person no longer has that particular disability in a manner that would interfere with or handicap that person in the handling of firearms." So far as the record before us shows, defendant did not submit a certificate of a medical doctor, treatment provider, or psychiatrist along with his applications for an FPIC and handgun purchase permit.

U.S. at 170). Second, the defendant must allege "deliberate falsehood or [ ] reckless disregard for the truth,' pointing out with specificity the portions of the warrant that are claimed to be untrue." *Ibid.* (quoting *Franks*, 438 U.S. at 171). "Finally, the misstatements claimed to be false must be material to the extent that when they are excised from the affidavit, that document no longer contains facts sufficient to establish probable cause." *Id.* at 568 (citing *Franks*, 438 U.S. at 171-72).

The same analysis applies when the defendant alleges the affidavit omitted material facts. *See State v. Sheehan*, 217 N.J. Super. 20, 25 (App. Div. 1987) ("the defendant must make a substantial preliminary showing that the affiant, either deliberately or with reckless disregard for the truth, failed to apprise the issuing judge of material information which, had it been included in the affidavit, would have militated against issuance of the search warrant"); *accord State v. Stelzner*, 257 N.J. Super. 219, 235 (App. Div. 1992).

In *State v. Broom-Smith*, we emphasized that a *Franks/Howery* hearing "is aimed at warrants obtained through intentional wrongdoing by law enforcement agents and requires a substantial preliminary showing[.]" 406 N.J. Super. 228, 240 (App. Div. 2009), *aff'd*, 201 N.J. 229 (2010). And as our Supreme Court recently reaffirmed, a "defendant's burden under *Franks* and *Howery* is high[.]" *State v. Desir*, 245 N.J. 179, 198 (2021). Applying that standard, we agree with Judge Amirata's conclusion that defendant failed to show that the affidavit contained deliberate falsehoods or reckless disregard

for the truth. We add the following comment with respect to defendant's contention that the affidavit improperly omitted any mention that the offense of unlawful possession of an assault weapon is subject to an exemption for police officers.<sup>7</sup> The prosecutor argued to Judge Amirata:

I submit, [y]our Honor, the State respects [ ]'s opinion [dismissing counts of the indictment based on the statutory exemption]. When the affidavit was prepared the State was not of the belief that the exemption applied to [defendant] and any weapons that he may own personally. It was [the] defense's

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<sup>7</sup> N.J.S.A. 2C:39-6 provides in pertinent part:

...a person complies with the requirements of subsection j. of this section [pertaining to police training requirements], N.J.S.[A.] 2C:39-5 does not apply to:

A regularly employed member, including a detective, of the police department of any county or municipality, or of any State, interstate, municipal or county park police force or boulevard police force, at all times while in the State of New Jersey.

[N.J.S.A. 2C:39-6(a)(7)(a).]

For purposes of addressing defendant's *Franks/Howery* contention, we need not decide whether this exemption permits private ownership of assault weapons and associated LCMs as distinct from possession of such devices police departments issue to their officers. We offer no opinion on that question.

position that it was. That was heavily briefed and argued before [ ]. And [ ] made a ruling that the exemption applied. The State respects that decision, did not appeal that decision. But again, at the time of the affidavit the State did not believe that exemption applied to the facts of this case.

We reiterate a *Franks/Howery* evidentiary hearing is required only when there is a showing of deliberate falsehoods or reckless disregard of the truth, that is, disregard for the *facts* that undergird the State's application for a search warrant. An ex parte affidavit for a search warrant is not the appropriate forum in which to interpret a criminal statute or consider legal defenses. *Cf.* N.J.S.A. 2C:1-14(i) (defining the term "material element of an offense") and N.J.S.A. 2C:1-13(b) (discussing defenses and affirmative defenses in the context of proving guilt beyond a reasonable doubt). Articulated another way, in establishing probable cause, the State is not obliged in a search warrant application to rebut legal defenses that might be raised following indictment. Furthermore, in this instance, the affiant by no means concealed the fact that defendant was a police officer. In these circumstances, we see no falsification or reckless disregard for the truth that would necessitate an evidentiary *Franks/Howery* hearing, much less invalidate the search warrant.

#### IV.

We need only briefly address defendant's contention that the trial court erred by denying his

motion to stay trial pending the final disposition of the ongoing federal litigation addressing the constitutionality of New Jersey's LCM ban. A party seeking a stay must demonstrate that: (1) the relief is needed to prevent irreparable harm; (2) the applicant's claim rests on settled law and has a reasonable probability of succeeding on the merits; and (3) balancing the "relative hardships to the parties reveals that greater harm would occur if a stay is not granted than if it were." *Garden State Equal. v. Dow*, 216 N.J. 314, 320 (2013); *see also Crowe v. De Gioia*, 90 N.J. 126 (1982). The moving party must establish these prongs by clear and convincing evidence. *Ibid.* (citing *Brown v. City of Paterson*, 424 N.J. Super. 176, 183 (App. Div. 2012)).

At the time defendant moved for a stay, he faced charges not only for unlawful possession of LCMs but also for endangering the welfare of a child based on unsecured weapons found in the home that defendant shared with a two-year-old and a four-year-old. The trial court acted well within its discretion by declining to indefinitely postpone the trial. We are unpersuaded that defendant established the requested relief is based on a well-settled right or that a stay was needed to prevent irreparable harm. The Second Amendment issue is not well-settled but rather remains contested. *See infra* note 4. Moreover, the harm is not irreparable because if LCM bans are found unconstitutional, defendant could file a petition for post-conviction relief (PCR). *See R. 3:22- 4(a)(3)* (authorizing PCR when "denial of relief would be contrary to a new rule of constitutional law under either the Constitution of the United States or the State of New Jersey"). We add



that defendant did not specifically preserve the stay issue when he pled guilty pursuant to a very favorable plea agreement that allowed him to avoid any prison or jail time. *See R. 3:9-3(f)*.<sup>8</sup> *See also* Section V, *infra*.

## V.

That brings us to defendant's closely-related contention the LCM statute violates the Second Amendment—the legal question raised in the pending federal litigation. The record clearly shows defendant did not preserve his substantive Second Amendment argument for our review when he pled guilty.

"Generally, a guilty plea constitutes a waiver of all issues which were or could have been addressed by the trial judge before the guilty plea." *State v. Robinson*, 224 N.J. Super. 495, 498 (App. Div. 1988). *See State v. J.M.*, 182 N.J. 402, 410 (2005) ("the failure to enter a conditional plea under Rule 3:9-3(f) generally bars appellate review of non-Fourth Amendment constitutional issues.").

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<sup>8</sup> *Rule 3:9-3(f)* provides:

With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty reserving on the record the right to appeal from the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant shall be afforded the opportunity to withdraw his or her plea. Nothing in this rule shall be construed as limiting the right of appeal provided for in *R. 3:5-7(d)*.

The following discussion took place during the plea hearing:

THE COURT: Do you understand ... also understand you are giving up certain pretrial motion rights. I note we have addressed numerous motions on this matter. There are motions pending, which by operation of law would be, I would assume they will be withdrawn based on the disposition. Is that an accurate assumption, counsel?

[DEFENDANT'S COUNSEL:]: Yes, [y]our Honor.

THE COURT: All right. Certainly, as for the physical evidence motion your [a]ppellate rights attach pursuant to our court rules, but an additional motion would be deemed waived; do you understand that?

[DEFENDANT'S COUNSEL:]: Just one exception, [y]our Honor. The *Franks* motion.

Additionally, on the plea form, under the section that provides, "[d]o you further understand that by pleading guilty you are waiving your right to appeal the denial of all other pretrial motions except the following:" The only motion listed was "Franks motion." In these circumstances, we conclude defendant waived his Second Amendment contention and decline to address it on the merits, especially considering that question is presently before a federal

court.

To the extent we have not specifically addressed any of defendant's arguments, it is because they lack sufficient merit to warrant discussion. *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.

/s/

CLERK OF THE APPELLATE  
DIVISION

**APPENDIX B**

RS-18-000980 01/17/2023 12:18:55 PM

**Judgment of Conviction****Superior Court of New Jersey, MORRIS  
County**

State of New Jersey v.

Last Name      First Name      Middle Name

GARCIA      GREGORY

Also Known AsDate of Birth      SBI Number      Date(s) of Offense

[REDACTED]/1978      848527C      12/04/2017

Date of Arrest      PROMIS Number      Date Ind /  
Acc      / Complt Filed

06/18/2018      18 000980-001      10/23/2018

Original Plea      Date of Original Plea  
☒ Not Guilty      ☐ Guilty      11/05/2022**Original Charges**

Ind/Acc/Complt	Count	Description	Statute	Degree
18-10-00787-I	1	[omitted]	2C39-10C	3
18-10-00787-I	2	[omitted]	2C39-10C	3

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18-10-00787-I	3	[omitted]	2C39-10C	3
18-10-00787-I	4	[omitted]	2C39-5F	2
18-10-00787-I	5	[omitted]	2C39-5F	2
18-10-00787-I	6	[omitted]	2C39-5F	2
18-10-00787-I	7	[omitted]	2C39-5F	2

(Cont...)

**Final Charges**

Ind/Acc/Complt	Count	Description	Statute	Degree
18-10-00787I	25	*	2C:39-3J	4

\*Description

PROHIBITED WEAPONS AND DEVICES – LARGE  
CAPACITY AMMO

**Sentencing Statement**

It is, therefore, on 01/13/2023 ORDERED and  
ADJUDGED that the defendant is sentenced as  
follows:

As to Count 25 of Indictment No. 18-10-787-I in  
violation of 2C:39-3J:

The Defendant is placed on probation for (1) one  
year. The usual conditions of probation, including  
random drug/alcohol testing, shall apply. Defendant  
must undergo DNA testing, if not already done, and  
pay all costs associated with that testing. The  
Court will consider an application for early  
termination with 6 months of compliance.

The Defendant is to pay the following fines and fees  
in full within 30 days:

\$50 VCCO; \$75 SNSF; \$30 LEOTEF;  
\$5 Probation Fee.

23a

Counts 1 through 24 and Counts 26 & 27 of  
Indictment are dismissed.

☐It is further ORDERED that the sheriff deliver the  
defendant to the appropriate correctional authority.

Total Custodial Term                      Institution Name

000 Years 00 Months 000 Days

Total Probation Term    01 Years 00 Months

**Copies to: County Probation Division  
Defendant Defense Counsel Prosecutor State  
Parole Board Dept of Corrections or County  
Penal Institution Juvenile Justice  
Commission**

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**State of New Jersey v.**  
**GARCIA, GREGORY**

DEDR (N.J.S.A. 2C35-15 and 2C35-5.11)

**S.B.I. # 848527C**

**Ind / Acc / Compl # 18-10-00787-I**

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A mandatory Drug Enforcement and Demand Reduction (DEDR) penalty is imposed for each count. (Write in number of counts for each degree.)

☐ DEDR penalty reduction granted (*N.J.S.A.* 2C:35-15a(2))

	<b>Standard</b>	<b>Doubled</b>
1st Degree	_____ @ \$	_____ @ \$
2nd Degree	_____ @ \$	_____ @ \$
3rd Degree	_____ @ \$	_____ @ \$
4th Degree	_____ @ \$	_____ @ \$
DP or		
Petty DP	_____ @ \$	_____ @ \$

**Total DEDR Penalty \$\_\_\_\_\_**

☐ The court further ORDERS that collection of the DEDR penalty be suspended upon defendant's entry into a residential drug program for the term of the program. (*N.J.S.A.* 2C:35-15e)

Forensic Laboratory Fee (*N.J.S.A.* 2C:35-20)

Total Lab Fee Offenses \_\_\_\_ @ \$ \_\_\_\_ @ \$

**VCCO Assessment (*N.J.S.A.* 2C:43-3.1)**

<b>Counts</b>	<b>Number</b>	<b>Amount</b>
<u>25</u> _____	<u>1</u> _____	@ \$50
_____	_____	
_____	_____	



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**Total VCCO Assessment \$50**

**Additional Conditions**

- ✓ The defendant is hereby ordered to
  - provide a DNA sample and ordered to
  - pay the costs for testing of the sample
  - provided
  - (*N.J.S.A. 53:1-20.20* and *N.J.S.A. 53:1-20.29*).
- ☐ The defendant is hereby sentenced to community supervision for life (CSL) if offense occurred before 1/14/04 (*N.J.S.A. 2C:43-6.4*).
- ☐ The defendant is hereby sentenced to parole supervision for life (PSL) if offense occurred on or after 1/14/04 (*N.J.S.A. 2C:43-6.4*).
- ☐ The defendant is hereby ordered to serve a \_\_\_\_ year term of parole supervision, pursuant to the No Early Release Act (NERA), which term shall begin as soon as the defendant completes the sentence of incarceration (*N.J.S.A. 2C:43-7.2*).
- ☐ The court imposes a Drug Offender Restraining Order (DORO) (*N.J.S.A. 2C:35-5.7h*). DORO expires \_\_\_\_\_
- ☐ The court continues/imposes a Sex Offender Restraining Order (SORO) if the offense occurred on or after 8/7/07 (Nicole's Law *N.J.S.A. 2C:14-12* or *N.J.S.A. 2C:44-8*).
- ☐ The court imposes a Stalking

Restraining Order (*N.J.S.A.*  
2C:12-10.1).

- ☐ The defendant is prohibited from purchasing, owning, possessing, or controlling a firearm and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun (*N.J.S.A.* 2C:25-27c(1)).

**Findings Per *N.J.S.A.* 2C:47-3**

- ☐ The court finds that the defendant's conduct was characterized by a pattern of repetitive and compulsive behavior.
- ☐ The court finds that the defendant is amenable to sex offender treatment.
- ☐ The court finds that the defendant is willing to participate in sex offender treatment.

**Vehicle Theft / Unlawful Taking Penalty**  
(*N.J.S.A.* 2C:20-2.1)

Offense	Mandatory Penalty
	\$ _____

**Offense Based Penalties**

Penalty	Amount
	\$ _____

**License Suspension**

- ☐ CDS/Paraphernalia (*N.J.S.A.* 2C:35-16)    ☐ Waived
- ☐ Auto Theft / Unlawful Taking (*N.J.S.A.* 2C:20-2.1)

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☐ Eluding (*N.J.S.A.* 2C:29-2)

☐ Other

Number of Months

☐ Nonresident driving  
privileges revoked

Start Date    End Date    Details

Drivers License Number    Jurisdiction

If the court is unable to collect the  
license, complete the following:

Defendant's Address

City	State	Zip
Date of Birth	Sex	Eye Color
	<input type="checkbox"/> M <input type="checkbox"/> F	

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**Other Fees and Penalties**

Law Enforcement Officers Training and  
Equipment Fund Penalty (*N.J.S.A. 2C:43-3.3*)

✓ \$30.00

Safe Neighborhoods Services Fund Assessment  
(*N.J.S.A. 2C:43-3.2*)

✓ 1 Offenses @ \$ 75.00

Total \$ 75.00

Probation Supervision Fee  
(*N.J.S.A. 2C:45-1d*)

✓ \$ 5.00 Statewide Sexual Assault

Nurse Examiner Program Penalty

(*N.J.S.A. 2C:43-3.6*)

☐ \_\_\_\_\_ offenses @ \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

Domestic Violence Offender  
Surcharge (*N.J.S.A. 2C:25-29.4*)

☐ \$ \_\_\_\_\_

Certain Sexual Offenders Surcharge  
(*N.J.S.A. 2C:43-3.7*)

☐ \$ \_\_\_\_\_

Fine

☐ \$ \_\_\_\_\_

Sex Crime Victim Treatment Fund Penalty  
(*N.J.S.A. 2C:14-10*)

☐ \$ \_\_\_\_\_

Restitution Joint & Several

\$ \_\_\_\_\_ ☐

Total Financial Obligation

\$ 155.00

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- Entry of Civil Judgment for court-ordered financial assessment  
(N.J.S.A. 2C:52-5.2)

Details

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**State of New Jersey v. S.B.I. # 848527C**  
**GARCIA, GREGORY**  
**Ind / Acc / Compl # 18-10-00787-I**

**Time Credits**

Time Spent in Custody

R. 3:21-1

Date: From - To

-

-

-

Total Number of Days \_\_\_\_\_

Gap Time Spent in Custody

N.J.S.A. 2C44-5b2

Date: From - To

-

-

-

Total Number of Days \_\_\_\_\_

Rosado Time

Date: From - To

-

-

-

Total Number of Days \_\_\_\_\_

**Statement of Reasons** – Include all applicable  
Aggravating and Mitigating Factors

AGGRAVATING FACTORS

-----

9. The need for deterring the defendant and others  
from violating the law.

MITIGATING FACTORS

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1. The defendant's conduct neither caused nor  
threatened serious harm.
2. The defendant did not contemplate that his/her  
conduct would cause or threaten serious harm.
4. There were substantial grounds tending to excuse  
or justify the defendant's conduct, though failing to  
establish a defense.
7. The defendant has no history of prior  
delinquency or criminal activity or has led a law-  
abiding life for a substantial period of time before  
the commission of the present offense.
8. The defendant's conduct was the result of  
circumstances unlikely to recur.
9. The character and attitude of the defendant  
indicate that he/she is unlikely to commit another  
offense.

This 44-year-old Defendant has pled guilty to one count of PROHIBITED WEAPONS AND DEVICES - LARGE CAPACITY AMMO, in violation of 2C:39-3J, a crime of the 4th degree. The Court has reviewed and considered the presentence report and the plea agreement in this matter. The Court finds that aggravating factor 9 applies and mitigating factors 1, 2, 4, 7, 8, 9, and 10 apply. In this regard, the Court finds that the mitigating factors substantially outweigh the aggravating factors. Under the circumstances of this case and the plea bargain, the court finds a probationary sentence is appropriate. This is a negotiated plea between the Prosecution and the Defendant. Under all the facts and circumstances of this case the Court has imposed the recommended sentence. All other reasons have been placed on the record.

Attorney for Defendant	Public
at Sentencing	Defender
WOLODYMIR P TYSHCHENKO	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Prosecutor at Sentencing	Deputy Attorney General
BRAD SEABURY	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Judge at Sentencing  
Ralph Amarata, J.S.C.

Judge (Signature)	Date
/s/ Ralph Amarata, J.S.C.	01/17/2023



MRS-18-000980 01/17/2023 12:18:55 PM

**State of New Jersey v. S.B.I. # 848527C**  
**GARCIA, GREGORY**

**Ind / Acc / Compl # 18-10-00787-I**

**Continuation**

Original Charges

Ind/Acc/Complt	Count	Description	Statute	Degree
18-10-00787-I	8	[below]	2C24-4A(2)	2
18-10-00787-I	9	[below]	9:6-3	4
18-10-00787-I	10	[below]	2C39-3C	4
18-10-00787-I	11	[below]	2C39-3C	4
18-10-00787-I	12	[below]	2C39-3J	4
18-10-00787-I	13	[below]	2C39-3J	4
18-10-00787-I	14	[below]	2C39-3J	4
18-10-00787-I	15	[below]	2C39-3J	4
18-10-00787-I	16	[below]	2C39-3J	4
18-10-00787-I	17	[below]	2C39-3J	4
18-10-00787-I	18	[below]	2C39-3J	4
18-10-00787-I	19	[below]	2C39-3J	4
18-10-00787-I	20	[below]	2C39-3J	4
18-10-00787-I	21	[below]	2C39-3J	4
18-10-00787-I	22	[below]	2C39-3J	4
18-10-00787-I	23	[below]	2C39-3J	4
18-10-00787-I	24	[below]	2C39-3J	4
18-10-00787-I	25	[below]	2C39-3J	4
18-10-00787-I	26	[below]	2C39-3J	4
18-10-00787-I	27	[below]	2C39-3J	4

[Description from above]

Count Description

- 8 Endangering-Abuse neglect of a child by Caretaker
- 9 Cruelty & Neglect of Children
- 10 Prohibited Weapons & Devices - Silencer
- 11 Prohibited Weapons & Devices - Silencer
- 12 Prohibited Weapons & Devices -L Capacity Ammo
- 13 Prohibited Weapons & Devices -L Capacity Ammo
- 14 Prohibited Weapons & Devices -L Capacity Ammo
- 15 Prohibited Weapons & Devices -L Capacity Ammo
- 16 Prohibited Weapons & Devices -L Capacity Ammo
- 17 Prohibited Weapons & Devices -L Capacity Ammo
- 18 Prohibited Weapons & Devices -L Capacity Ammo
- 19 Prohibited Weapons & Devices -L Capacity Ammo
- 20 Prohibited Weapons & Devices -L Capacity Ammo
- 21 Prohibited Weapons & Devices -L Capacity Ammo
- 22 Prohibited Weapons & Devices -L Capacity Ammo
- 23 Prohibited Weapons & Devices -L Capacity Ammo
- 24 Prohibited Weapons & Devices -L Capacity Ammo
- 25 Prohibited Weapons & Devices -L Capacity Ammo
- 26 Prohibited Weapons & Devices -L Capacity Ammo
- 27 Prohibited Weapons & Devices -L Capacity Ammo

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**APPENDIX C**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - CRIMINAL PART  
MORRIS COUNTY**

[DATE STAMP]

FILED

MAY 27, 2022

Ralph Amirata, J.S.C.

INDICTMENT NO.: 18-10-00787-1

Promis Gavel No.: 18-000980

**PREPARED BY THE COURT:**

STATE OF NEW JERSEY,  
Plaintiff,

vs.

Gregory Garcia,  
Defendant.

**ORDER**

**THIS MATTER** having come before the Court by the Defendant, Gregory Garcia, through his attorneys, Thomas M. Rogers, Esq. & Timothy Smith, Esq., and Assistant Morris County Prosecutor, Joseph Napurano, Esq., appearing on behalf of the State; and the Court having read and considered the papers submitted; and the court having heard oral arguments;

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and for the reasons set forth on the record; and for good cause shown.

**IT IS ON THIS 27th DAY OF MAY 2022  
ORDERED as follows:**

1. Defendant's Motion for Reconsideration of the Court's October 18, 2021, Order is hereby **DENIED**.
2. Defendant's Motion to Suppress Defendant's Statements pursuant to Garrity v. New Jersey, 385 U.S. 493 (1967) is hereby **DENIED**.

/s/

Honorable Ralph Amirata, J.S.C.

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**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - CRIMINAL PART  
MORRIS COUNTY**

[DATE STAMP]  
FILED  
MAY 27, 2022  
Ralph Amirata, J.S.C.

INDICTMENT NO.: 18-10-00787-1  
Promis Gavel No.: 18-000980

STATE OF NEW JERSEY,  
Plaintiff,

vs.

Gregory Garcia,  
Defendant.

**OPINION ON DEPENDANT'S MOTION  
FOR RECONSIDERATION OF THE  
COURT'S OCTOBER 18, 2021, ORDER  
& *GARRITY* MOTION**

Decided: MAY 27, 2022

Joseph Napurano, Esq., Assistant Prosecutor, attorney  
for plaintiff (Robert J. Carroll, Morris County  
Prosecutor, attorney).

Thomas M. Rogers, Esq. & Timothy R. Smith, Esq.,  
attorneys for defendant (Caruso, Smith, & Picini,  
P.C.).

AMIRATA, J.S.C.,

This matter comes before the Court by way of Gregory Garcia's (herein after "Defendant") Defendant's motion for reconsideration of the Court's October 18, 2021, Order denying Defendant's motion to suppress the fruits of warrant-bared searches and seizures and Defendant's motion for a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978).

Additionally, before this Court is Defendant's motion to suppress his statements, pursuant to *Garritty v. State of New Jersey*, 385 U.S. 493 (1967).

I.

The following facts are derived from the State's previous filings<sup>1</sup> with regard to the motion for reconsideration: On June 15, 2018, Morris County Prosecutor's Office (MCPO) Detective Janine Buchalski submitted an Affidavit in Support of a Search Warrant and a proposed Search Warrant Order, to the Hon. Stephen J. Taylor, J.S.C., for the residence of Defendant. The facts set forth in the Affidavit were based on information known to Detective Buchalski, as well as information supplied to her by other members of law enforcement, stemming from their involvement in the investigation. The facts regarding Indictment No. 18-10-00787-1, based on the investigation and discovery in this case, showed

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<sup>1</sup> State's Franks Submission filed on June 14, 2019 (CRM2019504898).

Defendant, Gregory Garcia, is a police officer with the Wharton Borough Police Department. As a police officer, he is authorized to carry a firearm. As a result of an administrative issue, Chief Anthony Fernandez of the Wharton Borough Police Department, had required that P.O. Garcia's service weapon remain secured at the police department when he is not on duty.

On December 16, 2016, P.O. Gregory Garcia filed an application with the New Jersey Department of Labor and Workforce Development Division of Temporary Disability Insurance. The form contains his name, his date of birth, and his Social Security Number. The application includes a listed home address of "112 Elizabeth Street, Dover, NJ 07801" and indicated it is in the County of Morris. The application lists the occupation as police officer. For the question that reads "What was the first day you were unable to work due to present disability- P.O. Garcia's answer was 11/4/2016. For the question, "If you have recovered or returned to work from this disability, list date", P.O Garcia left the answer space blank.

The application contains a certification that false statements could be punished. The application is signed by Gregory Garcia, dated 12/28/16, and provides an e-mail address of ggarcia037@\*\*\*\*\*.com. (Actual email address known to Law Enforcement.) P.O. Garcia's Wharton Police Identification Number is P3\*\*\*\*. (Actual ID number known to Law Enforcement.)

Question 16 on the above-described form contains the following: Describe your disability (How, when, where it happened). The information on the form to that question reads "Alcohol Dependency treatment." The word "dependency" appears to be misspelt. The application was submitted to the Borough of Wharton Certifying Payroll Officer to certify that payroll information provided by P.O. Garcia was correct. That certification is dated January 5, 2017.

On or about May 24, 2017, Lt. David Young of the Wharton Police Department, conducted an interview of P.O. Garcia, as it related to an Internal Affairs administrative investigation for untruthfulness and fitness for duty. During the course of that interview, P.O. Garcia admitted to having an alcohol problem which required him to seek in-patient treatment at some point during his employment with the Wharton Police Department. N.J.S.A. 2C:58-3c(3) states that no permit shall be issued to any person who suffers from a physical defect or disease which would make it unsafe for him to handle firearms, to any person who has ever been confined for a mental disorder, or to any alcoholic unless any of the foregoing persons produces a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof, that he is no longer suffering from that particular disability in a manner that would interfere with or handicap him in the handling of firearms; to any person who knowingly falsifies any information on the application form for a handgun purchase permit or firearms purchaser identification card.

A standard permit to purchase a handgun



application form is promulgated by the Superintendent of the New Jersey State Police entitled Application for Firearms Purchaser Identification Card and/or Handgun Purchase Permit. A permit is submitted to the local chief law enforcement executive of the municipality of residence of the applicant for review. Question 23 of the form asks the following question: "Are you an alcoholic?" There is a check box for a yes answer and a check box for a no answer.

On December 4, 2017, Gregory Garcia submitted a form that sought to change the address on his Firearm Purchaser Identification Card (FPIC) and to act as an application to purchase a handgun. He provided an address of 112 Elizabeth Street, Dover NJ 07801. He provided a NJ Driver's License Number on the application. A review of the certified records of the Motor Vehicle Commission indicates the **DL** Number on the application matches that of Gregory Garcia. A **NJ** Firearms ID Card/SBI Number of 8\*\*\*\*\*c (Actual number known to Law Enforcement) is listed. A review of records maintained by the NCIC system indicate that SBI Number is the same as that contained on the application for Gregory Garcia. The listed occupation is police officer. The check box No contains an "x" to Question 23. There is a certification on the application that reads "I hereby certify that the answers given on this application are complete, true and correct in every particular. If any of the foregoing answers made by me are false, I am subject to punishment." The signature Gregory Garcia with a date of December 4, 2017, attests to the certification. Based on the application, a duplicate FPIC was issued to Gregory Garcia on February 20, 2018, by the Chief Law Enforcement

Executive of Dover, New Jersey, Deputy Chief Anthony Smith.

The investigation revealed that the application of December 4, 2017, resulted in a Permit to Purchase a Handgun #1867103 being issued to Gregory Garcia, with a date of birth of March 29, 1978, and stated address of 112 Elizabeth Street, Dover NJ 07801 on December 14, 2017 by Deputy Chief Smith. That permit was used to purchase a handgun, to wit, a Hudson 9mm pistol with serial number H03431 on April 9, 2018. On April 11, 2018, Gregory Garcia submitted a form that sought to act as an application to purchase a handgun. He provided an address of 112 Elizabeth Street, Dover NJ 07801. He provided a NJ Driver's License Number on the application. A review of the certified records of the Motor Vehicle Commission indicates the DL Number on the application matches that of Gregory Garcia. A NJ Firearms ID Card/SBI Number of 8:f:\*\*\*\*C (Actual number known to Law Enforcement) is listed. A review of records maintained by the NCIC system indicate that SBI Number is the same as that contained on the application for Gregory Garcia. The listed occupation is police officer.

The check box No contains an "x" to Question 23. There is a certification on the application that reads "I hereby certify that the answers given on this application are complete, true and correct in every particular. If any of the foregoing answers made by me are false, I am subject to punishment." The signature Gregory Garcia with a date of April 11, 2018, attests to the certification.

The investigation has revealed that the application of December 4, 2017, resulted in a Permit to Purchase a Handgun #1867109 being issued to Gregory Garcia, with a date of birth of 3/29/1978 and stated address of 112 Elizabeth Street, Dover NJ 07801 on April 30, 2018 by Deputy Chief Smith. The New Jersey State Police was contacted by Morris County Prosecutor's Office Detective/Supv. Joseph Soulias and was informed that Permit #1867109 was used to purchase a Glock 9mm handgun with Serial Number BDCM 284 on May 25, 2018. Detective Buchalski was informed by Lt David Young of the Wharton Police Department that P.O. Garcia has stored a large amount of ammunition in his residence. A photograph provided to Chief Fernandez depicts a wall-size shelf that contains ammunition cans which are marked with labels that correspond to known calibers of pistols and long guns. There are also small boxes which contain markings similar to ammunition boxes that can be purchased.

Detective Buchalski is a certified firearms instructor, and she is familiar with the different calibers of ammunition and the types of firearms to which each might correspond. Based on the photograph, Detective Buchalski had probable cause to believe P.O. Garcia may be in possession a weapon that might be assault-style firearm. There are markings on individual bins which read: 223;556; 338,300 Win BLK; 308. These are calibers that would be fired by a highpower/high velocity long gun, which would have a range of at least 1000 yards. It is Detective Buchalski's experience that assault-style firearms must be examined to determine if it falls

within the category of prohibited assault firearms or substantially similar to those enumerated in N.J.S.A. 2C:39-1w. That examination, pursuant to standard procedures followed by the MCPO, requires examination under controlled circumstances by an expert in firearms recognition. There was also an ammunition can marked 12GA, which Detective Buchalski believed corresponded to a 12 gauge shotgun shell. There were also cans marked 40, 45 and 9 mil, which Detective Buchalski believed corresponded to handgun calibers, including those which would be used in handguns which P.O. Garcia had purchased. Detective Buchalski was informed by Morris County Prosecutor's Office Lt. Christoph Kimker that Special Agent Kimberly Cyganik of the Federal Bureau of Investigation (FBI) provided information to Deputy Chief Smith and Chief Fernandez that was based on a confidential source. S/A Cyganik informed law enforcement that the FBI had received information regarding P.O. Garcia and the source stated in substance that P.O. Garcia had become increasingly infatuated with firearms. Detective Buchalski was informed by Det/Supv. Soulias that he spoke with S/A Cyganik and that she indicated that the source also stated that P.O. Garcia was purchasing body armor and stockpiling ammunition. The source stated that P.O. Garcia had recently purchased an "Accuracy International" rifle sometime after January 1, 2018.

On June 15, 2018, the search warrant authorized by the Hon. Stephen J. Taylor, J.S.C. was executed upon the residence of the defendant on June 18, 2019.

## II.

Defendant asserts that it was premature to deny his motion to suppress the fruits of the warrant because Defendant was not permitted argument on the motion. Further, Defendant believes his motion suppress the fruits of the warrant should have been granted because the affidavit lacked probable cause that a crime had been or was committed and that the evidence of such crimes would be found at Defendant's residence. Defendant cites that the crimes include Unlawful Possession of Weapons in violation of N.J.S.A. 2C:39-5f and False Statements in Application for Permit in violation of N.J.S.A. 2C:39-10(c). Defendant reiterates the fruits of the warrant should have been suppressed because the warrant is the product of "fruit of the poisonous tree." Defendant believes the denying of the motion to suppress was premature because the issue of whether or not the statements obtained at the May 24, 2017, IA interview were obtained in violation of *Garritty*, had not yet been decided.

Defendant further contends the motion for a *Franks* hearing should've been granted. Specifically, Defendant asserts he satisfied the burden of showing that a false statements knowingly and intentionally, or with reckless disregard for the truth necessary to the finding of probable cause was included in the warrant affidavit.

The State relies on its previously filed opposition to Defendant's motion for a *Franks* hearing, as well as arguments previously placed on the record.

## III.

A court has the discretion and right to reconsider an interlocutory ruling prior to the entry of final judgment in "the sound discretion of the court to be exercised in the interests of justice." *See Johnson v. Cyklop Strapping Corp.*, 220 N.J. Super. 250, 257, 263 (App. Div. 1987) and *State v. Timmendequas*, 161 N.J. 515, 554, 737 A.2d 55 (1999) (quoting *Pressler*, Current N.J. Court Rules, comment 3 on R. 1:7-4 (1995), wherein it is noted there is not an explicit rule for motions for reconsideration in criminal matters, but that such motions are allowed in criminal matters), cert. denied, 534 U.S. 858, 122 S. Ct. 136, 151 L. Ed. 2d 89 (2001). *See also Rule 4:49-2*. While *Rule 4:49-2* does not expressly apply to criminal actions, in view of the absence of a corollary criminal practice rule, the rule has been applied to criminal matters. *See State v. Fitzsimmons*, 286 N.J. Super. 141, 147 (App. Div. 1995), *remanded* 143 N.J. 482 (1996) (where the rule applied to a prosecutor's motion for reconsideration of a trial court order admitting a defendant into the Pre-trial Intervention Program over prosecutorial objection); *See also State v. Puryear*, 441 N.J. Super. 280, 293-295 (App. Div. 2015).

Reconsideration is to be granted sparingly and the grounds for reconsideration are generally limited. The proper purpose of reconsideration is to correct a court's error or oversight. *Palombi v. Palombi*, 414 N.J. Super. 274 (App.Div.2010). A motion for reconsideration is not appropriate simply because a litigant is dissatisfied with a court's decision or wishes to reargue a motion, but "should be utilized only for

those cases which fall into that narrow corridor in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." [*Ibid.* (quoting *D'Atria v. D'Atria*, 242 N.J. Super. 392,401,576 A.2d 957 (Ch.Div.1990)).]

*Rule 4:49-2* requires that a party seeking reconsideration "state with specificity the basis on which [the motion] is made, including a statement of the matters or controlling decisions which [the movant] believes the Court has overlooked or as to which it has erred." *See Johnson v. Cyklop Strapping Corp.*, *supra* at 257, 263 (App. Div. 1987). A motion for reconsideration is not an opportunity for a second bite at the apple. It is not a mechanism for unhappy litigants to attempt once more to air their positions and re-litigate issues already decided. *See Michel v. Michel*, 210 N.J. Super. 218,224 (Ch. Div. 1985). Moreover, a party cannot rely on facts that were not raised in the initial motion to justify reconsideration when those facts were either known or could have been known at the time of the initial hearing. *Del Vecchio v. Hemberger*, 388 N.J. Super. 179, 189 (App. Div. 2006).

#### IV.

During the hearing on October 18, 2021, the Court issued its decision regarding Defendant's application to suppress evidence seized based on a warrant based search, pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). The Court found the search warrant was necessary to find additional

evidence. Specifically, this search warrant application requested authority to seize any and all regulatory paperwork required under N.J.S.A. 2C:58-3, N.J.S.A. 2C:58-4, N.J.S.A. 2C:58-5. Additionally, the search warrant application requested seizure of any and all firearms, long guns, and ammunition, as well as other items set forth in the affidavit and Order. It is clear the affidavit set forth information to support that there was evidence of a crime of falsifying an application to purchase a permit. There is also sufficient information to support Detective Buchalski's contention that Mr. Garcia's residence contained evidence related to the violation of N.J.S.A. 2C:39-10c, False Representation in an Application to Obtain a Permit to Purchase a Handgun, and the violation of N.J.S.A. 2C:39-5f, Unlawful Possession of an Assault Firearm.

Further, the Court carefully considered the information within the four corners of the supporting affidavit and found probable cause existed to support the issuance of a search warrant. Probable cause was based on the factual information provided by law enforcement sources to Detective Buchalski, as well as her own personal knowledge of the facts of this case. The Court specifically included the two applications to purchase a handgun on which Mr. Garcia indicated he was not an alcoholic.

This Court also touched upon the statements made by Mr. Garcia during the Internal Affairs Administration interview to Chief Young in which he admitted he suffered from alcohol related issues. Specifically, Mr. Garcia's disability application where



he referred to his disability as alcohol dependency treatment, and a photograph of a large amount of ammunition stockpiled in Mr. Garcia's household, and the anonymous tip that was forwarded to the Prosecutor's office through the FBI. The Court did note that Defendant asserts his statement cannot be used as probable cause under the circumstances. This Court stated it will address the issues of the statement as it was provided at the 104 hearing. Under the current circumstances, the Court found the statements at the time of the *Franks* hearing were appropriately provided at least in the administrative fashion.

Further, the Court stated the anonymous tip forwarded to the Prosecutor's Office by the FBI was corroborated with independent information. Detective Buchalski already had reason to know defendant was purchasing body armor and stockpiling ammunition because she observed the photograph which depicted a wall size shelf that contained ammunition cans with labels that corresponded to known calibers. In addition, Detective Buchalski was personally familiar with firearms and believed based on the ammunition in the photograph defendant may have been in possession of assault style firearms. Given the information known to her, there was a substantial basis for crediting the information provided in the tip from the FBI. Considering the totality of the circumstances this Court finds the affidavit sworn by Detective Buchalski is sufficient set forth in probable cause.

Additionally, the Court found Mr. Garcia did not make a showing that the affidavit contained deliberate

false hoods or reckless disregard for the truth. Mr. Garcia has not met his burden in showing that Detective Buchalski knowing and intentionally, or with reckless disregard of the truth, included a false statement within the affidavit.

Regarding Defendant's reconsideration application, this Court did not commit an error or oversight. The Court based its decision on firm grounds and gave a lengthy decision and analysis as stated above. Defendant does not get a second bite at the apple just because he is not satisfied with the Court's prior decision. All of Defendant's arguments could have easily been argued during the hearing held on October 18, 2021. Defendant claims he did not get to argue the issue of probable cause, or the suppression of evidence issue even though his application was a motion to suppress evidence pursuant to a warrant-based search and for a hearing pursuant to *Franks*. Defendant's entire application dated May 1, 2019, attacks the warrant on the ground that it lacks probable cause on its face, rather than alleging there is a falsehood or reckless disregard under *Franks*. Defendant even argues the concept of probable cause throughout the hearing even though he claims he was not afforded the opportunity to do so. The Court also notes for an application to warrant a *Franks* hearing, the issue of probable cause is fundamentally grounded issue that must be addressed. As stated at the previous hearing, Defendant did not present a prima facie showing to warrant a *Franks* hearing. The Court found that adequate probable cause existed, so the Court does not give any weight to point 1 or 2 of Defendant's reconsideration application.

As for point 3 in Defendant's brief, as previously stated, the Court will not relitigate issue of the *Franks* hearing.

Additionally, the Court afforded Defendant the opportunity to supplement his previous oral argument had he realized the Court was jointly addressing the *Franks* application and the fruit of the poisonous tree argument. This Court deems these applications integrated. Even after considering the additional oral arguments, this Court is unpersuaded to modify the previous outcome.

Accordingly, Defendant's motion for reconsiderations is DENIED.

## V.

Moving to the Defendant's motion to suppress his statements, pursuant to *Garrity v. State of New Jersey*, 385 U.S. 493 (1967). The following facts are derived from the State's previous filings<sup>2</sup> in regard this application: On May 24, 2017, Defendant provided a statement to Lt. Young of the Wharton Police Department during an administrative investigation of which Defendant was the subject of the investigation. Officer Garcia was advised by Lt. Young that "It's an investigation into a violation of the rules and regs, which is a neglect of duty and truthfulness or false swearing, which is referring to as one in the same."

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<sup>2</sup> State's Garrity Submission filed on June 14, 2019 (CRM2019505171).

Prior to that advisement, Lt. Young provided Officer Garcia with the Wharton Police Administrative Acknowledgement Form wherein Lt Young advised Officer Garcia what the investigation concerned and if Officer Garcia could review it, sign it and date it. Lt. Young advised Defendant that he was "obligated to answer all questions and provide full and complete information to the investigators during internal investigations. Less than complete candor during any statement may lead to serious disciplinary sanctions, which may include suspension or termination."

## VI.

Defendant argues that his statement should be suppressed, pursuant to *Garrity v. New Jersey*, 385 U.S. 493 (1967). Specifically, Defendant maintains that his statement provided was made under the threat of losing his job. As a result, Defendant argues that the statement may not subsequently be used against him in a subsequent criminal proceeding. In opposition, the State argues that Defendant's reliance on *Garrity* is misguided. The State maintains that, at the time of the Defendant's statement, the investigation was administrative only. Further, the State argues that the investigation was properly conducted pursuant to the Attorney General Internal Affairs Policy & Procedure. Specifically, the State maintains that during the investigation, Defendant did not refuse to answer questions by Lt. Young on the grounds that his answers could incriminate him in a criminal offense, such that Lt. Young would have to inquire into the availability of use immunity. Lastly, the State argues that *Garrity* does not immunize

Defendant from the consequences of his subsequent criminal acts.

During the 104 hearing, the Court heard testimony of Chief David Young. Chief Young testified in substance that he was assigned the administrative investigation of Officer Gregory Garcia for "neglect of duty" and "truthfulness or false swearing."

The administrative interview occurred on May 24, 2017, in Chief (then Lieutenant) Young's office located at the Wharton Police Department. Mr. Garcia was presented his Administrative Advisement Form (S-1 in evidence) along with the Weingarten Representative Acknowledgement (S-2 in evidence). Where upon counsel was present and modified the form to reflect same.

Chief Young acknowledged that the interview was strictly an administrative investigation, and Mr. Garcia was compelled to be present at the interview. Chief Young noted that neither Garcia nor his attorney ever requested *Garrity* protections or requested to terminate the interview. Chief Young noted the interview was recorded in its entirety (S-3 in evidence). He even utilized two (2) recording devices because the department was in transition to a new recording system.

During Chief Young's testimony, it became clear that additional internal affairs files would need to be subject to an *in camera* review and provided to all parties. Based on the newly discovered evidence, the hearing was adjourned and subsequently continued

after all relevant discovery was provided.

Chief Young explained his report writing techniques of continually expanding his original reports rather than generating new reports at each stay of the investigation.

This Court notes that Chief Young further testified that during the course of the administrative investigation the matter was never forwarded to the Morris County Prosecutor's Office for investigation.

Based on Chief Young's demeanor and responses to questions, the Court finds him as a credible witness. He was responsive to all questions asked. He would appropriately pause prior to responding to complex questions so that his answers would be precise. He remained clam throughout the hearing and was continually respectful to counsel, even during cross-examination. Furthermore, his answers were consistent and supported by the evidence and recordings.

## VII.

"Generally, as long as there are no *Bruton*, *Miranda*, privilege or voluntariness problems, and subject to R. 104(c), the State may introduce at a criminal trial any relevant statement by Defendant." *State v. Covell*, 157 N.J. 554, 573 (1999), cert. den'd 162 N.J. 132 (1999). The Rule requires the State to prove beyond a reasonable doubt that the statement was voluntary and not the product of official misconduct. *State v. Galloway*, 133 N.J. 631, 654

(1993). In making this determination, the Court must look at the totality of the circumstances, including the Defendant and the characteristics of the interrogation. *State v. Knight*, 183 N.J. 449, 462-63 (2005).

The Fifth Amendment of the United States Constitution guarantees all persons with the privilege against self-incrimination, and applies to the states through the Fourteenth Amendment. U.S. CONST. amend. V, XIV; *Griffin v. California*, 380 U.S. 609, 615 (1965). The Fifth Amendment is violated "when a State compels testimony by threatening to inflict potent sanctions unless the constitutional privilege is surrendered." *State v. P.Z.*, 152 N.J. 86, 106-07 (1997) (quoting *Lefkowitz v. Cunningham*, 431 U.S. 801, 805 (1977)). "New Jersey's privilege against self-incrimination is so venerated and deeply rooted in this state's common law that it has been deemed unnecessary to include the privilege in our State's Constitution." *State v. O'Neill*, 193 N.J. 148, 176 (2007). The New Jersey statute and corresponding rule of evidence explicitly afford a suspect the "right to refuse disclose ... any matter *that will incriminate* him or expose him to a penalty or a forfeiture of his estate." N.J.S.A. 2A:84A-19; N.J.R.E. 503 (emphasis added).

Furthermore, our Supreme Court "has treated 'our state privilege as though it were of constitutional magnitude, finding that it offers broader protection than its Fifth Amendment counterpart.'" *State v. Wright*, 444 N.J. Super. 347 (App. Div. 2016). In *State v. P.Z.*, our Supreme Court observed:

[c]ustodial interrogations by law

enforcement officers are not the only special circumstances in which the Fifth Amendment privilege against self-incrimination is self-executing. Both the United States Supreme Court and our New Jersey courts have consistently held that the state may not force an individual to choose between his or her Fifth Amendment privilege and another important interest because such choices are deemed to be inherently coercive.

152 N.J. at 106 (citing *Garrity v. New Jersey*, 385 U.S. 493 (1967)).

In *Garrity v. New Jersey*, the United States Supreme Court held that where police officers are being investigated for a crime and are given a choice to either incriminate themselves or forfeit their public positions, any statements given under those circumstances are not be voluntary under the Fourteenth Amendment. 385 U.S. at 500 ("[T]he protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statement obtained under threat of removal from office[.]") In *Garrity*, the State Attorney General investigated allegations that certain police officers were fixing traffic tickets. 385 U.S. at 494. Before questioning, each officer

"was warned (1) that anything he said might be used against him in any state criminal proceeding; (2) that he had the privilege to



refuse to answer if the disclosure would tend to incriminate him; but (3) that if he refused to answer he would be subject to removal from office." *Ibid.*

The officers answered the Attorney General's questions, and their statements were used against them in a subsequent criminal proceeding. *Id.* at 495. As such, the Court held those statements were not voluntary and inadmissible. *Id.* at 498 (finding the statements "were infected by ... coercion"). Specifically, the Court observed

The choice given petitioners was either to forfeit their jobs or to incriminate themselves. The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent. That practice, like interrogation practices reviewed in *Miranda v. Arizona*, 384 U.S. 436, 464-465, is "likely to exert such pressure upon an individual as to disable him from making a free and rational choice." We think the statements were infected by the coercion inherent in this scheme of questioning and cannot be sustained as voluntary under our prior decisions.

*Id.* at 497-98. See also *State v. Melendez*, 240 N.J. 268, 272 (2020) (holding, under the reasoning of *Garrity*, a defendant's statements in an answer to a civil forfeiture action cannot be introduced in a parallel criminal proceeding in the State's case in chief).

Notably, "[t]he public employee's constitutional right not to incriminate himself ... inevitably collides with the need of the public employer, in the public interest and as a matter of public trust, to require him to account for his conduct in public office." *Banca v. Town of Phillipsburg*, 181 N.J. Super. 109, 113 (App. Div. 1981). To balance these interests, the State requires Garrity warnings to be read when the "[f]ear that loss of employment will result from exercise of the constitutional right to remain silent [is] subjectively real and objectively reasonable."<sup>3</sup> *State v. Lacaille*, 266 N.J. Super. 522, 525 (App. Div. 1993). "Where a police officer's answers to police questioning are coerced by the threat of removal from office, the answers are not admissible unless the officer waives his or her right to remain silent. *Id.* at 528 (granting public employees use immunity for testimony compelled during certain proceedings). Accordingly, the New Jersey Attorney General's *Guidelines on Internal Affairs Policy & Procedure* (Revised July 2014) provides sample *Garrity* warnings for use by local police departments. Those warnings advise police officers that (1) they are being investigated, (2) they have been granted use immunity in any criminal proceeding for their answers, but that they may be disciplined if they refuse to answer, and (3) any answer may be used in subsequent departmental

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<sup>3</sup> "First, the defendant must have subjectively believed that he was compelled to give a statement upon threat of loss of job. Second, this belief must have been objectively reasonable at the time the statement was made." *State v. Lacaille*, 266 N.J. Super. 522, 525 (App. Div. 1993) (quoting *United States v. Camacho*, 739 F. Supp. 1504, 1515 (S.D. Fla. 1990).

disciplinary proceedings. *Id.*

While *Garrity* may prevent internal affairs investigators from coercing police officers into giving incriminating statements by threatening them with the termination of employment, it does not "immunize a police officer from the consequences of committing a subsequent crime." *State v. Falco*, 60 N.J. 570, 584-85 (1972) ("The Fifth Amendment privilege is to be silent; it is not a privilege to commit a crime."); *Compare State v. Lacaille*, 266 N.J. Super. 522 (App. Div. 1993) (holding police officer's statements inadmissible in subsequent criminal proceedings for prior misconduct). Our Supreme Court has recognized, "*Garrity* forbade the use of [a] 'coerced' statement to prove a prior criminal offense." *Falco*, 60 N.J. at 585 (emphasis added). In *Falco*, the Court refused to extend *Garrity* to allow a police officer to affirmatively commit a crime. *Ibid.* (holding that *Garrity* does not apply when "the 'coerced' report is itself the criminal act). Furthermore, "[i]t has been consistently held that the Fifth Amendment privilege does not entitle a witness to commit perjury." *Ibid.* "*Garrity* is not a license for law enforcement officers to commit future crimes." See also *United States v. Knox*, 396 U.S. 77, 82 (1969) ("[W]hile a public employee may not be put to the choice of self-incrimination or unemployment, he is not privileged to resort the third alternative, i.e., lying."); *State v. Mullen*, 67 N.J. 134, 138 (1975) ("It is generally held that the immunity for compelled testimony ... extends to past crimes only and does not protect against a prosecution for false testimony given when testifying under compulsion."); N.J.S.A. 2A:81-17.2(a)(2) ("no such public employee shall be exempt

from prosecution or punishment for perjury or false swearing").

## VIII.

In the present matter, Mr. Garcia was not being investigated for a crime at the time he made the statements. He did not face such an untenable situation, such that *Garrity* would be applicable. Mr. Garcia was not faced with the decision to either forfeit his position as a police officer or incriminate himself when he made the statement. Unlike the defendants in *Garrity*, at the time he made the statement Mr. Garcia was only the subject of an internal affairs investigation, not a criminal investigation.

Specifically, Mr. Garcia was being investigated for an internal affairs investigation for "neglect of duty" and "truthfulness or false swearing," stemming from events that occurred on November 4, 2016. Garcia made the allegedly incriminating statements on May 24, 2017, revealing to Chief Young that he had an alcohol problem which required him to seek inpatient treatment. Subsequently, Mr. Garcia submitted two applications for handgun purchase permits dated December 4, 2017, and April 11, 2018. In both applications, Mr. Garcia submitted a form in which a question read "Are you an alcoholic?" Mr. Garcia checked off the box labeled "no."

Our courts have determined that *Garrity* may not be used to shield an officer from the consequences of committing a subsequent crime. *Falco*, 60 N.J. at 584-85. The statements Mr. Garcia is seeking to suppress

do not involve prior conduct, but instead contradict conduct committed more than six months<sup>4</sup> following the interview. Rather than using the statement against Mr. Garcia to prove a prior criminal offense, as was the case in *Garrity*, the State here is seeking to use the statement against Mr. Garcia for his alleged subsequent crimes.

Further, the interview with Chief Young was not "infected by coercion," as there was no crime yet committed. Mr. Garcia, who had counsel present, was not subject to such pressure that his statement was not the product of his own free will. *See Garrity*, 385 U.S. at 497-98. The Court in *Garrity* sought to protect police officers from inherently coercive interrogation practices where a choice was so untenable that a police officer would feel forced to make a self-incriminating statement. The Court did not seek to shield police officers from traditional pressures that may accompany an administrative investigation for a failure to adequately perform their duties. While Mr. Garcia may have felt some degree of pressure as the subject of an administrative investigation, he was not subject to the degree of pressure described in *Garrity* to render his statements involuntary.

Furthermore, under the totality of the circumstances, the record indicates that Mr. Garcia's statements were voluntary. M r . G a r c i a w a s

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<sup>4</sup> There was approximately six months between the interview on May 24, 2017, with Lt. Young and the first alleged crime by Mr. Garcia on December 4, 2017.

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represented by counsel during the interview with Chief Young and the interview only lasted approximately one hour.

Accordingly, this Court finds Defendant's statements admissible.

**APPENDIX D**

**FILED**

**July 13, 2020**

**Hon. David H. Ironson, J.S.C.**

**PREPARED BY THE COURT**

STATE OF NEW JERSEY,	Superior Court
	of New Jersey
Plaintiff,	Law Division -
vs.	Criminal Part
	Morris County
GREGORY GARCIA,	Indictment No:
	18-10-00787-1
<u>Defendant.</u>	Promis Gavel No.:
	18-000980

**ORDER**

**THIS MATTER** having been opened to the Court by Counsel, Timothy Smith, and Wolodymyr Tyshchenko, on behalf of Defendant, Gregory Garcia; and Vincent Leo, Assistant Prosecutor, appearing on behalf of the State; and the Court having reviewed the papers; and having heard the arguments; and for other good cause shown;

**IT IS ON THIS 13th DAY OF July 2020,  
ORDERED**

1. Defendant's Motion to Dismiss Counts One through Three, Eight and Nine of the above Indictment is **DENIED**.
2. Defendant's Motion to Dismiss Counts Four

through Seven of the above Indictment is  
**GRANTED.**

3. Counts Four through Seven shall be  
**dismissed without prejudice.**
4. The remaining motions shall be scheduled for  
a hearing on September 17, 2020.

/s/ David H. Ironson, J.S.C.

David H. Ironson, J.S.C.

Attached hereto is a Statement of Reasons.



**State v. Gregory Garcia** Indictment No. 18-10-00787-I **STATEMENT OF REASONS**

This matter comes before the Court by way of Defendant, Gregory Garcia's Motion to Dismiss the Indictment filed on or about May 1, 2019. The State filed opposition on or about June 14, 2019. Defendant filed supplemental briefs on or about July 26, 2019 and November 5, 2019. Oral argument was held on May 20, 2020. On or about May 21, 2020, after oral argument, the State submitted a supplemental letter. Defendant responded to that letter on or about May 22, 2020, May 31, 2020 and June 2, 2020. As a result of those submissions, oral argument was continued on June 17, 2020. On or about June 24, 2020 Defendant filed additional Exhibits for the Court's consideration. On or about July 8, 2020, the State filed a supplemental letter bringing to the Court's attention a recent unpublished decision in the Law Division.

The record<sup>1</sup> reveals the following:

On October 16, 2018, the Morris County Prosecutor's Office presented this matter before the Grand Jury. There were three witnesses: William Stitt, a Forensic Examiner from the Morris County Sheriff's Office; Sergeant Joseph Soulias of the Morris County Prosecutor's Office; and Detective Matthew Magnone of the Morris County Prosecutor's Office. (T4:17-21). Prior to the testimony, the State gave the grand jurors' instructions. (T4:21-T5:7). In addition, the State read the law in its pertinent part for the grand jurors' consideration. Specifically, the

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<sup>1</sup> T refers to the transcript of proceedings before the Morris County Grand Jury dated October 16, 2018.

State explained the law surrounding Violation of Regulatory Provisions Relating to Firearms and False Representation and Applications, Unlawful Possession of Weapons, Prohibited Weapons and Devices, Endangering the Welfare of a Child, and any exemptions that the grand jurors could consider in their deliberation. (T5:8-T13:8). The State also gave definitions that could be utilized during deliberations. (T14:14-T16:24). The State then called Sergeant Soulias to testify. (T16:7- 8).

Sergeant Soulias' testimony revealed the following:

Sergeant Soulias is employed with the Morris County Prosecutor's Office as a Sergeant with the Specialized Crime Division. (T18:1-7). He has been so employed for approximately three and a half years. (T18:8-10). As part of his daily duties at the Morris County Prosecutor's Office, Sergeant Soulias testified that he is involved in investigations being conducted by the office or follow-up investigations with matters or cases that are referred to the Prosecutor's Office by the local municipalities. (T18:25-T19:7).

On or about June 19, 2018, Sergeant Soulias testified that he was assigned to an investigation to be performed by the professional standards unit of the Prosecutor's Office. (T19:19-23). Through that investigation, he learned that Defendant resides at [REDACTED] Elizabeth Street in Dover, New Jersey. (T19:24-T20:3). Sergeant Soulias testified that Defendant lives there with his wife, A.G., and two minor children, O.G., and E.G., born on December 1, 2013 and May 7, 2016, respectively. (T20:4-15). Sergeant Soulias testified that Defendant is a Wharton police officer who is authorized to carry his duty weapon

while on duty. (T20:20-23). He indicated that Defendant was authorized to carry his weapon while he was on duty at the time the investigation commenced. (T20:24-T21:2).

Sergeant Soulias testified that there were two applications submitted to the Dover Police Department by Defendant subsequent to his admission of being an alcoholic in a separate interview with his employer, Wharton Police Department. (T21:3-8). Specifically, the investigation revealed that on May 24, 2017, Defendant admitted to Lieutenant Young of the Wharton Police Department that he had an alcohol problem which required him to seek inpatient treatment. (T21:9-15). From information contained in a Wharton Police Department report dated May 29, 2018, prepared by Lieutenant Young, Defendant attended a substance abuse treatment program in Florida from on or about January 1, 2017 through January 30, 2017. (T21:16-22). He indicated that this treatment was required by Wharton Police Department due to alcohol issues that the department became aware of on or about November 4, 2016. (T21:23-T22:2).

The investigation further revealed that Defendant submitted an application for disability on or about December 28, 2016. (T22:3-7). He confirmed that document is entitled State of New Jersey Department of Labor and Workforce Development, Division of Temporary Disability. (T22:8-11). Sergeant Soulias indicated that he reviewed this document, amongst others, during the investigation as well as after completion of the investigation. (T22:12-15). He testified that Defendant is filled in as the applicant on this application. (T22:16-18). Sergeant Soulias confirmed that question sixteen on

the application states, “Describe your disability. How, when, where it happened.” (T22:19-22). The answer that is handwritten on the application is “alcohol dependency treatment.” (T22:23-T23:2). Sergeant Soulias confirmed that there is a question that reads “what was the first day you were unable to work due to your present disability,” and that the answer is, “November 4, 2016.” (T23:13-17). He indicated that the application was signed by Defendant. (T23:18-20).

Subsequent to Defendant’s admission of alcohol dependency to Lieutenant Young, on his disability application, and his inpatient treatment, Defendant submitted to Dover Police Department, the town in which he resides, two applications for handgun purchase permits dated December 4, 2017 and April 11, 2018. (T23:21-T24:3). The form dated December 4, 2017 included a request for a change of address for Defendant’s initial firearms purchaser identification card. (T24:4-8). Regarding both applications, the same form is submitted by Defendant. That form is STS-033, entitled State of New Jersey Application for Firearms Purchase Identification Card and/or a Handgun Purchase Permit. (T24:9-15). This application was marked as Exhibit 1 and shown to the grand jurors. (T24:16-2). Sergeant Soulias confirmed that on the application form, the box indicating change of address on identification card is checked off. (T25:6-10). The box indicating the “application to purchase a handgun, quantity of permits, one” is also checked off. (T25:11-15). Defendant indicated on the form that his occupation was police officer. (T25:21-23). Sergeant Soulias confirmed that question 13 reads “Are you an alcoholic?” (T25:24- T26:2). He indicated that the box

“no” is checked off. (T26:3-5). Sergeant Soulias testified that this application was submitted after Defendant admitted his alcohol dependency to Lieutenant Young and indicated same on his disability application. (T26:6-11). He stated that Defendant was aware of his alcohol dependency in 2016. (T26:12-14). Sergeant Soulias confirmed that this document is signed by Defendant. (T26:15-17). Above his signature, it states, “I hereby certify that the answers given on this application are complete, true, and correct in every particular. I realize if any of the forgoing answers made by me are false, I am subject to punishment.” (T26:19- 24). The date on the form is December 4, 2017. (T26:25-T27:1). He testified that this application was approved and signed by Dover Deputy Chief Anthony Smith on December 12, 2017. (T27:2- 6). Based on this application, a duplicate firearms purchaser identification card, or an FPIC, was issued to Defendant on December 14, 2017 by Dover Deputy Chief Anthony Smith. (T27:14-18; T28:1-5). In addition, a handgun purchase permit was issued to Defendant. (T27:19-T28:10).

Sergeant Soulias testified that the duplicate firearms purchaser ID card contained a typo error in the SBI number and therefore that card and permit number was voided by Dover Deputy Chief Anthony Smith. (T28:11-17). Deputy Chief Smith then issued a new duplicate FPIC on February 20, 2018 along with a new permit. (T28:18-21). The duplicate firearms identification card was marked as Exhibit 3. (T28:22-25). The permit was marked Exhibit 4. (T29:9-13).

Sergeant Soulias testified that on April 11,

2018, Defendant submitted another application, which was marked as Exhibit 2. (T35:5-10). This form is STS-033 and was signed by Defendant. At the top of the application, the quantity of permits is listed as one. (T35:9-13, 17-20). The identifiers contained are those of the Defendant. (T35:22-36:1). On questions 23, “are you an alcoholic,” the ‘no’ box was checked. (T36: 2-4). Underneath the same provision indicating that his answers are truthful was Defendant’s signature. (T36: 5-15). The application bearing identification card number 848527c and, permit number 1867109 was approved and signed by Deputy Chief Smith on April 11, 2018. (T36: 16-23). The permit was marked as Exhibit 5. (T37:7- 10).

Sergeant Soulias indicated that through the investigation, it had not been revealed that Defendant ever applied for and received a license to possess assault weapons or firearms. (T37:17- 23). In addition, the investigation did not reveal Defendant registered any assault weapons within the State of New Jersey. (T37:24-T38:3). Sergeant Soulias testified that the New Jersey State Police Investigation Unit was contacted, and as a result of their search on Defendant in their database, “all they had on file as being applied for and registered, are various handguns.” (T38:4- 15). No assault weapons were registered in the State of New Jersey. (T38:16-19). Lastly, Sergeant Soulias was asked, “[i]n reviewing the documentation provided by the Dover Police Department regarding both of these applications,<sup>22</sup> was any certificate submitted with those applications by the [D]efendant from a medical doctor or a psychiatrist licensed in New Jersey or

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<sup>2</sup> Applications dated December 4, 2017 and April 11, 2018.

other satisfactory proof that the [D]efendant is no longer suffering from that particular disability, meaning alcoholism, in a manner that would interfere with or handicap him in the handling of firearms.” (T38:20-T39:6). Sergeant Soulias responded, “No. None.” (T39:6).

The State then called Detective Matt Magnone to testify. His testimony revealed the following:

Detective Magnone has been employed by the Morris County Prosecutor’s Office for eighteen months and is assigned to the Professional Standards Unit. (T41:7-16). Detective Magnone previously worked for thirteen years as a crime scene investigator at the Middlesex County Prosecutor’s Office. (T42:3-8). As part of Detective Magnone’s daily duties, he is involved in investigations being conducted by the Morris County Prosecutor’s Office, including the Professional Standards Unit, or conducting follow-up investigations with matters or cases that are sent to the Prosecutor’s Office by local municipalities. (T42:9-16).

On June 18, 2018, Detective Magnone became involved with the execution of a search warrant upon the residence<sup>33</sup> of Defendant and A.G. (T42:22-T43:5). The search warrant was executed in conjunction with the Morris County Sheriff’s Office, Crime Scene Unit. (T43:15-18). As a result of the search warrant, law enforcement officers seized various weapons, ammunition and firearm accessories. (T43:6-10).

Detective Magnone testified that while he was on the first floor of the residence, he was able to see and make various observations of the interior of the

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<sup>33</sup> Residence is located at [REDACTED] Elizabeth Street, Dover, New Jersey.

home. (T44:12-16). In addition, upon completion of the execution of the search warrant, the investigation was continued by Detective Magnone's unit. Thus, he indicated that he had a chance to review any additional documentation, discovery, and photographs taken of the scene after the execution of that search warrant. (T44:17-24).

A photograph was marked as Exhibit 6 which Detective Magnone identified as the "family room slash children's play area." (T46:20-25). The only entrance into the room was where a gate is located, which separates the child's play area and the dining area. (T47:6-12). An additional photograph was marked as Exhibit 8 which Detective Magnone identified as "touching upon the kitchen area and also the living room area." (T47:18-25). He then corrected his statement by indicating it was the dining room, not living room. (T48:1-3). In the dining room area, he described a dining room table, a bar and a bar chair. (T48: 4-8). In regard to the bar chair, Detective Magnone testified that "just under the seat, the leather portion of the seat, there is a sliding drawer that would, that could come out." (T48:25-T49:2). He confirmed that this drawer is "accessible" and "could pull out." (T49:3-8). He indicated that at a point in time, the drawer was open. (T49:9-11).

Detective Magnone was then shown Exhibit 9, a photograph depicting the drawer and the contents therein on the day of the execution of the search warrant. (T49:17-22). Detective Magnone stated that on the left side of the drawer was "a semiautomatic pistol that is holstered into a Kytex-type holster that would affix to a person's belt or inside their waistband." (T49:23-T50:3). He indicated that based on the details he learned that day as well as



subsequent discovery thereafter, there was no lock or fastener on that drawer to limit access. (T50:4-9). In addition, he testified that the handgun did not have any type of safety features. (T50:10-15). Further, Detective Magnone indicated that the holster that contained the handgun did not have any type of safety feature to limit its access either. (T50:16-19). He testified that the handgun was fully loaded, meaning there was a magazine inserted. (T50:20-24).

Detective Magnone identified that Exhibit 10 depicts the Sheriff's Officer performing what is called a press check or a round check, where the officer is pulling the slide back to look into the breech space to see if there is a round chambered and ready to fire. (T51:5-11). In this case, Detective Magnone testified that there was a round "ready to fire." (T51:12-14). He confirmed this meant that the weapon was ready to fire with the pull of the trigger. (T51:22-25).

Detective Magnone identified Exhibit 11 as a photograph of the dining room area. (T52:1- 4). He indicated that on the dining room table there were numerous items. (T52:10-12). Specifically, he identified a gray bag with black stripes underneath the purple bag both of which were on top of the dining room table. (T52:18-21). Detective Magnone testified that the bag was seized and searched. (T52:22-24). He indicated that the gray bag contained handguns and magazines. (T52:25-T53:2). He testified that the dining room table was not fenced off and there was nothing to prevent any access from the contents on top of that table. (T52:3-7).

Detective Magnone identified Exhibit 12 as the grey bag with black stripes, that was under the purple bag on top of the dining room table. Subsequently, this bag was opened by Sheriff's

Officers during the execution of the warrant. (T53:8-16). In the bag, there were three separate magazines and two handguns. (T54:11-15). The handgun on the top right corner of the bag had a magazine inserted, but a bullet was not in the chamber. (T54:16-24). This handgun had a safety feature, but the “mechanism was in the F position, or fire position.” (T55:16-20). The handgun on the left-middle also had a magazine loaded, but there was not a bullet in the chamber. (T55:4-8). Detective Magnone testified that the handguns would need to be racked in order to have the bullet enter the chamber to be fired. (T55: 9-12).

Detective Magnone explained that Exhibit 15 depicts a photograph of the entranceway. (T56:14-18). He indicated that there is a couch basically blocking the entranceway to the children’s playroom previously described. (T56:24-T57:1). Leaning up against the couch on the floor is a black case. (T57:2-4). He testified that there was a shotgun contained in that case. (T57:5-7).

Detective Magnone indicated that the case was not locked, fastened, or any way limiting access to the weapon in the case. (T57:8-11). Detective Magnone testified that although not locked, there was no ammunition contained within that shotgun. (T57:12-15).

Exhibit 17 depicts two booklets or pamphlets seized from the kitchen of the residence. One is 12 Steps and the other is entitled Alcoholics Anonymous. (T58:10-16). Exhibit 18 is a safe that was located in the basement of the residence. (T58:1-7). The safe was unlocked at the execution of the warrant without any combination needed. Specifically, Detective Magnone testified that an “individual could actually pull the door handle and open it; they needed no

combination, no key, or any other item to get access to that safe.” (T59:20-23, T60:19-21). Exhibit 19 is a picture of the interior of the safe. (T60:10-12). There were firearms, rifles, and shotguns located within the safe. (T59:24-60:1). Detective Magnone could not recall if these weapons were loaded. (T61:2-3).

The State then called William Stitt to testify. (T65:5). Mr. Stitt is employed by the Morris County Sheriff’s Office as a forensic examiner, including firearms and weapons. (T65:24-T66:5). Mr. Stitt has been with the Sheriff’s Office in a civilian capacity for approximately six months. (T66:6-8). Prior to that, Mr. Stitt was employed with the Morris County Sheriff’s Office as a law enforcement officer for approximately twenty-five years. (T66:9-17). Mr. Stitt has been previously qualified as an expert in other trials involving firearms and weapons. (T66:21-T67:1).

Mr. Stitt testified that he became involved in this matter with respect to the analyzing of certain firearms and magazines to determine whether the item complied with the firearm laws of the State of New Jersey. (T67:18-23). (T67:13-17). He testified that these items were seized as a result of a search warrant conducted on the residence of Defendant and A.G. (T67:24-T68:4). As a result of his examination, Mr. Stitt testified that he authored two reports relating to his findings, one dated July 5, 2018 and the second dated July 10, 2018. (T68:5-9).

In regard to the July 10, 2018 report, marked as Exhibit 20, Mr. Stitt testified that this report contains the results of an examination of eleven weapons, more specifically defined as firearms, that were seized from the residence of Defendant and A.G. (T69:7-12). He indicated that he was requested by

Morris County Prosecutor's Office, Sergeant Soulias, to conduct an examination of the firearms. (T69:13-17). The examination for weapon legality includes: photographing the weapon; conducting a visual inspection to gain weapon make, model, serial number, condition and other markings on the weapon; checking the barrel to make sure there are no obstructions; and looking at the rifling within the barrel, called lands and grooves. (T69:20-T70:13). In addition, Mr. Stitt, "also determine[d] if the weapon possess certain items that are restricted by the State of New Jersey." (T70:14-16).

Mr. Stitt testified that based on his analysis contained in the July 10, 2018 report, out of the eleven firearms, four of them were regulated by the State of New Jersey. (T71:21-T72:1). He explained that being regulated by the State means that the firearms met the definition of an assault weapon in New Jersey. (T72:4-6). The master list contains information such as, item number, date, time, the item, what it is, a general or specific description, and the location from where the item was taken. (T73:2-9).

Grand Jury Exhibit 22 is Mr. Stitt's report dated July 5, 2018. (T85:8-14). Mr. Stitt indicated that the report contains an examination of twenty-one items seized from the Defendant's residence. (T85:20-T86:1). Mr. Stitt's analysis identified fourteen items as prohibited. (T86:7-10). Of the twenty-one items seized, eleven were identified as ammunition magazines with cartridges PMAG. (T86:11-15). The remainder of Mr. Stitt's testimony included a description and explanation of the various weapons and ammunition analyzed as a part of this investigation. (T86:16-T105:5).

As a result of the above testimony, the Grand Jury returned Indictment Number 18-10- 00787-I, charging Defendant with one count of False Representation in Applying for a Firearm Purchase Identification Card, in violation of, N.J.S.A. 2C:39-10(c), a crime of the Third-Degree; two counts of False Representation in Applying for a Handgun Purchase Permit, in violation of, N.J.S.A. 2C:39-10(c), a crime of the Third-Degree; four counts of Unlawful Possession of a Weapon, in violation of N.J.S.A. 2C:39-5(f), a crime of the Second-Degree; one count of Endangering the Welfare of a Child, in violation of N.J.S.A. 2C:24-4(a)(2), a crime of the Second- Degree; one count of Child Neglect, in violation of N.J.S.A. 9:6-3, a crime of the Fourth-Degree; two counts of Unlawful Possession of a Prohibited Weapon or Device, in violation of N.J.S.A. 2C:39-3(c), a crime of the Fourth Degree; sixteen counts of Unlawful Possession of a Prohibited Weapon or Device, in violation of N.J.S.A. 2C:39-3(j), a crime in the Fourth-Degree.

In support of the Motion, Defendant argues that Counts One through Nine of the indictment should be dismissed. In support of this contention, Defendant advances three primary arguments. First, Counts One through Three must be dismissed because the State presented inadmissible evidence, failed to present exculpatory evidence and failed to instruct the grand jurors as to all elements of the offense. Second, Counts Four through Seven must be dismissed because the State failed to present exculpatory evidence. Third, Counts Eight and Nine must be dismissed because the State did not present a prima facie case and failed to properly instruct the grand jurors.

In opposition, the State argues the indictment is proper and was based on admissible evidence; that the State was under no obligation to present evidence which is not clearly exculpatory; and the grand jurors were properly instructed as to the elements of the offense. Lastly, the State argues that it presented a prima facie case and properly instructed the grand jurors.

### **LEGAL ANALYSIS**

An indictment by a grand jury is presumed valid and should not be disturbed except “on the clearest and plainest ground.” State v. New Jersey Trade Waste Ass’n, 96 N.J. 8, 18-19 (1984). Further, dismissing a grand jury indictment should only be done upon a “palpabl[e] showing of fundamental unfairness, or where the conduct of the prosecutor amounted to an ‘intentional subversion’ of the grand jury process.” State v. Engel, 249 N.J. Super. 336, 360 (App. Div. 1991). In reviewing the grand jury record on a motion to dismiss an indictment, the trial court should use a standard similar to that applicable in a motion for a judgment of acquittal at trial. State v. Morrison, 188 N.J. 2, 13 (2006). The Court should evaluate whether, viewing the evidence and the rational inferences drawn from that evidence in the light most favorable to the State, a grand jury could reasonably believe that a crime occurred and that the defendant committed it. Ibid. “Specifically, the grand jury must determine whether the State has established a prima facie case that a crime has been committed and that the accused has committed it.” State v. Hogan, 144 N.J. 216, 227 (1996).

“An indictment that appears sufficient on its face will not be dismissed as long as there is at least

‘some evidence’ as to each element of the State’s prima facie case.” State v. Cook, 330 N.J. Super. 395, 410 (App. Div. 2000), certif. denied, 165 N.J. 486 (2000) (quoting State v. Vasky, 218 N.J. Super. 487, 491 (App. Div. 1987)). A grand jury proceeding is not an “adversar[ial] hearing in which the guilt or innocence of the accused is adjudicated.” United States v. Calandra, 414 U.S. 338, 343 (1974). “The grand jury’s role is not to weigh evidence presented by each party, but rather to investigate potential defendants and decide whether a criminal proceeding should be commenced.” State v. Hogan, 144 N.J. 216, 235 (1996).

**I. Counts One Through Three: False Representation in Applying for a Firearms Purchaser Identification Card/Handgun Purchase Permit**

Defendant argues that Counts One through Three must be dismissed because the State presented inadmissible evidence, failed to present exculpatory evidence and failed to ensure that the grand jurors were properly instructed as to the elements of the offense.

In opposition, the State maintains that the indictment is proper and was based on admissible evidence, that the State was under no obligation to present evidence which was not clearly exculpatory, and that the grand jurors were properly instructed as to the elements of the offense.

**1. Inadmissible evidence**

In support of this argument, Defendant contends that any information about Defendant’s alcohol problem and treatment should never have

been presented to the grand jury as the statements were made during an internal affairs investigation. More specifically, the Defense asserts that when Defendant was interviewed on May 24, 2017, Lieutenant Young stated Defendant was “obligated to answer all questions and provide full and complete information....less than complete candor during any statement may lead to serious disciplinary sanctions, which may lead to include suspension or termination.” (IAT5:20-6:1).<sup>44</sup>

The Attorney General Internal Affairs Policy & Procedures (AGIPP)<sup>55</sup> set forth how an administrative investigation is to be conducted. The AGIPP on pages 36 and 37 sets forth, in relevant part, the following:

A public employee must answer questions specifically, directly and narrowly related to the performance of his or her official duties, on pain of dismissal. This obligation exists even though the answers to the questions may implicate them in a violation of agency rules, regulations and procedures that may ultimately result in some form of discipline up to and including dismissal. In short, no "right to remain silent" exists in administrative investigations. . . Prior to the start of any questioning, the officer shall be advised that he or she is being questioned as the subject of an

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<sup>4</sup> IAT refers to the Internal Affairs transcript dated May 24, 2017.

<sup>5</sup> Internal Affairs Policy & Procedures, Issued August 1991, last revised November 2017. Prosecution’s exhibit D.



investigation into potential violations of department rules and regulations, or fitness for duty. He or she should be advised of the subject matter under investigation, and that he or she will be asked questions specifically related to performing his or her official duties. This information shall be recorded on a form which the subject officer signs and whose signature is witnessed. The completed form must be made a part of the investigative file. . . If the officer refuses to answer questions during this interview, the interviewer should inquire about the reason for that refusal. If the subject officer states that he refuses to answer any questions on the grounds that he may incriminate himself in a criminal matter, even though the investigators do not perceive a criminal violation, the department should discontinue the interview and contact the county prosecutor. If the department wants to continue its administrative interview and the county prosecutor agrees to grant use immunity, the department shall advise the subject officer in writing that he or she has been granted use immunity if his or her answers implicate him or her in a criminal offense. The officer must then answer the questions specifically related to performing his or her official duties, but no answer given, nor evidence derived therefrom, may be

used against the officer in a criminal proceeding. If the officer still refuses to answer, he or she is subject to disciplinary charges for that refusal, including dismissal. This information shall be contained in a form that the subject officer signs and whose signature is witnessed. The completed form must be made a part of the investigative file. . . The courts have decided that a public employer must permit an employee to have a representative present at an investigative interview if the employee requests representation and reasonably believes the interview may result in disciplinary action. See N.L.R.B. v. Weingarten, 420 U.S. 251 (1975).

The Internal Affairs (“IA”) interview took place on May 24, 2017. At the start of the interview, Lieutenant Young indicated that he was conducting an “internal investigation” and that Defendant is “required to be and take part in the internal investigation.” (IAT5:5-8). Lieutenant Young informed Defendant that he was “obligated to answer all questions and provide full and complete information to investigators during internal investigations.” (IAT5:20-23). He was also informed of the disciplinary actions that may be pursued should he not comply with this obligation. (IAT5:23-IAT6:4). In addition, prior to the start of any questioning, Lieutenant Young informed Defendant that this was an “investigation into a violation of the rules and regs, which is a neglect of duty and

truthfulness or false swearing, which is referring to as one in the same.” (IAT7:7-10). Lieutenant Young further clarified that the subject matter is Defendant’s absence from duty on November 4, 2016 and “statements made in reference to [his] absence on that date.” (IAT7:13- 16). At no point during the interview did Defendant did refuse to answer Lieutenant Young’s questions based on the fact he may incriminate himself. Additionally, Defendant was accompanied by a Weingarten Representative. (IAT3:15-17). Thus, according to the AGIPP, for Defendant to inquire as to whether immunity was available, he must state his refusal to answer any questions. Additionally, Defendant did not ask for the interview to be terminated in fear of self-incrimination. The Defendant relies on Garrity v. New Jersey, 385 U.S. 493 (1967) for support. In Garrity, police officers from different New Jersey boroughs were investigated for allegedly fixing tickets. Id. at 494. The Supreme Court of New Jersey ordered that alleged irregularities in handling cases in the municipal courts of those boroughs be investigated by the Attorney General. Ibid. The Supreme Court of New Jersey invested the Attorney General with broad powers of inquiry and investigation and directed him to make a report to the court. Ibid. Before being questioned, each officer was warned of the following: “(1) that anything he said might be used against him in any state criminal proceeding; (2) that he had the privilege to refuse to answer if the disclosure would tend to incriminate him; but (3) that if he refused to answer he would be subject to removal from office.” Ibid. The officers then answered the questions and no immunity was granted. Over their objections, some of the answers

given were used in subsequent prosecutions for conspiracy to obstruct the administration of the traffic laws. Id. at 495. The officers were subsequently convicted, and their convictions were “sustained over their protests that their statements were coerced, by reason of the fact that, if they refused to answer, they could lose their positions with the police department.” Ibid.

After careful analysis, the United States Supreme Court held that “the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic.” Id. at 500. However, this matter is distinguishable. Here, the internal affairs interview appears to be administrative in nature. Further, based on the AGIPP that regulates these types of interviews, Defendant had no right to remain silent. In addition, Defendant did not refuse to answer any questions on the grounds of self-incrimination. As already discussed, the internal affairs interview appears to have complied with all the necessary policies and procedures set forth by the AGIPP. Thus, Defendant’s reliance on Garritty is misplaced.

Even if this Court did find that a violation of Defendant’s Fifth Amendment privilege did exist, “the reception before a grand jury of inadmissible or even illegally obtained evidence procured in violation of an individual’s constitutional right does not serve to vitiate the resulting indictment.” State v. White, 326 N.J. Super. 304, 310-11 (1999). A grand jury proceeding is not an adversarial hearing in which the

guilt or innocence of the accused is adjudicated. Rather, it is an ex parte investigation to determine whether a crime has been committed and whether criminal proceedings should be instituted against any person. United States v. Calandra, 414 U.S. 338, 344 (1974). An indictment valid on its face is not subject to challenge on the ground that the grand jury acted on the basis of inadequate or incompetent evidence; or even on the basis of information obtained in violation of a Defendant's Fifth Amendment privilege. Calandra, 414 U.S. at 345. Moreover, in State v. Holsten, 223 N.J. Super. 578, 585 (1988), the Court found that "[o]ur case law has recognized that 'an indictment may be based largely or wholly on hearsay and other evidence which may not be legally competent or admissible at plenary trial.'" Ibid.

Thus, given the above reasons, dismissal of these counts of the indictment is not warranted based upon inadmissible evidence.

## **2. Exculpatory evidence**

In State v. Hogan, 144 N.J. 216, 237 (1996), the Court held that the State is not required to present potentially exculpatory evidence to the grand jury unless such evidence "directly negates the guilt of the accused and is clearly exculpatory." In seeking an indictment, the prosecutor's "sole evidential obligation is to present a prima facie case that the accused has committed a crime." Id. at 236. As the Court noted, "resolution[s] of factual disputes are reserved almost exclusively for the petit jury." Id. at 235. That is not to say, however, that the State may "deceive the grand jury or present its evidence in a way that is tantamount to telling the grand jury a 'half-truth'" Id. at 236. The Court further explained

that in order for the grand jury to perform its vital function of “protect[ing] persons who are victims of personal animus, partisanship, or inappropriate zeal on the part of a prosecutor[.]” it cannot be denied access to evidence that is credible, material, and so clearly exculpatory as to induce a rational grand juror to conclude that the State has not made out a prima facie case against the accused. Ibid. If evidence of that character is withheld from the grand jury, the prosecutor, in essence, presents a distorted version of the facts and interferes with the grand jury’s decision-making function. Ibid.

Hogan holds there are two factors to consider in evaluating exculpatory evidence. First, the evidence must directly negate guilt by squarely refuting an element of the crime, and second, the evidence must be clearly exculpatory. Id. at 237. The second requirement demands “an evaluation of the quality and reliability of the evidence. The exculpatory value of the evidence should be analyzed in the context of the nature and source of the evidence, and the strength of the State’s case.” Ibid. The Court cautioned that an indictment should be dismissed on this ground “only after giving due regard to the prosecutor’s own evaluation of whether the evidence in question is ‘clearly exculpatory[.]’ and ‘only in the exceptional case will a prosecutor’s failure to present exculpatory evidence to a grand jury constitute grounds for challenging an indictment.’” Id. at 238-39.

Here, Defendant argues that the Assistant Prosecutor failed to present evidence that Defendant completed treatment on January 30, 2017 and was declared fit for duty on March 2, 2017. Specifically, Defendant points to the following question asked by

a grand juror: “[i]s it the presumption that once an alcoholic, always an alcoholic? Or if after going through treatment, somehow you get a fresh start.” (T30:19-23). The Assistant Prosecutor responded, “the exemption that I read . . . no alcoholic could get a purchaser’s ID card or a permit to purchase a handgun, stated that if you provided certain documentation, that you could be considered for a permit.” (T30:24-T31:3). In addition, Defendant alleges that he had a reasonable belief to check the “no” box for questions 23, “are you an alcoholic,” on the Permit Form. Specifically, he indicates that on the New Jersey Certificate of Eligibility for the Transfer of a Shotgun, Rifle Form (“Transfer Form”), question 5 states, “[a]re you an alcoholic?” followed by the phrase “Note: A recovered alcoholic may answer no to this question.” Thus, Defendant argues the grand jury was not instructed that he had a reason to answer “no” on the Permit Form thereby constituting a ‘half- truth’ under Hogan.

Here, there is no indication that the Assistant Prosecutor deceived the grand jury or presented its evidence in a way that is tantamount to telling the grand jury a ‘half-truth’ in regard to these counts. Specifically, concerning the grand juror’s question referred to above, the colloquy continued as follows:

ASSISTANT PROSECUTOR: What Sergeant Soulias testified to down at the bottom of the application is the defendant certifying under penalty of perjury and crime that the answers are true and correct. And he answered as – based on the testimony from Sergeant Soulias, he answered no, he is not an alcoholic.

JUROR: Maybe he assumed he wasn't because he had gone through treatment. I mean, I – it seems like a chicken and egg kind of thing.

ASSISTANT PROSECUTOR: But – and we'll get to – and that a question that's coming up should answer that, again, whether he submitted that documentation or not. All right? Because there is the permit process, which documentation if you are an alcoholic, you would have to check off yes and – and submit two additional – one or – one additional document based on that exemption.

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ASSISTANT PROSECUTOR: And the last question for you, Sergeant. In reviewing the documentation provided by Dover Police Department regarding both of these applications of December 4, 2017 and April 11, 2018, was any certificate submitted with those applications by the defendant from a medical doctor or a psychiatrist licensed in New Jersey or other satisfactory proof that the defendant is no longer suffering from that particular disability, meaning alcoholism, in a manner that would interfere with or handicap him in the handling of a firearm.

SERGEANT SOULIAS: No. None.

(T32:12-T33:3, T38:20-T39:6). Further, Sergeant



Soulias presented testimony that Defendant attended a substance abuse treatment in Florida from on or about January 1, 2017 through January 30, 2017. (T21:16-22). Thus, the grand jurors were given information that Defendant attended a substance abuse treatment program and that no documentation was provided indicating that he was no longer suffering from alcoholism.

In regard to Defendant's fitness for duty, that information does not directly negate an element of the alleged crimes. As stated, the exculpatory evidence must directly negate guilt by squarely refuting an element of the crime, and the evidence must be clearly exculpatory. These counts charge Defendant with False Representation in Applying for a Firearms Purchaser Identification Card/Handgun Purchase Permit. Defendant's fitness for duty does not directly negate whether he provided false representations on the firearm permits.

Further, the Assistant Prosecutor's decision to not present the Transfer Form does not amount to an intentional subversion or fundamental unfairness. The Permit Form and the Transfer Form are two separate and distinct legal documents pertaining to different types of firearms. On the Permit Form, question 23 "are you an alcoholic," does not contain the same additional phrase as the Transfer Form. In addition, the Permit Form does not direct the applicant's attention to any additional forms to further clarify the question. Thus, as the two forms are separate and distinct from each other, one form's subsequent phrasing cannot be used to further interpret questions on the other. As a result, this does not amount to a 'half-truth' under Hogan.

Given the reasons set forth above, dismissal of these counts of the Indictment is not warranted based upon the failure to provide exculpatory evidence.

### **3. Mental State**

Defendant argues that the grand jurors were not instructed as to the mental state of this crime and as such was “blatantly wrong” and denied Defendant his constitutional right to be charged by the indictment. Specifically, Defendant maintains that the State “merely recited the statute, which does not specify the required culpability.” (Def. Counsel’s Brief, pg. 5).

A prosecutor must charge the grand jury “as to the elements of specific offenses.” State v. Eldakroury, 439 N.J. Super. 304, 309 (App. Div. 2015) (quoting State v. Triestman, 416 N.J. Super. 195, 205 (App. Div. 2010)). Further, “an indictment will fail where a prosecutor’s instructions to the grand jury were misleading or an incorrect statement of law.” Ibid. However, “nothing in the New Jersey Constitution demands ‘a verbatim reading of applicable statutes or a recitation of all legal elements of each charge . . .’” State v. Hogan, 336 N.J. Super. 319, 340 (App. Div. 2001). Further, it has been noted that “incomplete or imprecise instructions by a prosecutor will not ordinarily warrant dismissal of the indictment.” Id. at 344 (citing to State v. Ball, 268 N.J. Super. 72, 120 (App. Div. 1993)). There is a difference between instructions that are merely imprecise or incomplete and those that are “blatantly wrong.” Ibid.

In the present matter, specifically in

regard to these counts, the Assistant Prosecutor read to the grand jurors the following statute:

Under 2C:39-10, under part (c), and the title of 2C:39-10 is Violation of Regulatory Provisions Relating to Firearms and False Representations and Applications. Under part (c), any person who gives or causes to be given any false information in applying for a firearms purchaser identification card, a permit to purchase a handgun, or in completing the certificate or any other instrument required by law in purchasing or otherwise acquiring delivery of any rifle, handgun is guilty of a crime of the third degree.

(T5:8-17). This information was presented prior to the start of testimony. There is no mental state listed as an element for this offense. In addition, the Assistant Prosecutor read the statute, in pertinent part, to the grand jurors. As a result, there is no indication that the instructions were blatantly wrong.

Even further, the grand jurors were advised prior to the proceeding that should the statute be silent on the mental state, they should infer the culpability as “knowingly.” Specifically, the grand jurors received an orientation on July 10, 2018. During the orientation, SAP Joseph Napurano conducted the introduction of the grand jurors and explained various standards of culpability. The grand

jurors were informed that if the mental state were to be absent from the statute, the requisite mental state to be inferred is knowingly. (2T35:4-16).<sup>66</sup>It was also explained to the grand jurors that this can be inferred by the surrounding circumstances. (2T36:4-6). Specifically, the following was explained in regard to the mental state “knowingly”:

[I]f, for example, I’m charged with criminal mischief causing more than \$2,000 damage to this building across the street and one of the witnesses saw me take a baseball bat, walk across the street, eye up the windows, look at it and then say, okay, and I knock out this window and that window and that window and that window. I get arrested. The witness reports me to the police. I’m seen walking with the bat down the street. They place me under arrest. I invoke my Fifth Amendment right to remain silent. There’s no statement that’s ever given by me. But, the evidence that gets presented . . . to the Grand Jury, exactly what I just explained to you what the observations were, you can infer from that that I knew what I was doing. That I knew because I took that baseball bat out and it was my purpose, my conscience object, to destroy those windows. So you don’t have to enter my mind. There doesn’t have to be any evidence presented by

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<sup>6</sup> 2T refers to the Transcript of Grand Jury Orientation dated July 10, 2018.

the prosecutor or the witness that says, yeah, he knew what he was doing. You can infer it from all of the circumstances of the evidence that is presented. Does that make sense? Is there any questions regarding that? Okay. I see no hands. I take that as a negative.

(2T35:17-2T36:15).

Thus, even though the statute does not express the requisite mental state, and the Assistant Prosecutor adequately read the statute, in pertinent part, the grand jurors had been previously instructed to use knowingly. As a result, the grand jurors were properly advised of all elements of the crime and Defendant was not denied the constitutional right to be charged by the Indictment.

In conclusion, Defendant's motion to dismiss Counts One through Three is **DENIED**.

## **II. Counts Four through Seven: Unlawful Possession of a Weapon**

Defendant argues that the above counts must be dismissed because the State failed to present exculpatory evidence. Defendant maintains that testimony was not provided that the grand jurors needed in order to determine whether an exemption applied. Specifically, that Defendant did receive the requisite firearms training.

The State argues that there was no obligation to present evidence that was not clearly exculpatory. The State contends that the exemption to N.J.S.A. 2C:39-5(f) has two components. For an individual to qualify for the exemption, he or she must comply with

both N.J.S.A. 2C:39- 6(a)(7) and N.J.S.A. 2C:39-6(j).

N.J.S.A. 2C:39-6(a) provides the following:

Provided a person complies with the requirements of subsection j. of this section, N.J.S. 2c:39-5 does not apply to...[a] regularly employed member, including a detective, of the police department of any county or municipality, or of any State, interstate, municipal or county park police force or boulevard police force, at all times while in the State of New Jersey.

N.J.S.A. 2C:39-6(j) provides:

A person shall qualify for an exemption from the provision of N.J.S.~~2C:39-5~~, as specified under subsections a. and c. of this section, if the person has satisfactorily completed a firearms training course approved by the Police Training Commission. The exempt person shall not possess or carry a firearm until the person has satisfactorily completed a firearms training course and shall annually qualify in the use of a revolver or similar weapon. For purpose of this subsection, a “firearms training course” means a course of instruction in the safe use, maintenance and storage of firearms which is approved by the Police Training Commission. The Commission shall approve a firearms training course of the requirements of the course are

substantially equivalent to the requirements for firearms training provided by police training course. . .

As discussed above, Hogan holds there are two factors to consider in evaluating exculpatory evidence. First, the evidence must directly negate guilt by squarely refuting an element of the crime, and second, the evidence must be clearly exculpatory. Id. at 237. The Court in Hogan further “decline[d] to adopt any rule that would compel prosecutors generally to provide the grand jury with evidence on behalf on the accused. Such a rule would unduly alter the traditional function of the grand jury by changing the proceedings from an ex parte inquest into a mini trial.” Id. at 235. Lastly, a Court should dismiss an indictment on failure to present exculpatory evidence only after “giving due regard to the prosecutor’s own evaluation of whether the evidence in question is ‘clearly exculpatory’...and the court should act with substantial causation before concluding that a prosecutor’s decision in that regard was erroneous.” Id. at 238-39. Furthermore, in State v. Rovito, 99 N.J. 581, 587 (1985), the Court found that “exemptions from gun statutes should be strictly construed to better effectuate the police of gun control.” Ibid. Meaning the “exception to the gun control law must be narrowly construed.” Ibid.

In the present matter, the Assistant Prosecutor informed the grand jurors of the following:

It’s anticipated you’ll hear testimony that this defendant, Gregory Garcia, had no additional firearms training course approved by the police training

commission which was substantially equal to the police training course that he received at the Academy. All right? Thereby not receiving additional training, he does not satisfy subsection (j), which does not give him the exemption as a police officer for unlawful possession of a—of a weapon.

(T11:7-15). After the hearing held on May 20, 2020, in a supplemental letter to the Court, the State indicated that it had made an inaccurate statement regarding the Wharton Police Departments use of assault weapons. The State noted that in October 2018, the Wharton Police Department advised that “they do have Colt M4 assault rifles which are in the patrol cars and can be utilized by the Officers while on duty and that they also handle the weapons on a training day.” (State’s Suppl. Letter dated May 21, 2020). In addition, the State indicated that a review of the grand jury transcript shows that “none of this was mentioned during testimony.” (*Ibid.*).

At the June 17, 2020 hearing, the State argued that the information was not exculpatory to negate guilt. In addition, the State contended that the information provided was appropriate and formulated a prima facie case to move forward. The State further argued that there is no clear definition in regard to the exemption. The State acknowledged that the statute does not distinguish between duty-issued and personal firearms, and that the State’s interpretation of the exemption is that it is to be construed narrowly. The State indicated its belief that the training Defendant received on the Colt M4 is not exculpatory as it does not fit the exemption as



it applies to the assault weapons that were of a private nature. The State further noted that there was no authorization by the Wharton Police Department to utilize the assault weapons while on duty and it was not a part of Defendant's law enforcement responsibilities.

Defendant argues that as a member of the Wharton Police Force; he was required to qualify and requalify semiannually according to the Firearms Qualification and Requalification Standards for New Jersey Law Enforcement<sup>77</sup>("FQRS"). The FQRS states, in relevant part,

The approved training and qualification requirements for law enforcement personnel exempt from provision of N.J.S.A. 2C:39-5. These requirements are necessary to meet the mandates of N.J.S.A. 2C:39-6J. A person shall qualify for an exemption from the provisions of N.J.S.A. 2C:39-5, if the person has satisfactorily completed a firearms training course approved the Police Training Commission. Such exempt person shall not possess or carry a firearm until the person has satisfactorily completed a firearms training course and shall annually qualify in the use of a revolver or similar weapon. (FQRS at 9-5.) A Handgun Qualification Course must be completed

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<sup>7</sup> Semi-Annual Firearms Qualification and Requalification Standards. Revised (5/03). <https://www.state.nj.us/lps/dcj/pdfs/dcj-firearms.pdf>

two times a year for service handguns and for handguns authorized for use off duty and which are determined to be substantially different in design, function or caliber from the service handgun. (FQRS at 9-13). The Shotgun Qualification Course is to be conducted semi-annually for the agency issued and approved shotgun. Id.

Here, the State alleges that the assault weapons were the personal possessions of the Defendant. In addition, the State contends these weapons were not issued by the Wharton Police Department and were not authorized for Defendant to utilize while on duty. However, as the State indicated in its supplemental letter to the Court, the Wharton Police Department has Colt M4 assault rifles in their patrol cars which can be utilized by the officers while on duty. However, the plain language of the statute does not distinguish between private firearms and duty-issued firearms. Specifically, in relevant part, the statute reads as follows: “[a] person shall qualify for an exemption from the provision of N.J.S.2C:39-5, as specified under subsections a. and c. of this section, if the person has satisfactorily completed a firearms training course approved by the Police Training Commission.” N.J.S.A. 2C:39-6(j). In addition, the State’s letter indicates that these weapons are also handled on a training day. On May 14, 2018, Defendant had trained with assault weapons at the Morris County Public Safety Training Academy.<sup>88</sup> Specifically, Defendant participated in

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<sup>8</sup> Exhibit B of Defendant’s Supplemental Submission dated June

an Assault Rifle Qualification Course and received a 96.7/100 score in the day course, and a 100 score in the night course.<sup>99</sup>This information was not provided to the grand jurors. As the exemption does not distinguish between duty issued and personal issued firearms, the grand jurors should have been provided information regarding Defendant's training. Thus, these counts are dismissed without prejudice.

As a result, Defendant's motion to dismiss Counts Four through Seven of the indictment is **GRANTED**.

### **III. Counts Eight and Nine: Endangering the Welfare of a Child and Child Neglect**

#### **1. Mental Elements**

Defendant argues that the grand jurors were not instructed as to the mental state of this crime.

In the present matter, the grand jurors were presented with the elements of the offenses Endangering the Welfare of a Child and Child Neglect, prior to the State's witnesses being called to testify. Specifically, the grand jurors were informed of the following:

Any person having a legal duty for the care of a child or has assumed responsibility for the care of a child who causes the child harm that would make the child an abused or neglected child as

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8, 2020 (Firearms Worksheet, Weapons Proficiency, Qualification & Evaluation).

<sup>9</sup> Exhibit B of Defendant's Supplemental Submission dated June 8, 2020 (Firearms Worksheet, Weapons Proficiency, Qualification & Evaluation).

defined in 9:6-1, 9:6-3, and . . . 9:6-8.21  
is guilty of a crime in the second degree.

(T7:23-T8:3). The Assistant Prosecutor further informed the grand jurors that the “laws of the [S]tate of New Jersey and the case law does not require actual harm under this section.” (T8:4-5). The Assistant Prosecutor provided the grand jurors with the definition of neglect. In addition, the State indicated its theory that in this case there was a “failure to secure the firearms which was necessary for the child’s physical well-being in the residence.” (T8:15-25). To find Defendant guilty, one of the elements the State would have to prove beyond a reasonable doubt is that Defendant knowingly caused the child harm that would make the child abused or neglected.<sup>1010</sup> This was not mentioned to the grand jurors. Nevertheless, as noted above, the grand jurors received an orientation once sworn in and prior to any hearing of cases. During the orientation various types of culpability were explained and the grand jurors were informed that the requisite mental state to be inferred is knowingly. (2T35:4-16).

Thus, it is reasonable that the grand jury inferred its use of the mental state ‘knowingly’ without specifically being told to do so due to the statute’s silence in regard to mental culpability. In addition, as discussed above, incomplete or imprecise instructions will not ordinarily warrant dismissal of the indictment. Here, the grand jurors were told prior to the proceeding to utilize the culpability knowingly if not told differently and the Assistant Prosecutor read the statute in pertinent part. Thus, the Court

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<sup>10</sup> See Model Criminal Jury Charges.

finds that the grand jurors were properly advised of the applicable mental elements in regard to these counts.

## **2. Prima Facie Case**

Defendant contends that because the children were not home on June 18, 2018, the date of the alleged crime, there was no child exposed to a substantial risk of harm, and hence no crime.

Here, the grand jurors heard that Defendant and his wife were parents of two minor children, and they all resided at the Dover address. (T20:4-10). Both children were under the age of eighteen at the time of the incident; O.G. was born December 1, 2013 and E.G. born on May 7, 2016. (T20:11-19). The grand jurors heard the testimony of Detective Magnone who described the house, and were aided by photo exhibits, that depicted where weapons were located inside the residence. Furthermore, Exhibits 8 and 9 were photographs depicting a leather bar chair from the dining room with a drawer that could pull out. (T48:4-49:8). The chair was accessible, with no way to limit access. (T50:4-9). At the time the search warrant was conducted, the drawer was open and a semiautomatic pistol, loaded with a magazine and no safety features, was found inside. (T49:23-T50:21). In addition, a handgun was found in a bag on top of the dining room table with the safety mechanism in the “F position.” (T54:16-T55:20). Furthermore, Exhibit 15 showed a black case leaning up against the couch of the living room/children’s play area. (T56:11-T57:4). The case contained an unloaded shotgun. The case was not locked or fastened. (T57:5-15).

In addition, a grand juror asked, “[d]oes the law require that all firearms in possession be

secured?” (T62:12-13). The Assistant Prosecutor answered, “being transferred or transported, yes.” (T62:14-15). The grand juror followed up by asking, “[s]o in the home, are they required to be secured?” (T62:18, 20). The Assistant Prosecutor responded, “[t]here’s no law that says that they have to be under lock and key. However, the unfastened or easily accessible firearms are what leads to the neglect and child, child endangerment.” (T62:21-25). Additionally, the Assistant Prosecutor stated, “[t]he lack of fastening these items locking the case, allowing anyone to have access to these weapons is what brings in the child endangerment and child neglect. The fact that...these weapons were unlocked or loaded in Gregory Garcia’s home is not a legally a weapons offense.” (T63:24-T64:6).

In State v. Fuqua, 234 N.J. 583, 593 (2018) the Court held that “the State is not required to provide actual harm to a child to convict under N.J.S.A. 2C:24-4(a)(2). Instead, they have concluded that proof of a child’s exposure to a substantial risk of harm is sufficient to sustain a conviction.” Ibid. Thus, viewing the evidence and the rational inferences drawn from that evidence in the light most favorable to the State, the grand jurors could reasonably believe that a crime occurred, and that Defendant committed it. Specifically, there were children who reside in the house where certain weapons were found in unsecure places, some without safety mechanisms.

Thus, Defendant’s motion to dismiss Counts Eight and Nine is **DENIED**.

#### **IV. Conclusion**

Based on the forgoing, Defendant’s motion is

**DENIED** in regard to Counts One through Three, Eight, and Nine and **GRANTED** in regard to Counts Four through Seven. Thus, Counts Four through Seven will be dismissed without prejudice.

The matter is scheduled for the remaining testimonial motions on September 17, 2020.

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**APPENDIX E**

**SUPREME COURT OF NEW JERSEY**

C-279 September Term 2024

090001

[DATE STAMP]

FILED

Clerk of the Supreme Court

31 Jan 2025

State of New Jersey,  
Plaintiff-Respondent,

v.

Gregory Garcia,  
Defendant-Petitioner.

**ORDER**

A petition for certification of the judgment in A-001606-22 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 28th day of January, 2025.

/s/

CLERK OF THE SUPREME COURT



**APPENDIX F**

Case 2:19-cv-17946 Document 1 Filed 09/13/19

LAW OFFICES OF PETER C. LAGRECA LLC  
Peter C. LaGreca, Esq. (073562014)  
4 York Ave., 2<sup>nd</sup> Fl.  
West Caldwell, NJ 07006  
Telephone: (973) 723-9936  
Facsimile: (973) 887-8880  
*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW JERSEY

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GREGORY GARCIA and  
ALISON GARCIA,

Plaintiffs,

Civil Action No.

V.

FREDRIC M. KNAPP, individually  
and in his capacity as Morris County  
Prosecutor, THOMAS A. ZELANTE,  
JANINE BUCHALSKI, VINCENT  
LEO, III, all individually and in  
their capacity as current and/or former  
employees of the Morris County  
Prosecutor's Office, ANTHONY  
FERNANDEZ, individually and in  
his capacity as the Chief/Former  
Chief of Wharton Police Department,

DAVID YOUNG, CHARLES  
KRANZ, all individually and in  
their capacity as current and/or  
former employees of the Wharton  
Police Department, MORRIS COUNTY  
PROSECUTOR'S OFFICE, WHARTON  
POLICE DEPARTMENT,  
JOHN DOE 1-5, and JOHN DOE  
ENTITY 1-5,

Defendants.

**COMPLAINT AND  
JURY DEMAND**

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Plaintiffs, by and through counsel, complain of the  
above-named defendants as follows:

**PARTIES**

1. Plaintiff Gregory Garcia is an individual  
residing in the County of Morris, State of New  
Jersey, who at all relevant times is a police officer  
employed by Wharton Police Department.

2. Plaintiff Alison Garcia is an individual residing in the County of Morris, State of New Jersey.

3. Upon information and belief, Defendant Fredric M. Knapp is an individual who, at all relevant times, is in command and control of the Morris County Prosecutor's Office with a principal place of operation located on the third floor of the Records & Administration Building, 10 Court St., Town of Morristown, County of Morris, State of New Jersey. He is, at all relevant times, a citizen and resident of the County of Morris, State of New Jersey. He is being sued additionally in his individual capacity.

4. Upon information and belief, Defendant Thomas A. Zelante is an individual who, at all relevant times, is an employee of the Morris County Prosecutor's Office with a principal place of operation located on the third floor of the Records & Administration Building, 10 Court St., Town of Morristown, County of Morris, State of New Jersey. He is, at all relevant times, a citizen and resident of the County of Morris, State of New Jersey. He is being sued additionally in his individual capacity.

5. Upon information and belief, Defendant Janine Buchalski is an individual who, at all relevant times, is an employee of the Morris County Prosecutor's Office with a principal place of operation located on the third floor of the Records & Administration Building, 10 Court St., Town of Morristown, County of Morris, State of New Jersey. She is, at all relevant times, a citizen and resident of the County of Somerset, State of New Jersey. She is being sued additionally in her individual capacity.

6. Upon information and belief, Defendant Vincent Leo, III is an individual who, at all relevant times, is an employee of the Morris County Prosecutor's Office with a principal place of operation located on the third floor of the Records & Administration Building, IO Court St., Town of Morristown, County of Morris, State of New Jersey. He is, at all relevant times, a citizen and resident of the County of Morris, State of New Jersey. He is being sued additionally in his individual capacity.

7. Upon information and belief, Defendant Anthony Fernandez is an individual who, at all relevant time, is the Chief of Police of the Wharton Police Department with a principal place of operation located at IO Robert St., Borough of Wharton, County of Morris, State of New Jersey. He is, at all relevant times, a citizen and resident of the County of Morris, State of New Jersey. He is, being sued additionally in his individual capacity.

8. Upon information and belief, Defendant David Young is an individual who, at all relevant times, is an employee of the Wharton Police Department with a principal place of operation located at IO Robert St., Borough of Wharton, County of Morris, State of New Jersey. He is, at all relevant times, a citizen and resident of the County of Morris, State of New Jersey. He is, being sued additionally in his individual capacity.

9. Upon information and belief, Defendant Charles Kranz is an individual who, at all relevant times, is an employee of the Wharton Police Department with a principal place of operation located at 10 Robert St., Borough of Wharton, County of Morris, State of New Jersey. He is, at all relevant times, a citizen and resident of the County of Morris, State of New

Jersey. He is, being sued additionally in his individual capacity.

10. Upon information and belief, Defendant Morris County Prosecutor's Office is a prosecutorial agency with its principal place of operation located on the third floor of the Records & Administration Building, 10 Court St., Town of Morristown, County of Morris, State of New Jersey.

11. Upon information and belief, Defendant Wharton Police Department is a law enforcement agency with its principal place of operation located at 10 Robert St., Borough of Wharton, County of Morris, State of New Jersey.

12. Upon information and belief, Defendant John Doe 1-5 and/or John Doe Entity 1-5 (collectively, "John Doe 1-5") is a governmental body and/or public entity, private entity, and/or an individual, male or female, that caused and/or contributed to Plaintiffs damages, whether through an affirmative act and/or an omission under circumstances upon which there was a duty to act, whether such affirmative act and/or omission occurred prior to, on, and/or after November 4, 2016, including but not limited to causing, contributing to, altering and/or hiding the circumstances of Plaintiffs damages and/or failing to take or report action to prevent Plaintiffs damages or the circumstances of Plaintiffs damages.

### **JURISDICTION AND VENUE**

13. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(a) to the extent the allegations in this matter are derived from 42 U.S.C. § 1983 or other due process rights and allege violation of one's civil, Constitutional, and/or due process rights.

14. This Court has supplemental jurisdiction over causes of action arising under the laws of the State of New Jersey pursuant to 28 U.S.C. § 1367.

15. Venue is properly laid in the District of New Jersey by virtue of 28 U.S.C. § 1391(b), as the events and/or omissions giving rise to the claims occurred in this District and because the parties predominantly reside in this District.

### **FACTUAL BACKGROUND**

16. On December 16, 2016, Plaintiff Gregory Garcia filed an application with the New Jersey Department of Labor for Temporary Disability Insurance due his seeking alcohol dependency treatment on November 4, 2016.

17. Immediately following the holidays, which he spent with his wife and their young children, Plaintiff Gregory Garcia voluntarily checked himself into the Adaptive Center Partial Hospitalization Program in Miami, Florida on January 2, 2017.

18. There, Plaintiff Gregory Garcia attended daily treatment groups, engaged in individual therapy sessions, and complied with all urinalysis and breathalyzer screenings- results of which indicate Plaintiff Gregory Garcia remained sober.

19. Plaintiff Gregory Garcia was discharged after successful completion of the program on January 30, 2017, with a prognosis of sobriety.

20. Plaintiff Gregory Garcia has been and continues to be sober ever since November 5, 2016.

21. Plaintiff Gregory Garcia, a police officer with the Wharton Police Department, underwent a fitness for duty evaluation by licensed psychologist and board certified doctor, Matthew Guller, J.D., Ph.D, ABPP of the Institute of Forensic Psychology.

22. Dr. Guller's report, dated March 2, 2017, was addressed to Wharton Police Chief Anthony Fernandez and later provided to the Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, and/or Vincent Leo, III.

23. After multiple evaluations of Plaintiff Gregory Garcia which included numerous psychological tests, reviews of Plaintiff Gregory Garcia's treatment records and discharge summary, as well as a telephone discussion with Plaintiff Gregory Garcia's treatment provider, Dr. Gulier declared Plaintiff Gregory Garcia "psychologically fit for duty."

24. Dr. Guller informed Chief Fernandez that Plaintiff Gregory Garcia "does not evidence a psychological condition or impairment that would be likely [to] interfere with his ability to effectively function as a police officer [ ]."

25. Dr. Guller informed Chief Fernandez that Plaintiff Gregory Garcia is "functioning adequately ... without evidence of impairment."

26. Dr. Gulier informed Chief Fernandez that Plaintiff Gregory Garcia is "capable of carrying a weapon and fulfilling all of the duties of his rank."

27. Plaintiff Gregory Garcia was made aware, on or about March 2, 2017, of Dr. Gulier's conclusions that Plaintiff Gregory Garcia was deemed fit for duty, capable of carrying a weapon, and was not suffering from any psychological condition or impairment that would prevent him from performing his duties as a police officer or carrying a weapon.

28. On December 4, 2017, Plaintiff Gregory Garcia filed with the Dover Police Department an application for a duplicate Firearms Purchaser Identification Card with a change of address, as well as an application for a handgun purchase permit.

29. Question 23 on each application asks the

applicant, "Are you an alcoholic?"

30. Filed nine months after Dr. Guller declared Plaintiff Gregory Garcia fit for duty and that Plaintiff Gregory Garcia does not suffer an impairment- and after more than 1 year of maintaining his sobriety- Plaintiff Gregory Garcia checked the box next to Question 23 on each application, "No."

31. On April 11, 2018, Plaintiff Gregory Garcia filed with the Dover Police Department an application for a handgun purchase permit.

32. Now more than a year since being declared fit for duty, more than a year since being declared functioning without impairment, and nearly a year and a half of remaining sober, Plaintiff Gregory Garcia again checked the box next to Question 23, "No."

33. Additionally, at the time Plaintiff Gregory Garcia answered "No" to Question 23 on each of the applications at issue, Plaintiff Gregory Garcia had prior experience with the State of New Jersey Certificate of Eligibility form for the transfer of a shotgun or rifle, which asks in Question 5: "Are you an alcoholic?"

34. Directly next to the boxes to be checked 'yes' or 'no' in relation to Question 5 is the following in bold text: **"\*Note: A recovered alcoholic may answer no to this question."**

35. Plaintiff Gregory Garcia was nevertheless indicted on October 23, 2018 with three counts of false representation in applying for a Firearms Purchaser Identification Card and handgun purchase permits.

36. Under order, direction, supervision, authority and/or acquiescence of Prosecutor Fredric M. Knapp and/or First Assistant Prosecutor Thomas A.



Zelante, Assistant Prosecutor Vincent Leo, III presented the case to the grand jury, is prosecuting Plaintiff Gregory Garcia, and is refusing to dismiss the charges against Plaintiff Gregory Garcia, in spite of the pervasive failure of mens rea and evidential insufficiency.

37. The Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, and/or Assistant Prosecutor Leo never presented the grand jury with evidence that Plaintiff Gregory Garcia completed treatment, and these defendants persist in prosecuting Plaintiff Gregory Garcia even though he completed treatment.

38. The Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, and/or Assistant Prosecutor Leo never presented the grand jury with evidence that Plaintiff Gregory Garcia was declared fit for duty, and these defendants persist in prosecuting Plaintiff Gregory Garcia even though he was declared fit for duty.

39. The Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, and/or Assistant Prosecutor Leo never presented the grand jury with evidence that Plaintiff Gregory Garcia was deemed capable of carrying a weapon, and these defendants persist in prosecuting Plaintiff Gregory Garcia even though he was deemed capable of carrying a weapon.

40. The Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, and/or Assistant Prosecutor Leo never presented the grand jury with evidence that Plaintiff Gregory Garcia is not suffering from any psychological condition or impairment that would prevent him from performing his duties as a police officer or carrying a weapon, and these defendants persist in prosecuting Plaintiff Gregory Garcia even though Plaintiff Gregory Garcia

is not suffering from any psychological condition or impairment that would prevent him from performing his duties as a police officer or carrying a weapon.

41. The Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, and/or Assistant Prosecutor Leo never presented the grand jury with a definition of the term "alcoholic" even though a grand juror directly asked whether a person who completes treatment is considered an alcoholic.

42. The Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, and/or Assistant Prosecutor Leo persist in prosecuting Plaintiff Gregory Garcia even though these defendants are incapable of producing the definition of the term "alcoholic" as that term is used in Question 23 of the relevant firearms applications.

43. The Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, and/or Assistant Prosecutor Leo persist in prosecuting Plaintiff Gregory Garcia even though these defendants are incapable of producing sufficient evidence of mens rea.

44. Plaintiff Gregory Garcia was also indicted on October 23, 2018 with four counts of unlawful possession of assault firearms, two counts of unlawful possession of firearms suppressors, and sixteen counts of unlawful possession of large capacity ammunition magazines.

45. These charges resulted from the execution of a no-knock search warrant at Plaintiff Gregory Garcia's residence on June 18, 2018.

46. Plaintiff Alison Garcia arrived home to find police caution tape surrounding her residence and law enforcement already inside her home without her or Plaintiff Gregory Garcia being present.

47. The affidavit supporting the issuance of the

highly unusual no-knock search warrant was sworn to by Det. Janine Buchalski of the Morris County Prosecutor's Office.

48. In her affidavit, Det. Buchalski recites that she is certified by the Police Training Commission as a firearms instructor and is familiar with the different calibers of ammunition and the types of firearms to which each might correspond.

49. Based on a picture provided to Chief Anthony Fernandez of closed ammunition cans supposedly located in Plaintiff Gregory Garcia's residence, Det. Buchalski concludes Plaintiff Gregory Garcia "**may** be in possession of a weapon that **might** be an assault-style firearm" (emphasis added).

50. Specifically, the picture depicts closed ammunition cans labeled 223, 556, 338, 300 Win BLK, and 308.

51. As a certified firearms instructor who is familiar with these calibers of ammunition and the types of firearms to which each might correspond, Det. Buchalski knows or reasonably should know that none of these rounds are exclusively used in "assault-style firearm[s]."

52. In fact, all of these rounds are used in competitive shooting and/or hunting; and all of these rounds can be chambered in bolt action rifles, single shot rifles, and/or semi-automatic rifles. There are even a few pump action 308 rifles on the market.

53. Additionally, anyone over the age of 18 can walk into any store that sells rifle rounds and purchase as many 223, 556, 338, 300 Win BLK, and 308 rounds as they want without so much as showing an ID.

54. But, Det. Buchalski knew that a judge reviewing her search warrant affidavit (who probably would not be versed in ammunition and firearms) would

rely on her "expertise" as a certified firearms instructor and grant the warrant, when in truth, Det. Buchalski had nothing more than naked suspicion.

55. As to the four counts of unlawful possession of assault firearms which resulted from the search of Plaintiff Gregory Garcia's residence, the Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, and/or Assistant Prosecutor Leo presented the charges to the grand jury, are prosecuting Plaintiff Gregory Garcia, and are refusing to dismiss the charges against Plaintiff Gregory Garcia despite the illegal search, and again, evidential insufficiency.

56. Specifically, Plaintiff Gregory Garcia was charged under N.J.S.A. 2C:39-5(f) for which there is a law enforcement exemption under N.J.S.A. 2C:39-6(a)7(a) so long as the officer has "satisfactorily completed a firearms training course approved by the Police Training Commission." N.J.S.A. 2C:39-6G).

57. Plaintiff Gregory Garcia satisfactorily completed a firearms training course approved by the Police Training Commission.

58. Although Plaintiff Gregory Garcia therefore qualifies for the law enforcement exemption, the Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, and/or Assistant Prosecutor Leo persist in prosecuting Plaintiff Gregory Garcia anyway.

59. These defendants take the untenable position that Plaintiff Gregory Garcia's satisfactory completion of the approved firearms training course was not enough; that Plaintiff Gregory Garcia was also required to complete "Automatic and Semi-Automatic Assault Weapon Police Carbine and

Scoped Rifle Training" in order to qualify for the law enforcement exemption.

60. The Assault Weapon Training Policy (which these defendants are aware of because they attached it to their brief in opposition to Plaintiff Gregory Garcia's motion to dismiss) states that such training requirements only apply to persons who "carry" an assault weapon.

61. The Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, and/or Assistant Prosecutor Leo state in their motion to dismiss opposition brief that Plaintiff Gregory Garcia was not authorized by his police department to carry assault weapons.

62. Therefore, Plaintiff Gregory Garcia was not required to complete "Automatic and Semi-Automatic Assault Weapon Police Carbine and Scoped Rifle Training" in order to qualify for the law enforcement exemption.

63. Furthermore, the explanatory policy memo accompanying the Assault Weapon Training Policy (which these defendants also attach to their opposition brief) states: "[A]ll law enforcement officers who are **authorized to use** such weapons **shall comply** with the provisions of this manual concerning automatic and semi-automatic assault weapons" (emphasis added).

64. Again, the Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, and/or Assistant Prosecutor Leo state in their opposition brief, "the Wharton Police Department did not authorize [Plaintiff Gregory Garcia] to utilize those weapons while on duty."

65. Therefore, Plaintiff Gregory Garcia was not required to complete "Automatic and Semi-Automatic Assault Weapon Police Carbine and

Scoped Rifle Training" in order to qualify for the law enforcement exemption.

66. Plaintiff Gregory Garcia nevertheless has complied with the Automatic and Semi- Automatic Assault Weapon Police Carbine and Scoped Rifle Training requirements.

67. Plaintiff Gregory Garcia is also Basic SWAT (Special Weapons and Tactics) Certified.

68. Plaintiff Gregory Garcia is also SWAT Team Leader Certified.

69. Plaintiff Gregory Garcia is also a NRA (National Rifle Association) Certified Instructor.

70. Plaintiff Gregory Garcia is also a MACTAC (Multi-Assault Counter-Terrorism Action Capabilities) and Active Shooter Certified Instructor.

71. Plaintiff Gregory Garcia is also a Certified AR-15 Armorer.

72. All of these certification, training, qualification and compliance records are available at the Wharton Police Department and Department of Justice.

73. The Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, and/or Assistant Prosecutor Leo provided false and/or misleading evidence to the grand jury that the New Jersey State Police does not have any record of the above certifications, trainings, qualifications and compliance: The NJSP would not have that information because the NJSP does not oversee the training, qualification, and certification of local law enforcement. Those records are maintained by the Wharton Police Department and Department of Justice.

74. The Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, and/or Assistant Prosecutor Leo persist in prosecuting Plaintiff Gregory Garcia despite readily available proof that

Plaintiff Gregory Garcia meets the statutory law enforcement exemption.

75. As to the two counts of unlawful possession of firearms suppressors, the Morris County Prosecutor's Office and/or its authorized agents never performed a functionality test to determine whether the suppressors are operable.

76. The "suppressors" are, in fact, not operable.

77. The Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, and/or Assistant Prosecutor Leo persist in prosecuting Plaintiff Gregory Garcia anyway.

78. As to the sixteen counts of unlawful possession of large capacity ammunition magazines, under the applicable law at the time, Plaintiff Gregory Garcia was permitted to possess large capacity magazines while on duty as well as to and from duty.

79. The Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, and/or Assistant Prosecutor Leo persist in prosecuting Plaintiff Gregory Garcia anyway.

80. Plaintiff Gregory Garcia was also indicted on one count of endangering the welfare of a child and one count of child neglect, charges which also resulted from the unlawful search.

81. In addition to lodging the charges, the Morris County Prosecutor's Office and/or its authorized agent made a referral of abuse and neglect allegations to the Division of Child Protection & Permanency against both Plaintiffs Gregory and Alison Garcia.

82. In spite of judicial fact finding that there was no abuse or neglect, in spite of DCP&P conducting an investigation and ultimately concluding the Prosecutor's Office allegations of abuse and neglect are "not established," the Morris County Prosecutor's

Office, Fredric M. Knapp, Thomas A. Zelante, and/or Assistant Prosecutor Leo, not only attempted to indict Plaintiff Alison Garcia, but also and persist in prosecuting Plaintiff Gregory Garcia.

83. This prosecution as a whole is the culmination of years of targeted harassment and retaliation against Plaintiff Gregory Garcia by the Wharton Police Department, Chief Anthony Fernandez, Sgt. Kranz, and Lt. David Young.

84. Unable to achieve their administrative objective of terminating Plaintiff Gregory Garcia, the Wharton Police Department, Chief Anthony Fernandez, Lt. David Young, and/or Sgt. Kranz enlisted the services of the Morris County Prosecutor's Office to do their dirty work and circumvent the administrative process.

85. Plaintiff Gregory Garcia has been a police officer with the Wharton Police Department since 2005.

86. In or around 2014, and for the next two years, Plaintiff Gregory Garcia brought to the attention of his supervisors (Chief Fernandez, Lt. Young, and/or Sgt. Kranz) their violations of departmental policies regarding internal affairs procedures as applied to Plaintiff Gregory Garcia's fellow officers.

87. In fact, Plaintiff Gregory Garcia routinely stood up to Chief Fernandez, Lt. Young, and/or Sgt. Kranz for his fellow officers whom Plaintiff Gregory Garcia believed were being treated unfairly and against departmental policy or, in some instances, against State and Federal law.

88. Plaintiff Gregory Garcia was even instrumental on organizing a union vote on whether to file administrative charges against Chief Fernandez.

89. In response, the Wharton Police Department, Chief Fernandez, Lt. Young, and/or Sgt. Kranz waged a targeted campaign of retaliatory actions



against Plaintiff Gregory Garcia including but not limited to, all of a sudden, an onslaught of internal affairs investigations.

90. In addition to bogus internal affairs investigations, as part of these defendants' retaliatory actions against Plaintiff Gregory Garcia, members of the Wharton Police Department violated Plaintiff Gregory Garcia's rights by appearing at his house numerous times when he would call out of work.

91. During one incident that occurred on or about November 4, 2016, Plaintiff Gregory Garcia had called out of work due to a medical emergency with a family member.

92. Plaintiff Gregory Garcia contacted Sgt. Kranz who spoke with Lt. Young, and Lt. Young told Plaintiff Gregory Garcia his time off was approved.

93. Despite having the time off approved, Chief Fernandez sent Lt. Young and Sgt. Kranz to Plaintiff Gregory Garcia's home under the guise of a "welfare check."

94. Lt. Young and Sgt. Kranz showed up at Plaintiff Gregory Garcia's home and attempted to enter Plaintiff Gregory Garcia's home despite Plaintiff Gregory Garcia not wishing them to do so.

95. In an attempt to enter the home, Lt. Young placed his foot in the door preventing Plaintiff Gregory Garcia from closing the door.

96. Despite not wishing to allow Lt. Young and Sgt. Kranz into Plaintiff Gregory Garcia's home, these officers forced their way inside and refused to leave.

97. Lt. Young and Sgt. Kranz eventually left, but not without first harassing Plaintiff Gregory Garcia's wife and children, and not without calling the Dover Police Department to Plaintiff Gregory Garcia's home as backup.

98. In another act of retaliatory action by the Wharton Police Department and/or Chief Fernandez, they frivolously challenged Plaintiff Gregory Garcia's unemployment claim.

99. Unfortunately for Chief Fernandez, he was caught lying under oath. In his certification opposing Plaintiff Gregory Garcia's unemployment application, Chief Fernandez certifies he knew of Plaintiff Gregory Garcia's firearms application in Dover because he observed Plaintiff Gregory Garcia sign the application in front of him. However, Plaintiff Gregory Garcia received a voicemail from Dover Police Department that Plaintiff Gregory Garcia had forgot to sign the application. Under questioning on August 31, 2018 during Plaintiff Gregory Garcia's unemployment appeal, Chief Fernandez admitted he did not observe Plaintiff Gregory Garcia sign the firearms application.

100. The truth is, Chief Fernandez illegally obtained Plaintiff Gregory Garcia's gun license records, fed the Prosecutor's Office false information about Plaintiff Gregory Garcia being an alcoholic, and enlisted the Prosecutor's Office in his campaign of retaliation against Plaintiff Gregory Garcia.

101. Chief Fernandez has since retired. Lt. Young is now Chief, Sgt. Kranz is now Lt., and Plaintiff Gregory Garcia is now under indictment.

#### **FIRST COUNT**

#### **(Violation of the NJ Law Against Discrimination and Americans With Disabilities Act)**

102. Plaintiffs repeat all prior allegations.

103. Defendants Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, Janine Buchalski, Vincent Leo, III, Wharton Police Department, Anthony Fernandez, David Young, Charles Kranz, John Doe 1-5 (collectively, "Defendants") contend Plaintiff Gregory Garcia is an alcoholic and/or lied on applications for a Firearms Identification Card and hand gun purchase permits by denying that he is an alcoholic.
104. Alcoholism is a disability under both the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12.
105. One of the first symptoms of being an alcoholic is denial of being an alcoholic.
106. So assuming Plaintiff Gregory Garcia is, as Defendants contend, an alcoholic, Plaintiff Gregory Garcia was actually exhibiting the symptoms of his disability when he checked "No" next to the question, "Are you an alcoholic?"
107. By targeting Plaintiff for discipline, including but not limited to instituting internal affairs investigations and taking other administrative actions against Plaintiff Gregory Garcia, as well as by criminally prosecuting Plaintiff Gregory Garcia, Defendants unlawfully discriminate against Plaintiff Gregory Garcia on the basis of a perceived disability and on Plaintiff Gregory Garcia's seeking alcohol dependency treatment.
108. Although provided with enumerated reasonable accommodations in Dr. Guller's fitness for duty report, Defendants refused to provide Plaintiff Gregory Garcia with reasonable accommodations and instead targeted Plaintiff for discipline including internal affairs investigations and criminal prosecution.

109. Additionally, Defendants Wharton Police Department, Anthony Fernandez, David Young, and/or Charles Kranz ordered Plaintiff Gregory Garcia to take certain actions such as attending Alcoholics Anonymous meetings.

110. Defendants Wharton Police Department, Anthony Fernandez, David Young, and/or Charles Kranz then turned around and used Plaintiff Gregory Garcia's attendance at AA meetings as "evidence" against him on administrative charges related to truthfulness.

WHEREFORE, Plaintiff Gregory Garcia demands judgement against Defendants Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, Janine Buchalski, Vincent Leo, III, Wharton Police Department, Anthony Fernandez, David Young, Charles Kranz, and/or John Doe 1-5 for damages including but not limited to compensatory damages, interest, punitive damages, attorneys' fees and costs, and such further relief as the Court and/or a jury deem appropriate.

#### **SECOND COUNT**

#### **(Violation of the New Jersey Conscientious Employee Protection Act)**

110. Plaintiffs repeat all prior allegations.

111. Plaintiff Gregory Garcia brought to the attention of his supervisors- Wharton Police Department, Anthony Fernandez, David Young, and Charles Kranz (collectively, the "Wharton Defendants")- what he reasonably believed to be their violations of departmental policies regarding internal affairs procedures as applied to Plaintiff Gregory Garcia's fellow officers.

112. In fact, Plaintiff Gregory Garcia routinely stood up to the Wharton Defendants for his fellow officers

whom Plaintiff Gregory Garcia believed were being treated unfairly and against departmental policy or, in some instances, against State and Federal law.

113. Plaintiff Gregory Garcia was even instrumental on organizing a union vote on whether to file administrative charges against Defendant Fernandez.

114. In response, the Wharton Defendants waged a targeted campaign of retaliatory actions against Plaintiff Gregory Garcia including an onslaught of unwarranted internal affairs investigations, harassment at and inside Plaintiff Gregory Garcia's home, privacy and Fourth Amendment violations at and inside Plaintiff Gregory Garcia's home, illegally obtaining Plaintiff Gregory Garcia's gun license records, and providing Defendant Morris County Prosecutor's Office and/or its authorized representatives with false and misleading information with the intent and ultimate effect that the Prosecutor's Office would use that information to investigate, charge, and prosecute Plaintiff Gregory Garcia.

115. Exactly as the Wharton Defendants designed, Chief Fernandez has since retired, Lt. Young is now Chief, Sgt. Kranz is now Lt., and Gregory Garcia is now under indictment.

WHEREFORE, Plaintiff Gregory Garcia demands judgement against Wharton Police Department, Anthony Fernandez, David Young, and Charles Kranz and/or John Doe 1-5 for damages including but not limited to compensatory damages, interest, punitive damages, attorneys' fees and costs, and such further relief as the Court and/or a jury deem appropriate.

### **THIRD COUNT**

**(Malicious Prosecution)**

116. Plaintiffs repeat all prior allegations.

117. Defendants Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, Janine Buchalski, Vincent Leo, III, Wharton Police Department, Anthony Fernandez, David Young, Charles Kranz, John Doe 1-5 (collectively, "Defendants") investigated, initiated, maintained, pursued, and/or pressed administrative and criminal proceedings against Plaintiff Gregory Garcia.

118. Plaintiff Gregory Garcia anticipates that all such proceedings will be terminated in his favor and/or in a manner not adverse to him.

119. Defendants lacked reasonable or probable cause for the administrative and/or criminal proceedings.

120. Defendants had malicious motive to investigate, initiate, maintain, pursue, and/or press administrative and/or criminal charges including but not limited to retaliating against Plaintiff Gregory Garcia.

WHEREFORE, Plaintiff Gregory Garcia demands judgement against Defendants Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, Janine Buchalski, Vincent Leo, III, Wharton Police Department, Anthony Fernandez, David Young, Charles Kranz, and/or John Doe 1-5 for damages including but not limited to compensatory damages, interest, punitive damages, attorneys' fees and costs, and such further relief as the Court and/or a jury deem appropriate.

**FOURTH COUNT****(Violation of the Federal Civil Rights Act)**

121. Plaintiffs repeat all prior allegations.

122. 42 U.S.C. § 1983 provides in pertinent part, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or of the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured[.]"

123. Defendants Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, Janine Buchalski, Vincent Leo, III, Wharton Police Department, Anthony Fernandez, David Young, Charles Kranz, John Doe 1-5 (collectively, "Defendants"), under color of law, engaged in and/or conspired to engage in acts and/or omissions that breached federal law including 42 U.S.C. § 1983 and deprived Plaintiffs Gregory Garcia and/or Alison Garcia of the rights afforded to them under 42 U.S.C. § 1983, including but not limited to: (a) the right not to be subject to unlawful employment practices, discrimination, harassment, and/or retaliation; (b) the right to be secure in one's person, home, and effects against unreasonable searches and seizures; and (c) the right to be free from investigation and/or prosecution without reasonable or probable cause.

124. Defendants jointly and/or severally witnessed and/or observed one or more of each other violating Plaintiffs' rights and, though having the ability and having taken an oath to uphold the law, failed to intervene.

125. In addition to directly violating the law,

Defendants aided and abetted each other to violate the law, in concert and in furtherance of a scheme to deprive Plaintiff of his rights.

126. Defendants are persons and/or entities covered under the Federal Civil Rights Act.

127. As a direct and proximate result, Plaintiffs suffered damages including the deprivation of their Federal and State rights.

WHEREFORE, Plaintiffs Gregory Garcia and Alison Garcia demand judgement against Defendants Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, Janine Buchalski, Vincent Leo, III, Wharton Police Department, Anthony Fernandez, David Young, Charles Kranz, and/or John Doe 1-5 for damages including but not limited to compensatory damages, interest, punitive damages, attorneys' fees and costs, and such further relief as the Court and/or a jury deem appropriate.

#### **FIFTH COUNT**

#### **(Negligent and/or Intentional Infliction of Emotional Distress)**

128. Plaintiffs repeat all prior allegations.

129. Defendants Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, Janine Buchalski, Vincent Leo, III, Wharton Police Department, Anthony Fernandez, David Young, Charles Kranz, John Doe 1-5 (collectively, "Defendants") acted negligently and/or intentionally with respect to their acts and/or omissions described above.

130. Defendants' acts and/or omissions are extreme and outrageous.



131. As a direct and proximate result, Defendants caused Plaintiffs Gregory Garcia and/or Alison Garcia to suffer severe emotional distress.

WHEREFORE, Plaintiffs Gregory Garcia and Alison Garcia demand judgement against Defendants Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, Janine Buchalski, Vincent Leo, **111**, Wharton Police Department, Anthony Fernandez, David Young, Charles Kranz, and/or John Doe 1-5 for damages including but not limited to compensatory damages, interest, punitive damages, attorneys' fees and costs, and such further relief as the Court and/or a jury deem appropriate.

#### **SIXTH COUNT**

#### **(Conversion/Replevin)**

132. Plaintiffs repeat all prior allegations.

133. Defendants Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, Janine Buchalski, Vincent Leo, III ("Defendants") never filed or pursued a forfeiture action of the property seized during the June 18, 2018 execution of the search warrant.

134. Plaintiff Gregory Garcia anticipates the criminal proceedings will be terminated in his favor and/or in a manner not adverse to him.

135. Plaintiff Gregory Garcia has the right to possession of his seized property immediately upon conclusion of the criminal matter.

136. Defendants' continued exercise of dominion over Plaintiff Gregory Garcia's property upon conclusion of the criminal matter denies Plaintiff Gregory Garcia his title to the property and/or is inconsistent with his title to the property.

137. Defendants' actions and/or omissions proximately cause Plaintiff to suffer damages.

WHEREFORE, Plaintiff Gregory Garcia demands judgement against Defendants Morris County Prosecutor's Office, Fredric M. Knapp, Thomas A. Zelante, Janine Buchalski, Vincent Leo, III, and/or John Doe 1-5 for the return of Plaintiffs property in the same condition as when it was taken, and for damages including but not limited to compensatory damages, interest, punitive damages, attorneys' fees and costs, and such further relief as the Court and/or a jury deem appropriate.

**JURY DEMAND**

Plaintiffs demands a trial by a jury on all issues so triable.

**CERTIFICATION PURSUANT TO L. CIV. R. 11.2**

I certify that, to the best of my knowledge, the matter in controversy is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding.

/s/ Peter C. LaGreca

Peter C. LaGreca

Dated: 9/12/2019

## APPENDIX G

## FIREARMS WORKSHEET

DATE/LOCATION: 5/14/18 MCPSTAINSTRUCTORS: Fleck, Ornelas

## OFFICERS IN ATTENDANCE:

- |                        |           |
|------------------------|-----------|
| 1. <u>Kranz</u>        | 7. _____  |
| 2. <u>Zimmerman</u>    | 8. _____  |
| 3. <u>Garcia</u>       | 9. _____  |
| 4. <u>Ploth</u>        | 10. _____ |
| 5. <u>Katsagiganis</u> |           |
|                        | 11. _____ |
| 6. <u>Schmidt</u>      | 12. _____ |

## QUALIFICATION:

DUTY WEAPON,	HQC2	YES__	NO__
DUTY WEAPON,	HNQC	YES__	NO__
SHOTGUN, BUCK	SGQC	YES__	NO__
SHOTGUN, NIGHT	SGNQC	YES__	NO__
SHOTGUN, SLUG	SGSQC	YES__	NO__

SHOTGUN, SLUG, N      SGSNQC   YES\_\_ NO\_\_

SERVICE RIFLE,      ARQC   YES ✓ NO\_\_

SUBGUN NIGHT,      SGNQC   YES ✓ NO\_\_

**MANDATORY TRAINING:**

DOMESTIC VIOLENCE \_\_\_\_\_

VEIBCLE PURSUIT \_\_\_\_\_

USE OF FORCE \_\_\_\_\_

FATS \_\_\_\_\_      SERVICE RIFLE \_\_\_\_\_

**ADDITIONAL TRAINING:**

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**APPENDIX H**

**WHARTON POLICE DEPARTMENT  
WEAPONS PROFICIENCY,  
QUALIFICATION & EVALUATION**

Name: *G. Garcia*

Rank: PTL

Date: 8/14/18

<b>Duty Weapon Handgun Qualification</b>	
Make:	Model:      Serial#:      Caliber:
Ammunition:      Other (if applicable)	
Day Course – Qualifying Score 80% P   F  p  <b>F</b>	Night Course - Qualifying Score 80% P   F  <b>p</b>
Weapon & Holster Inspected:	
Yes      No      Comments:	
<b>Police Shotgun Qualification</b>	
Make:	Model:      Serial#:      Caliber:
Ammunition:      Other (if applicable)	
Day- Buck Shot Qualifying Score 80% P   F  p  <b>F</b>	Night - Buck Shot Qualifying Score 80% P   F  
Day - Slug Qualifying Score 80% P   F	Night - Slug Qualifying Score 80% P   F

<b>Off Duty Handgun Qualification</b>			
Make:	Model:	Serial#:	Caliber:
Ammunition:		Other (if applicable)	
Day Course -		Night Course -	
Qualifying Score 80%		Qualifying score 80%	
<b>P</b>	<b>F</b>	<b>P</b>	<b>F</b>
Weapons & Holster Inspected:			
Yes	No	Comments:	
<b>Rifle Qualification.</b>			
Make: Colt Model: AR-15 Serial # LEO 1218Z			
Caliber 5.56/.223			
Ammunition: Federal 55 gr FMJ			
Other (if applicable) Winchester 55gr JSP			
Day Course –		Night Course -	
Qualifying Score 80%		Qualifying Score 80%	
<b>(P)</b>	<b>F</b>	<b>(P)</b>	<b>F</b>
Weapons & Holster Inspected:			
<u><b>Yes</b></u>	No	Comments: OK	

**Less Lethal Weapons Proficiency**

*(Officer has demonstrated proficiency in the  
following)*

O.C. \_\_\_\_\_ Type: \_\_\_\_\_

Baton/PR24 ABP \_\_\_\_\_ Type \_\_\_\_\_

Other (describe) \_\_\_\_\_

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*Officer/Contestant Signature & ID      Date*

*/s/ Kates      5/4/18*

*Weapons Instructor Signature & ID      Date*

**APPENDIX I**

FILED

June 15, 2018

Hon Stephen J. Taylor P.J. Cr

SEARCH WARRANT

SUPERIOR COURT OF NEW JERSEY

COUNTY OF MORRIS

**STATE OF NEW JERSEY.**

)

)

**COUNTY OF MORRIS.**

)

**TO: ANY LAW ENFORCEMENT OFFICER:**

**WHEREAS**, it appears to me, **Honorable Stephen J. Taylor**, a Judge of the Superior Court, County of Morris, State of New Jersey, from the facts or circumstances presented to me under oath by **Detective Janine Buchalski of the Office of the Morris County Prosecutor**, on application for a Search Warrant, that probable cause exists to believe that in and upon certain premises, places, persons or things within the State of New Jersey known and particularly described as:

The residence at [REDACTED] Elizabeth Street, Dover, NJ, more specifically described as a single- family dwelling, that has four white columns facing the street, and a macadam driveway to the left of the residence if one faces the house. There is a staircase leading to a deck that must be traversed to get to the front door.

There has been, and now is located, certain property



obtained in violation of the Penal Laws of the State of New Jersey or any other State; or possessed, controlled, designed and intended for use in connection with the violation of the Penal Laws of the State of New Jersey; or which has been used in connection with the violation of the penal Laws of the State of New Jersey; or which constitutes evidence or totaling to show any such violation of the Penal Laws of the State of New Jersey, to wit: False Representation in an Application to Obtain a Permit to Purchase a Handgun, in violation of N.J.S.A. 2C:39-10c, a crime of the Third Degree, and Unlawful Possession of an Assault Firearm, in violation of N.J.S.A. 2C:39-5f, a crime of the Second Degree.

The property to be seized and searched consists of:

Any and all firearms, including but not limited to those listed in Exhibit A, any long guns, any shotguns, any and all regulatory paperwork as required by N.J.S.A. 2C:58-3 and/or N.J.S.A. 2C:58-4 and/or N.J.S.A. 2C:58-5; any and all documents relating to the purchase of handguns, including but not limited to bills of sale, receipts, credit card statements, debit card statements so as to be relevant to proof of ownership; and any and all documents related to ownership and/or occupancy of [REDACTED] Elizabeth Street, Dover, New Jersey by Gregory Garcia, date of birth March 29, 1978; and any other contraband or evidence that a thorough and complete search would reveal.

Affiant requests permission to use all reasonable means necessary to access and effectuate the search of any locked containers, including but not limited to, lock boxes, gun safes or any other container in which

the items described above could be stored, located or secreted.

**THE COURT** being satisfied that there is probable cause to believe that grounds for the granting of the applicant exists.

**JUDICIAL SANCTION IS GRANTED** to enter and search the premises, place, person or thing above named and to seize and take into your possession such specified property which may be found on the said premises place, person or thing.

**YOU ARE HEREBY AUTHORIZED** to move any item of property to search for serial numbers on its interior or exterior which may be found on the said premises, place, person or thing.

**YOU ARE HEREBY AUTHORIZED** to execute this warrant without knocking and announcing your authority and purpose. ("No-Knock and announce"<sup>11</sup> authorization).

**YOU ARE FURTHER COM1\1ANDED** to serve a copy of this Warrant, together with a receipt for the property so seized, to the person from whom it is taken or in whose possession it is found, or in the absence of such a person, to leave a copy of this Warrant together with such receipt, in and upon the premises or place or thing from which the said property was taken.

**YOU ARE FURTHER COMMANDED** to execute this Warrant within ten (10) days from the issuance hereof between the hours of 12:01 a.m. and 11:59 p.m., making your Return of this Warrant, forthwith

to me accompanied by a verified written inventory of any property taken.

**ISSUED** under my hand at 1:20 PM this 15th day of June, 2018

/s/ Stephen J. Taylor, P.J.Cr

Hon. Stephen J. Taylor, P.J.Cr

**APPENDIX J**

FILED

June 15, 2018

Hon Stephen J. Taylor P.J. Cr

AFFIDAVIT IN SUPPORT OF A SEARCH WARRANT

██████████ ELIZABETH ST., DOVER, NEW JERSEY

STATE OF NEW JERSEY)

) SS:

COUNTY OF MORRIS)

I, Detective Janine Buchalski, of the Office of the Morris County Prosecutor being of full age and having been duly sworn according to law upon my oath depose and say:

1. I am a Detective with the Office of the Morris County Prosecutor (MCPO) and have been so employed at all times relevant hereto.
2. I have participated in the investigation described herein and have full knowledge thereof. I was sworn in as a Detective with the Morris County Prosecutor's Office in March of 2008 and graduated the Basic Course for Investigators, Division of Criminal Justice Police Academy in December, 2008. I served as a Detective for the Morris County Prosecutor's Office from 2008 through March, 2012. During my tenure at the MCPO I investigated a multitude of cases in the following units; General Investigations Unit, Domestic Violence/Missing Persons Unit and the Sex Crimes, Child Endangerment Unit. I then served as a Detective for the Division of Criminal Justice in the Government

Corruption Bureau from March, 2012 through May, 2015. During my tenure at the Division of Criminal Justice, I received a certification from the Police Training Commission as a Firearms Instructor in 2014. In May, 2015 I transitioned to the State Commission of investigation and served as a Special Agent where I investigated government corruption cases. During my tenure at the SCI, I received a certification from the Police Training Commission as a Defensive Tactics Instructor in 2016. In April of 2017, I returned to the Morris County Prosecutor's Office as a Detective in the Professional Standards Unit.

3. Throughout my training and experience along with my certifications as a Firearms Instructor and a Defensive Tactics Instructor, I am familiar with the dangers of firearms. I am also familiar with the lethality of not only a firearm, but also the combination of a firearm and tactics training.

4. I am currently involved in the investigation of Gregory Garcia, who is currently a police officer with the Wharton Borough Police Department. Garcia provides a home address of [REDACTED] Elizabeth Street, Dover, New Jersey to his employer. I am investigating Garcia for potential violations of N.J.S.A. 2C:39-10c, False Representation in an Application to Obtain a Permit to Purchase a Handgun, a crime of the Third Degree, and N.J.S.A. 2C:39-5f, Unlawful Possession of an Assault Firearm, a crime of the Second Degree. I am familiar with the facts herein based upon my involvement, as well as information that I have obtained through other law enforcement sources.

5. I have probable cause to believe that there is information relating to the violation of the Penal Laws of the State of New Jersey or any other State,

or that said items were possessed, controlled, designed and intended for use in connection with the violation of the Penal Laws of the State of New Jersey, to *wit*: False Representation in an Application to Obtain a Permit to Purchase a Handgun, in violation of N.J.S.A. 2C:39-10c, a crime of the Third Degree, and Unlawful Possession of an Assault Firearm, in violation of N.J.S.A. 2C:39-5f, a crime of the Second Degree.

6. The locations to be searched are:

a. The residence at [REDACTED] Elizabeth Street, Dover, NJ, more specifically described as a single family dwelling, that has four white columns facing the street, and a macadam driveway to the left of the residence if one faces the house. There is a staircase leading to a deck that must be traversed to get to the front door.

7. The property to be seized and searched pursuant to the execution of the applied for search warrant include, but are not limited to:

a. Any and all firearms, including but not limited to those listed in Exhibit A, any long guns, any shotguns, any and all regulatory paperwork as required by N.J.S.A. 2C:58-3 and/or N.J.S.A. 2C:58-4 and/or N.J.S.A. 2C:58-5; any and all documents relating to the purchase of handguns, including but not limited to bills of sale, receipts, credit card statements, debit card statements so as to be relevant to proof of ownership; and any all documents related to ownership and/or occupancy of [REDACTED] Elizabeth Street, Dover, New Jersey by Gregory Garcia, date of birth March 29, 1978; and

any other contraband or evidence that a thorough and complete search would reveal.

b. Affiant requests permission to use all reasonable means necessary to effectuate the search of any locked containers, including but not limited to, lock boxes, gun safes or any other containers in which the items described above could be stored, located or secreted.

c. Due to the nature of the items sought, and the heightened risk present due to the presence of firearms and/or long guns, affiant requests permission to execute this Search Warrant without the need to announce the presence of the police and to enter without notice if the circumstances warrant (No-Knock).

8. This Affiant offers the following facts to establish probable cause for the issuance of this search warrant are as follows:

a. Gregory Garcia, date of birth March 29, 1978, is a police officer with the Wharton Borough Police Department. As a police officer, he is authorized to carry a firearm. As the result of an administrative issue, Chief Anthony Fernandez of the Wharton Borough Police Department, has required that P.O. Garcia's service weapon remain secured at the police department when he is not on duty.

b. I am informed by Lt. Christoph Kimker of the Morris County Prosecutor's Office (MCPO) that Lt. David Young of the Wharton Police Department, conducted an interview of P.O. Garcia on or about May 24, 2017 as it related to an Internal Affairs

administrative investigation. During the course of that interview, P.O. Garcia admitted to having an alcohol problem which required him to seek in-patient treatment at some point.

c. On December 16, 2016, P.O Gregory Garcia filed an application with the New Jersey Department of Labor and Workforce Development Division of Temporary Disability Insurance. The form contains his name, his date of birth and his Social Security Number. The application includes a listed home address of "[REDACTED] Elizabeth Street, Dover, NJ 07801" and indicates it is in the County of Morris. The application lists the occupation as police officer. For the question that reads "What was the first day you were unable to work due to present disability"-- P.O. Garcia's answer was 11/4/2016. For the question, "If you have recovered or returned to work from this disability, list date", P.O Garcia left the answer space blank.

d. The application contains a certification that false statements could be punished. The application is signed by Gregory Garcia, dated 12/28/16, and provides an e-mail address of P.O. Garcia's Wharton Police Identification Number-is P39037.

e. Question 16 on the above-described form contains the following: Describe your disability (How, when, where it happened). The information on the form to that question reads "Alcohol Dependency treatment." The word "dependency" appears to be misspelt.

f. The application was submitted to the Borough of



Wharton Certifying Payroll Officer to certify that payroll information provided by P.O Garcia was correct. That certification is dated January 5, 2017.

g. N.J.S.A. 2C:58-3c(3) states that no permit shall be issued to any person who suffers from a physical defect or disease which would make it unsafe for him to handle firearms, to any person who has ever been confined for a mental disorder, or to any alcoholic unless any of the foregoing persons produces a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof, that he is no longer suffering from that particular disability in a manner that would interfere with or handicap him in the handling of firearms; to any person who knowingly falsifies any information on the application form for a handgun purchase permit or firearms purchaser identification card.

h. A standard permit to purchase a handgun application form is promulgated by the Superintendent of the New Jersey State Police entitled Application for Firearms Purchaser Identification Card and/or Handgun Purchase Permit. A permit is submitted to the local chief law enforcement executive of the municipality of residence of the applicant for review. Question 23 of the form asks the following question: "Are you an alcoholic?" There is a check box for a yes answer and a check box for a no answer.

i. On December 4, 2017, Gregory Garcia submitted a form that sought to change the address on his Firearm Purchaser Identification Card (FPIC) and to act as an application to purchase a handgun. He

provided an address of [REDACTED] Elizabeth Street, Dover NJ 07801. He provided a NJ Driver's License Number on the application. A review of the certified records of the Motor Vehicle Commission indicate the DL Number on the application matches that of Gregory Garcia. A NJ Firearms ID Card/SBI Number of 848527C is listed. A review of records maintained by the NCIC system indicate that SBI Number is the same as that contained on the application for Gregory Garcia. The listed occupation is police officer.

j. The check box No contains an "x" to Question 23. There is a certification on the application that reads "I hereby certify that the answers given on this application are complete, true and correct in every particular. If any of the foregoing answers made by me are false, I am subject to punishment." The signature Gregory Garcia with a date of 12/4/17 attests to the certification. The application is attached as Exhibit B.

k. Based on the application, a duplicate FPIC was issued to Gregory Garcia on February 20, 2018, by the Chief Law Enforcement Executive of Dover, New Jersey, Deputy Chief Anthony Smith.

l. The investigation has revealed that the application of December 4, 2017 resulted in a Permit to Purchase a Handgun #1867103 being issued to Gregory Garcia, with a date of birth of 3/29/1978 and stated address of [REDACTED] Elizabeth Street, Dover NJ 07801 on December 14, 2017 by Deputy Chief Smith. That permit was used to purchase a handgun, to wit, a Hudson 9mm pistol with serial number H03431 on

April 9, 2018.

m. On April 11, 2018, Gregory Garcia submitted a form that sought to act as an application to purchase a handgun. He provided an address of [REDACTED] Elizabeth Street, Dover NJ 07801. He provided a NJ Driver's License Number on the application. A review of the certified records of the Motor Vehicle Commission indicate the DL Number on the application matches that of Gregory Garcia. A NJ Firearms ID Card/SBI Number of 848527C is listed. A review of records maintained by the NCIC system indicate that SBI Number is the same as that contained on the application for Gregory Garcia. The listed occupation is police officer.

n. The check box No contains an "x" to Question 23. There is a certification on the application that reads "I hereby certify that the answers given on this application are complete, true and correct in every particular. If any of the foregoing answers made by me are false, I am subject to punishment." The signature Gregory Garcia with a date of 4/11/18 attests to the certification. The application is attached as Exhibit C.

o. The investigation has revealed that the application of December 4, 2017 resulted in a Permit to Purchase a Handgun #1867109 being issued to Gregory Garcia, with a date of birth of 3/29/1978 and stated address of [REDACTED] Elizabeth Street, Dover NJ 07801 on April 30, 2018 by Deputy Chief Smith.

p. I am informed by Det/Supv. Joseph Soulias (MCPO) that he contacted the New Jersey State Police and was informed that Permit #1867109 was

used to purchase a Glock 9mm handgun with Serial Number BDCM 284 on May 25, 2018.

q. Records maintained by the New Jersey State Police regarding Gregory Garcia's FPIC indicate that he has purchased other handguns. He purchased a Glock .45 caliber pistol with Serial Number HFY369 in 2007. He purchased a Glock .40 caliber pistol with serial number LDC 354 in 2007. He purchased a Smith and Wesson .40 caliber pistol with serial number VJL6028 in 2007, and which was sold in 2012. He purchased a H+K .45 caliber pistol with serial number 25077211 in 2003.

r. I am informed by Lt. David Young of the Wharton Police Department that P.O. Garcia has stored a large amount of ammunition in his residence. A photograph provided to Chief Fernandez depicts a wall-size shelf that contains ammunition cans which are marked with labels that correspond to known calibers of pistols and long guns. There are also small boxes which contain markings similar to ammunition boxes that can be purchased.

s. I am a certified firearms instructor and I am familiar with the different calibers of ammunition and the types of firearms to which each might correspond. Based on the photograph (attached as Exhibit D), I have probable cause to believe P.O. Garcia may be in possession a weapon that might be assault-style firearm. There are markings on individual bins which read: 223; 556; 338; 300 Win BLK; 308. These are calibers that would be fired by a high-power/high velocity long gun, which would have a range of at least 1000 yards. It is my experience

that assault-style firearms must be examined to determine if it falls within the category of prohibited assault firearms or substantially similar to those enumerated in N.J.S.A. 2C:39-1w. That examination, pursuant to standard procedures followed by the MCPO, requires examination under controlled circumstances by an expert in firearms recognition.

t. There is also an ammunition can marked 12GA, which I believe corresponds to a 12 gauge shotgun shell. There are also cans marked 40, 45 and 9 mil, which I believe correspond to handgun calibers, including those which would be used in handguns which P.O Garcia has purchased.

u. I am informed by Lt. Kimker that Special Agent Kimberly Cyganik of the Federal Bureau of Investigation (FBI) provided information to Deputy Chief Smith and Chief Fernandez that was based on a confidential source. S/A Cyganik informed law enforcement that the FBI had received information regarding P.O. Garcia and the source stated in substance that Garcia had become increasingly infatuated with firearms. I run informed by Det/Supv. Soulias that he spoke with *SIA* Cyganik and that she indicated that the source also stated that Garcia was purchasing body armor and stockpiling ammunition. The source stated that Garcia had recently purchased an "Accuracy International" rifle sometime after January 1, 2018.

v. Based upon my training and experience, people who possess firearms may store them in locked containers and/or gun safes and/or disguised areas of

a residence. Thus, affiant seeks permission to use all reasonable means to effectuate the search for the items authorized by this Search Warrant.

**REQUEST FOR AUTHORIZATION TO ENTER  
WITHOUT PRIOR ANNOUNCING OF PURPOSE  
OR AUTHORITY/ REQUEST FOR NIGHTTIME  
ENTRY**

w. To justify an exception to the "knock and announce" requirement that is imposed upon police officers prior to the execution of a search warrant, a police officer must have a reasonable, particularized suspicion that a no-knock entry is required to prevent the destruction of evidence, to protect the officer's safety, or to effectuate the arrest or seizure of evidence. Affiant has a reasonable suspicion based upon the totality of the circumstances as laid out in the foregoing paragraphs that there is a real probability that announcing the police authority and purpose prior to execution of the warrant may jeopardize the lives of the executing officers. It is also unknown at this time whether Allison Garcia, date of birth [REDACTED], 1982, who is his wife and resides at the same address, might have access to those same firearms and/or long guns.

x. There is also the opportunity that delaying the police entry could lead to a heightened risk to other members of the household if Garcia were to gain access to any of the firearms.

y. The current tactical plan is to execute the search warrant once it has been confirmed that Gregory Garcia is outside the residence and/or is at the

Wharton Borough Police Department. However, it is impossible to predict if or when that might happen if P.O. Garcia does not go to work, or were to become aware of this investigation. It is also unknown at this time whether Allison Garcia might have access to those same firearms and/or long guns. Thus, these warrants may need to be executed at any time of the day or night to ensure the safety of the executing officers or other residents. Thus, the safety of the public or the police may require execution after hours to minimize danger to the general public and/or the police.

9. Based upon the aforementioned facts in this case, affiant believes there is probable cause to search **the residence at [REDACTED] Elizabeth Street, Dover, New Jersey** for evidence related to the violation of New Jersey Criminal Laws, specifically the crime of False Representation in an Application to Obtain a Permit to Purchase a Handgun, in violation of N.J.S.A. 2C:39-10c, a crime of the Third Degree, and Unlawful Possession of an Assault Firearm, in violation of N.J.S.A. 2C:39-5f, a crime of the Second Degree.

10. Therefore, it is respectfully requested that a Search Warrant be issued authorizing the seizure of any and all firearms, including but not limited to those listed in Exhibit A, any long *guns*, any shotguns, any and all regulatory paperwork as required by N.J.S.A. 2C:58-3 and/or N.J.S.A. 2C:58-4 and/or N.J.S.A. 2C:58-5; any and all documents relating to the purchase of handguns, including but not limited to bills of sale, receipts, credit card statements, debit card statements so as to be relevant to proof of ownership; and any and all documents related to ownership and/or occupancy of ■ Elizabeth Street, Dover, New Jersey by Gregory Garcia, date of birth March 29, 1978; and any other contraband or evidence that a thorough and complete search would reveal.

11. Affiant requests permission to use all reasonable means necessary to effectuate the search of any locked containers, including but not limited to, lock boxes, gun safes or any other container in which the items described above could be stored, located or secreted.

12. Due to the nature of the items sought, and the heightened risk present due to the presence of firearms and/or long guns, affiant requests permission to execute this Search Warrant without the need to announce the presence of the police and to enter without notice if the circumstances warrant (No-Knock). Affiant also requests permission to execute this warrant at any time of the day or night.

Approved by STC John McNamara, Jr.

/s/ Detective Janice Buchalski



154a

Detective Janice Buchalski  
Morris County Prosecutor's Office

Sworn to and subscribed before me on this  
15<sup>th</sup> day of June, 2018

/s/ Stephen J. Taylor  
Hon. Stephen J. Taylor, P.J.Cr  
JUDGE OF THE SUPERIOR COURT

**Exhibit "A"**

1. Hudson H03431 9mm Handgun
2. Glock BDCM284 9mm Handgun
3. Glock HFY369 .45 caliber Handgun
4. Glock LDC354 .40 caliber Handgun
5. H&K 25077211 .45 caliber Handgun

Exhibit C

STATE OF NEW JERSEY

Application for Firearms Purchaser Identification  
Card and/or Handgun Purchase Permit

This form is prescribed by the Superintendent for  
use by applicants for Firearms Purchaser I.D. Cards  
& Handgun Purchase Permits. Any alteration to this  
form is expressly forbidden

Check Appropriate Block(s)

- ☐ Initial Firearms Purchaser Identification Card
- ☐ Card Lost or Stolen Identification Card
- ☐ Mutilated Identification Card
- ☐ Change of Address on Identification Card
- ☐ Change of Sex on Identification Card
- ☐ Change of name on Identification

List former name and attach copy  
of marriage license or court order

☒ Application to Purchase a Handgun

Quantity of Permits   1  

(1) NAME Last (If female, include maiden)    First  
Middle

Garcia

Gregory

-

(2) SOCIAL SECURITY NUMBER

██████████

(3) RESIDENCE ADDRESS Number & Street City  
State Zip

████ Elizabeth St.  
07801

Dover,

NJ

## (4) HOME TELEPHONE



## (5) DATE OF BIRTH (6) AGE (7) PLACE OF BIRTH

Country City, State,  
 40 Newark NJ USA

(8) DRIVER'S LICENSE NUMBER & STATE  
NJ(9) SEX RACE HEIGHT WEIGHT HAIR EYES  
M W 6-04 240 BRN BRN(10) DIST. PHYSICAL CHARACTERISTICS  
(Marks, Scars, Tattoos)

None

## (11) U.S. CITIZEN

☒ Yes ☐ No

## (12) NAME OF EMPLOYER

Wharton Bureau

## EMPLOYER'S ADDRESS &amp; TELEPHONE

10 Robert St.

## (13) OCCUPATION

Police Officer

(14) ADDRESS APPEARING ON FORMER  
FIREARMS IDENTIFICATION CARD (If Applicable)(15) N.J. FIREARMS ID CARD/SBI NUMBER  
848527C

(16) Have you ever been convicted of any domestic violence offense in any jurisdiction which involved the elements of (1) striking, kicking, shoving, or (2) purposely or attempting to or knowingly or recklessly causing bodily injury, or (3) negligently causing bodily injury to another with a deadly weapon? If yes, explain. ☐ Yes ☒ No

(17) Are you subject to any court order issued pursuant to Domestic Violence? If yes, explain ☐ Yes ☒ No

(18) Have you ever been adjudged a juvenile delinquent? If yes, list date(s), place(s), and offense(s) ☐ Yes ☒ No

(19) Have you ever been convicted of a disorderly persons offense in New Jersey or any criminal offense in another jurisdiction where you could have been sentenced up to six months in jail that has not been expunged or sealed? If yes, list date(s), place(s) and offense(s). ☐ Yes ☒ No

(20) Have you ever been convicted of a crime in New Jersey or a criminal offense in another jurisdiction where you could have been sentenced to more than six months in jail that has not been expunged or sealed? If yes, list date(s), place(s) and crime(s) ☐ Yes ☒ No

(21) Do you suffer from a physical defect or disease?

☐ Yes ☒

No

(22) If answer to question 21 is yes, does this make it unsafe for you to handle firearms? If not, explain ☐

Yes ☒ No

(23) Are you an alcoholic?

☐ Yes ☒

No

(24) Have you ever been confined or committed to a mental institution or hospital for treatment or observation of a mental or psychiatric condition on a temporary, interim, or permanent basis? If yes, give the name and location of the institution or hospital and the date(s) of such confinement or commitment.

☐ Yes ☒

No

(25) Are you dependent upon the use of a narcotic(s) or other controlled dangerous substance(s)?

☐ Yes ☒

No

(26) Have you ever been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an inpatient or outpatient basis for any mental or psychiatric condition? If yes, give the name and location of the doctor, psychiatrist, hospital or institution and the date(s) of such occurrence.

☐ Yes ☒ No

(27) Have you ever had a firearms purchaser

identification card, permit to purchase a handgun, permit to carry a handgun or any other firearms license or application refused or revoked in New Jersey or any other state? If yes, explain.

☐ Yes ☒

No

(28) Are you presently, or have you ever been a member of any organization which advocates or approves the commission of acts of force and violence, either to overthrow the Government of the United States or of this State, or which seeks to deny others their rights under the Constitution of either the United States or the State of New Jersey? If yes, list name and address of organization(s). Yes No S.T.S. 033 (Rev. 09/09)

☐ Yes

☒ No

(29) Names, Addresses and Telephone Numbers of two reputable persons who are presently acquainted with the applicant, other than relatives:

A.

B.

I hereby certify that the answers given on this application are complete, true and correct in every particular. I realize that if any of the foregoing answers made by me are false, I am subject to punishment. (30) Signature of Applicant Date of Application (The disclosure of my social security number is voluntary. Without this number, the processing of my application may be delayed. This number is considered confidential.) Falsification of

this form is a crime of the third degree as provided in  
NJS 2C:39-10c.

APPLICANT: DO NOT WRITE BELOW THIS  
SPACE

A non-refundable fee of \$5.00 for a Firearms  
Purchaser Identification Card (Initial Firearms  
Purchaser ID card only) and/or \$2.00 for each Permit  
to Purchase a Handgun, payable to the  
Superintendent of State Police or the Chief of Police  
in the municipality in which you reside, must  
accompany this application

IDENTIFICATION CARD/PERMIT NUMBER(S)

☐ Approved ☐ Disapproved ☐ Granted on Appeal  
Reason for Disapproval

☐ A. CRIMINAL RECORD

☐ B. PUBLIC HEALTH SAFETY AND WELFARE

☐ C. MEDICAL, MENTAL OR ALCOHOLIC  
BACKGROUND

☐ D. NARCOTICS/ DANGEROUS DRUG OFFENSE

☐ E. FALSIFICATION OF APPLICATION

☐ F. DOMESTIC VIOLENCE

☐ G. OTHER (SPECIFY)

This \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_\_

Signature \_\_\_\_\_ Title \_\_\_\_\_

\_\_\_\_\_  
Department of Police \_\_\_\_\_ municipal  
code



162a

Exhibit D

5/31/2018

IMG\_2926.JPG



<https://mail.google.com/mail/u/0/#inbox/163b5c7a9ec40302?projector=1&messagePartId=0.1>

MCP018000980/00000000  
1/2

**APPENDIX K**

Thomas M. Rogers, Esq  
 CARUSO SMITH PICINI, P.C.  
 60 ROUTE 46 EAST  
 Fairfield NJ 07004  
 Phone: 973 667-7000  
 Fax: 973 667 1200

Attorneys for Defendant, Gregory Garcia

STATE OF NEW JERSEY,	Superior Court
	of New Jersey
Plaintiff,	Law Division –
vs.	Criminal Part
	Morris County
GREGORY GARCIA,	Indictment No:
	18-10-00787-1
<u>Defendant.</u>	<b><u>Certification of</u></b>
	<b><u>John P. Delesio</u></b>

I, John P. Delesio, of full age, hereby certify as follows:

1. I am fully familiar with the facts contained herein.
2. I was a Trooper with the New Jersey State Police for twenty-nine (29) years. For fifteen (15) of those years with the New Jersey State Police I served as a sworn member of the Firearms Investigation Unit. My curriculum vitae is attached as **Exhibit A**.
3. The Firearms Investigation Unit of the New Jersey State Police (the “NJSP Firearms Unit”) is

recognized as the lead agency in the State of New Jersey concerning regulatory and criminal investigations of Firearms and Weapons Law with direct access to the Office of the Attorney General.

4. The NJSP Firearms Unit is also responsible for recommending changes to law and procedures in the application process and assists State Legislators when new legislation pertaining to new firearms or weapons law is proposed. I personally made a number of recommendations before a Senate sub-committee hearing when the Assault Firearms bill was proposed by then Senator Russo. A number of these recommendations were accepted and enacted into law.

5. During my time with the NJSP Firearms Unit, I was responsible for overseeing the operations of 400 retail, wholesale/manufacturer State-licensed firearm dealers and undercover investigations. In addition, during my tenure with the NJSP Firearms Unit, I was promoted to Detective Sergeant and assigned to oversee all criminal investigations initiated by the NJSP Firearms Unit detectives before being promoted to the position of Unit Supervisor of the Firearms Investigation Unit in 1990.

6. During my service with the NJSP Firearms Unit, I was cross sworn as a federal agent with the Bureau of Alcohol Tobacco and Firearms ("ATF") and worked closely with ATF on both criminal and regulatory investigations.

7. During my time with ATF, I assisted in drafting federal BATF policy that resolved ongoing issues with federally licensed firearm dealers, which were not properly licensed in New Jersey.

8. Additionally, I am qualified as a Firearms Law & Identification Expert on multiple occasions in the Courts of New Jersey, as well as in the Federal Courts, and have extensive experience in the identification, operation and training of, and with, firearms.

9. Based on my knowledge of, skill, expertise, training and experience with handling and identifying firearms and various calibers of ammunition, .223/.556; .338; .300 Win BLK; and .308 rounds are not exclusively used as ammunition for assault weapons, and are more commonly used as ammunition for bolt-action rifles and other long guns than as ammunition for assault weapons.

10. Furthermore, it is not reasonable to assume from the mere presence of such rounds that such rounds were intended for use in an assault weapon or that the person in possession of these rounds possesses an assault weapon as implied in paragraph 8a of the affidavit in support of the search warrant executed on Mr. Garcia's home. See affidavit and warrant attached as **Exhibit B**.

11. Even if it were reasonable to infer from the presence of these types of rounds that an individual who possesses them also possesses an assault weapon, Mr. Garcia as a municipal police officer is exempt from the prohibition against possession of such weapons. As such, neither the presence of these rounds, nor the possession of firearms capable of firing them is indicative of a crime.

12. Moreover, while rounds may be fired by a high-powered velocity long gun, including those with a

range of at least 1000 yards, these rounds are far more commonly used in more typical long guns that have far shorter ranges. It is not reasonable to assume from the mere presence of these rounds that an individual possesses a high-power/high velocity long gun. Even if it were, possession of such a gun by Mr. Garcia would be legal, assuming such a long gun was legally acquired. As such, neither the presence of these rounds nor the possession of firearm capable of firing them is indicative of a crime.

13. In addition 12-gauge shotgun shells are frequently and exclusively used in connection with shotgun-type firearms, which are not assault weapons nor can they be modified to meet the definition of an assault weapon.

14. I certify that the foregoing statements are true to the best of my knowledge and belief, I am aware that if any of the foregoing statements are found to be willfully false I am subject to punishment.

/s/ John P. Delesio

John P. Delesio

Date: Sept 4, 2020

## APPENDIX L

### **2C:39-3. Prohibited weapons and devices, NJ ST 2C:39-3**

N.J.S.A. 2C:39-3

2C:39-3. Prohibited weapons and devices

a. Destructive devices. Any person who knowingly has in his possession any destructive device is guilty of a crime of the third degree.

b. Sawed-off shotguns. Any person who knowingly has in his possession any sawed-off shotgun is guilty of a crime of the third degree.

c. Silencers. Any person who knowingly has in his possession any firearm silencer is guilty of a crime of the fourth degree.

d. Defaced firearms. Any person who knowingly has in his possession any firearm which has been defaced, except an antique firearm or an antique handgun, is guilty of a crime of the fourth degree.

e. Certain weapons. Any person who knowingly has in his possession any gravity knife, switchblade knife, dagger, dirk, stiletto, billy, blackjack, metal knuckle, sandclub, slingshot, cestus or similar leather band studded with metal filings or razor blades imbedded in wood, ballistic knife, without any explainable lawful purpose, is guilty of a crime of the fourth degree.

f. Dum-dum or armor piercing ammunition. (1) Any person, other than a law enforcement officer or persons engaged in activities pursuant to subsection f. of N.J.S.2C:39-6, who knowingly has in his possession any hollow nose or dum-dum bullet, or (2) any person, other than a collector of firearms or ammunition as curios or relics as defined in Title 18, United States Code, section 921 (a) (13) and has in his possession a valid Collector of Curios and Relics License issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, who knowingly has in his possession any armor piercing ammunition, as defined in subsection gg. of N.J.S.2C:39-1, is guilty of a crime of the fourth degree. For purposes of this section, a collector may possess not more than three examples of each distinctive variation of the ammunition described above. A distinctive variation includes a different head stamp, composition, design, or color.

g. Exceptions.

(1)(a) Nothing in subsection a., b., c., d., e., f., j. or k. of this section shall apply to any member of the Armed Forces of the United States or the National Guard, or except as otherwise provided, to any law enforcement officer while actually on duty or traveling to or from an authorized place of duty, provided that his possession of the prohibited weapon or device has been duly authorized under the applicable laws, regulations or military or law enforcement orders.

(b) Nothing in subsection j. of this section shall apply to a law enforcement officer who possesses and carries while off-duty a large capacity

ammunition magazine capable of holding not more than 17 rounds of ammunition that can be fed continuously and directly into a semi-automatic firearm.

(c) Notwithstanding subparagraph (b) of this paragraph, subsection j. of this section shall not apply to a law enforcement officer who possesses and carries while off-duty a large capacity ammunition magazine capable of holding more than 17 rounds of ammunition that can be fed continuously and directly into a semi-automatic firearm provided the large capacity ammunition magazine is used with a service firearm issued to the officer by the officer's employer for use in the officer's official duties.

(d) Nothing in subsection h. of this section shall apply to any law enforcement officer who is exempted from the provisions of that subsection by the Attorney General. Nothing in this section shall apply to the possession of any weapon or device by a law enforcement officer who has confiscated, seized or otherwise taken possession of said weapon or device as evidence of the commission of a crime or because he believed it to be possessed illegally by the person from whom it was taken, provided that said law enforcement officer promptly notifies his superiors of his possession of such prohibited weapon or device.

(2)(a) Nothing in paragraph (1) of subsection f. of this section shall be construed to prevent a person from keeping such ammunition at his dwelling, premises or other land owned or possessed by him, or from carrying such ammunition from the place of purchase to said dwelling or land, nor shall



paragraph (1) of subsection f. of this section be construed to prevent any licensed retail or wholesale firearms dealer from possessing such ammunition at its licensed premises, provided that the seller of any such ammunition shall maintain a record of the name, age and place of residence of any purchaser who is not a licensed dealer, together with the date of sale and quantity of ammunition sold.

(b) Nothing in paragraph (1) of subsection f. of this section shall be construed to prevent a designated employee or designated licensed agent for a nuclear power plant under the license of the Nuclear Regulatory Commission from possessing hollow nose ammunition while in the actual performance of his official duties, if the federal licensee certifies that the designated employee or designated licensed agent is assigned to perform site protection, guard, armed response or armed escort duties and is appropriately trained and qualified, as prescribed by federal regulation, to perform those duties.

(3) Nothing in paragraph (2) of subsection f. or in subsection j. of this section shall be construed to prevent any licensed retail or wholesale firearms dealer from possessing that ammunition or large capacity ammunition magazine at its licensed premises for sale or disposition to another licensed dealer, the Armed Forces of the United States or the National Guard, or to a law enforcement agency, provided that the seller maintains a record of any sale or disposition to a law enforcement agency. The record shall include the name of the purchasing agency, together with written authorization of the chief of police or highest ranking official of the agency, the name and rank of the purchasing law

enforcement officer, if applicable, and the date, time and amount of ammunition sold or otherwise disposed. A copy of this record shall be forwarded by the seller to the Superintendent of the Division of State Police within 48 hours of the sale or disposition.

(4) Nothing in subsection a. of this section shall be construed to apply to antique cannons as exempted in subsection d. of N.J.S.2C:39-6.

(5) Nothing in subsection c. of this section shall be construed to apply to any person who is specifically identified in a special deer management permit issued by the Division of Fish and Wildlife to utilize a firearm silencer as part of an alternative deer control method implemented in accordance with a special deer management permit issued pursuant to section 4 of P.L.2000, c. 46 (C.23:4-42.6), while the person is in the actual performance of the permitted alternative deer control method and while going to and from the place where the permitted alternative deer control method is being utilized. This exception shall not, however, otherwise apply to any person to authorize the purchase or possession of a firearm silencer.

h. Stun guns. Any person who knowingly has in his possession any stun gun is guilty of a crime of the fourth degree.

i. Nothing in subsection e. of this section shall be construed to prevent any guard in the employ of a private security company, who is licensed to carry a firearm, from the possession of a nightstick when in the actual performance of his official duties, provided

that he has satisfactorily completed a training course approved by the Police Training Commission in the use of a nightstick.

j. Any person who knowingly has in his possession a large capacity ammunition magazine is guilty of a crime of the fourth degree unless the person has registered:

(1) an assault firearm pursuant to section 11 of P.L.1990, c. 32 (C.2C:58-12) and the magazine is maintained and used in connection with participation in competitive shooting matches sanctioned by the Director of Civilian Marksmanship of the United States Department of the Army; or  
(2) a firearm with a fixed magazine capacity or detachable magazine capable of holding up to 15 rounds pursuant to section 7 of P.L.2018, c. 39 (C.2C:39-20).

k. Handcuffs. Any person who knowingly has in his possession handcuffs as defined in P.L.1991, c. 437 (C.2C:39-9.2), under circumstances not manifestly appropriate for such lawful uses as handcuffs may have, is guilty of a disorderly persons offense. A law enforcement officer shall confiscate handcuffs possessed in violation of the law.

l. Bump stock or trigger crank. Any person who knowingly possesses a bump stock as defined in subsection ee. of N.J.S.2C:39-1 or a trigger crank as defined in subsection ff. of N.J.S.2C:39-1, regardless of whether the person is in possession of a firearm, is guilty of a crime of the third degree. Notwithstanding the provisions of N.J.S.2C:1-8 or any other provision of law, a conviction arising out of

this subsection shall not merge with a conviction for possessing an assault firearm in violation of subsection f. of N.J.S.2C:39-5 or a machine gun in violation of subsection a. of N.J.S.2C:39-5 and a separate sentence shall be imposed upon each conviction. Notwithstanding the provisions of N.J.S.2C:44-5 or any other provisions of law, the sentence imposed pursuant to this subsection shall be served consecutively to that imposed for unlawfully possessing an assault firearm in violation of subsection f. of N.J.S.2C:39-5.

m. Covert or undetectable firearms. Any person who knowingly possesses any covert firearm as defined in subsection hh. Of N.J.S.2C:39-1, an undetectable firearm as defined in subsection ii. of N.J.S.2C:39-1, or a firearm enclosed in a container or covering that is designed or modified to allow the firearm to be fired while so enclosed and that disguises or obscures the shape of the firearm such that it does not resemble a handgun, rifle, shotgun, or machine gun is guilty of a crime of the third degree.

n. Firearms without a serial number. Any person who knowingly possesses a firearm manufactured or otherwise assembled using a firearm frame or firearm receiver as defined in subsection k. of N.J.S.2C:39-9 which is not imprinted with a serial number registered with a federally licensed manufacturer including, but not limited to, a firearm manufactured or otherwise assembled from parts purchased or otherwise obtained in violation of subsection k. of N.J.S.2C:39-9, is guilty of a crime of the third degree.

**2C:39-5. Unlawful possession of weapons,  
NJ ST 2C:39-5**

Unlawful possession of weapons.

a. Machine guns. Any person who knowingly has in his possession a machine gun or any instrument or device adaptable for use as a machine gun, without being licensed to do so as provided in N.J.S.2C:58-5, is guilty of a crime of the second degree.

b. Handguns. (1) Any person who knowingly has in his possession any handgun, including any antique handgun, without first having obtained a permit to carry the same as provided in N.J.S.2C:58-4, is guilty of a crime of the second degree. (2) If the handgun is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person it is a crime of the third degree.

c. Rifles and shotguns.

(1) Any person who knowingly has in his possession any rifle or shotgun without having first obtained a firearms purchaser identification card in accordance with the provisions of N.J.S.2C:58-3, is guilty of a crime of the third degree.

(2) Unless otherwise permitted by law, any person who knowingly has in his possession any loaded rifle

or shotgun is guilty of a crime of the third degree.

d. Other weapons. Any person who knowingly has in his possession any other weapon under circumstances not manifestly appropriate for such lawful uses as it may have is guilty of a crime of the fourth degree.

e. Firearms or other weapons in educational institutions.

(1) Any person who knowingly has in his possession any firearm in or upon any part of the buildings or grounds of any school, college, university or other educational institution, without the written authorization of the governing officer of the institution, is guilty of a crime of the third degree, irrespective of whether he possesses a valid permit to carry the firearm or a valid firearms purchaser identification card.

(2) Any person who knowingly possesses any weapon enumerated in paragraphs (3) and (4) of subsection r. of N.J.S.2C:39-1 or any components which can readily be assembled into a firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1 or any other weapon under circumstances not manifestly appropriate for such lawful use as it may have, while in or upon any part of the buildings or grounds of any school, college, university or other educational institution without the written authorization of the governing officer of the institution is guilty of a crime of the fourth degree.

(3) Any person who knowingly has in his possession any imitation firearm in or upon any part of the buildings or grounds of any school, college, university or other educational institution, without the written authorization of the governing officer of

the institution, or while on any school bus is a disorderly person, irrespective of whether he possesses a valid permit to carry a firearm or a valid firearms purchaser identification card.

f. Assault firearms. Any person who knowingly has in his possession an assault firearm is guilty of a crime of the second degree except if the assault firearm is licensed pursuant to N.J.S.2C:58-5; registered pursuant to section 11 of P.L.1990, c. 32 (C.2C:58-12); or rendered inoperable pursuant to section 12 of P.L.1990, c. 32 (C.2C:58-13).

g. (1) The temporary possession of a handgun, rifle or shotgun by a person receiving, possessing, carrying or using the handgun, rifle, or shotgun under the provisions of section 1 of P.L.1992, c. 74 (C.2C:58-3.1) shall not be considered unlawful possession under the provisions of subsection b. or c. of this section.

(2) The temporary possession of a firearm by a person receiving, possessing, carrying or using the firearm under the provisions of section 1 of P.L.1997, c. 375 (C.2C:58-3.2) shall not be considered unlawful possession under the provisions of this section.

h. A person who is convicted of a crime under subsection a., b., f. or j. of this section shall be ineligible for participation in any program of intensive supervision; provided, however, that this provision shall not apply to a crime under subsection b. involving only a handgun which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or

other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

i. A person convicted of violating subsection a., b. or f. of this section shall be sentenced by the court to a term of imprisonment, which shall include the imposition of a minimum term during which the defendant shall be ineligible for parole, if the court finds that the aggravating circumstance set forth in paragraph (5) of subsection a. of N.J.S.2C:44-1 applies. The minimum term of parole ineligibility shall be fixed at five years. The sentencing court shall make a finding on the record as to whether the aggravating circumstance set forth in paragraph (5) of subsection a. of N.J.S.2C:44-1 applies, and the court shall presume that there is a substantial likelihood that the defendant is involved in organized criminal activity if there is a substantial likelihood that the defendant is a member of an organization or group that engages in criminal activity. The prosecution at the sentencing hearing shall have the initial burden of producing evidence or information concerning the defendant's membership in such an organization or group.

j. A violation of subsection a., b., c. or f. of this section by a person who has a prior conviction of any of the crimes enumerated in subsection d. of section 2 of P.L.1997, c. 117 (C.2C:43-7.2) is a first degree crime.



**2C:39-6. Exemptions**

N.J.S.A. 2C:39-6

a. Provided a person complies with the requirements of subsection j. of this section, N.J.S.2C:39-5 does not apply to:

- (1) Members of the Armed Forces of the United States or of the National Guard while actually on duty, or while traveling between places of duty and carrying authorized weapons in the manner prescribed by the appropriate military authorities;
- (2) Federal law enforcement officers, and any other federal officers and employees required to carry firearms in the performance of their official duties;
- (3) Members of the State Police and, under conditions prescribed by the superintendent, members of the Marine Law Enforcement Bureau of the Division of State Police;
- (4) A sheriff, undersheriff, sheriff's officer, prosecutor's detective or investigator, State investigator employed by the Division of Criminal Justice of the Department of Law and Public Safety, investigator employed by the State Commission of Investigation, inspector of the Alcoholic Beverage Control Enforcement Bureau of the Division of State Police in the Department of Law and Public Safety authorized to carry weapons by the Superintendent of State Police, State park police officer, or State conservation police officer;
- (5) Except as hereinafter provided, a State correctional police officer, or a prison or jail warden of any penal institution in this State or the warden's deputies, or an employee of the Department of Corrections engaged in the interstate transportation of convicted offenders, while in the performance of

the employee's duties, and when required to possess the weapon by a superior officer, or a correctional police officer or keeper of a penal institution in this State at all times while in the State of New Jersey, provided the person annually passes an examination approved by the superintendent testing the person's proficiency in the handling of firearms;

(6) A civilian employee of the United States Government under the supervision of the commanding officer of any post, camp, station, base or other military or naval installation located in this State who is required, in the performance of the employee's official duties, to carry firearms, and who is authorized to carry firearms by the commanding officer, while in the actual performance of the employee's official duties;

(7)(a) A regularly employed member, including a detective, of the police department of any county or municipality, or of any State, interstate, municipal or county park police force or boulevard police force, at all times while in the State of New Jersey;

(b) A special law enforcement officer authorized to carry a weapon as provided in subsection b. of section 7 of P.L.1985, c. 439 (C.40A:14-146.14);

(c) An airport security officer or a special law enforcement officer appointed by the governing body of any county or municipality, except as provided in subparagraph (b) of this paragraph, or by the commission, board or other body having control of a county park or airport or boulevard police force, while engaged in the actual performance of the officer's official duties and when specifically authorized by the governing body to carry weapons;

(8) A full-time, paid member of a paid or part-paid

fire department or force of any municipality who is assigned full-time or part-time to an arson investigation unit created pursuant to section 1 of P.L.1981, c. 409 (C.40A:14-7.1) or to the county arson investigation unit in the county prosecutor's office, while either engaged in the actual performance of arson investigation duties or while actually on call to perform arson investigation duties and when specifically authorized by the governing body or the county prosecutor, as the case may be, to carry weapons. Prior to being permitted to carry a firearm, a member shall take and successfully complete a firearms training course administered by the Police Training Commission pursuant to P.L.1961, c. 56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(9) A juvenile correctional police officer in the employment of the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c. 284 (C.52:17B-170) subject to the regulations promulgated by the commission;

(10) A designated employee or designated licensed agent for a nuclear power plant under license of the Nuclear Regulatory Commission, while in the actual performance of the person's official duties, if the federal licensee certifies that the designated employee or designated licensed agent is assigned to perform site protection, guard, armed response or armed escort duties and is appropriately trained and qualified, as prescribed by federal regulation, to perform those duties. Any firearm utilized by an employee or agent for a nuclear power plant

pursuant to this paragraph shall be returned each day at the end of the employee's or agent's authorized official duties to the employee's or agent's supervisor. All firearms returned each day pursuant to this paragraph shall be stored in locked containers located in a secure area;

(11) A county correctional police officer at all times while in the State of New Jersey, provided the officer annually passes an examination approved by the superintendent testing the officer's proficiency in the handling of firearms;

(12) A county prosecutor, assistant prosecutor, federal prosecutor, municipal prosecutor, Attorney General, assistant attorney general, deputy attorney general and federal, State, county, or municipal court judge, including a judge of the Tax Court and any other court of limited jurisdiction established, altered, or abolished by law, a judge of the Office of Administrative Law, a judge of the Division of Workers' Compensation at all times while in this State. Prior to being permitted to carry a firearm, a person subject to this paragraph shall take and successfully complete a firearms training course administered by the Police Training Commission pursuant to P.L.1961, c. 56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a handgun or similar weapon prior to being permitted to carry a firearm. The superintendent may issue identification cards indicating that such a person is permitted to carry a handgun pursuant to this paragraph.

b. Subsections a., b. and c. of N.J.S.2C:39-5 do not apply to:

(1) A law enforcement officer employed by a governmental agency outside of the State of New Jersey while actually engaged in the officer's official duties, provided, however, that the officer has first notified the superintendent or the chief law enforcement officer of the municipality or the prosecutor of the county in which the officer is engaged; or

(2) A licensed dealer in firearms and the dealer's registered employees during the course of their normal business while traveling to and from their place of business and other places for the purpose of demonstration, exhibition or delivery in connection with a sale, provided, however, that the weapon is carried in the manner specified in subsection g. of this section.

c. Provided a person complies with the requirements of subsection j. of this section, subsections b. and c. of N.J.S.2C:39-5 do not apply to:

(1) A special agent of the Division of Taxation who has passed an examination in an approved police training program testing proficiency in the handling of any firearm which the agent may be required to carry, while in the actual performance of the agent's official duties and while going to or from the agent's place of duty, or any other police officer, while in the actual performance of the officer's official duties;

(2) A State deputy conservation police officer or a full-time employee of the Division of Parks and Forestry having the power of arrest and authorized to carry weapons, while in the actual performance of the officer's official duties;

- (3) (Deleted by amendment, P.L.1986, c. 150.)
- (4) A court attendant appointed by the sheriff of the county or by the judge of any municipal court or other court of this State, while in the actual performance of the attendant's official duties;
- (5) A guard employed by any railway express company, banking or building and loan or savings and loan institution of this State, while in the actual performance of the guard's official duties;
- (6) A member of a legally recognized military organization while actually under orders or while going to or from the prescribed place of meeting and carrying the weapons prescribed for drill, exercise or parade;
- (7) A municipal humane law enforcement officer, authorized pursuant to subsection d. of section 25 of P.L.2017, c. 331 (C.4:22-14.1), or humane law enforcement officer of a county society for the prevention of cruelty to animals authorized pursuant to subsection c. of section 29 of P.L.2017, c. 331 (C.4:22-14.5), while in the actual performance of the officer's duties;
- (8) An employee of a public utilities corporation actually engaged in the transportation of explosives;
- (9) A railway policeman, except a transit police officer of the New Jersey Transit Police Department, at all times while in the State of New Jersey, provided that the person has passed an approved police academy training program consisting of at

least 280 hours. The training program shall include, but need not be limited to, the handling of firearms, community relations, and juvenile relations;

(10) A campus police officer appointed under P.L.1970, c. 211 (C.18A:6-4.2 et seq.) at all times. Prior to being permitted to carry a firearm, a campus police officer shall take and successfully complete a firearms training course administered by the Police Training Commission, pursuant to P.L.1961, c. 56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(11) (Deleted by amendment, P.L.2003, c. 168).

(12) A transit police officer of the New Jersey Transit Police Department, at all times while in the State of New Jersey, provided the officer has satisfied the training requirements of the Police Training Commission, pursuant to subsection c. of section 2 of P.L.1989, c. 291 (C.27:25-15.1);

(13) A parole officer employed by the State Parole Board at all times. Prior to being permitted to carry a firearm, a parole officer shall take and successfully complete a basic course for regular police officer training administered by the Police Training Commission, pursuant to P.L.1961, c. 56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(14) A Human Services police officer at all times while in the State of New Jersey, as authorized by

the Commissioner of Human Services;

(15) A person or employee of any person who, pursuant to and as required by a contract with a governmental entity, supervises or transports persons charged with or convicted of an offense;

(16) A housing authority police officer appointed under P.L.1997, c. 210 (C.40A:14-146.19 et al.) at all times while in the State of New Jersey; or

(17) A probation officer assigned to the "Probation Officer Community Safety Unit" created by section 2 of P.L.2001, c. 362 (C.2B:10A-2) while in the actual performance of the probation officer's official duties. Prior to being permitted to carry a firearm, a probation officer shall take and successfully complete a basic course for regular police officer training administered by the Police Training Commission, pursuant to P.L.1961, c. 56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm.

d. (1) Subsections c. and d. of N.J.S.2C:39-5 do not apply to antique firearms, provided that the antique firearms are unloaded or are being fired for the purposes of exhibition or demonstration at an authorized target range or in another manner approved in writing by the chief law enforcement officer of the municipality in which the exhibition or demonstration is held, or if not held on property under the control of a particular municipality, the superintendent.

(2) Subsection a. of N.J.S.2C:39-3 and subsection d.



of N.J.S.2C:39-5 do not apply to an antique cannon that is capable of being fired but that is unloaded and immobile, provided that the antique cannon is possessed by (a) a scholastic institution, a museum, a municipality, a county or the State, or (b) a person who obtained a firearms purchaser identification card as specified in N.J.S.2C:58-3.

(3) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to an unloaded antique cannon that is being transported by one eligible to possess it, in compliance with regulations the superintendent may promulgate, between its permanent location and place of purchase or repair.

(4) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to antique cannons that are being loaded or fired by one eligible to possess an antique cannon, for purposes of exhibition or demonstration at an authorized target range or in the manner as has been approved in writing by the chief law enforcement officer of the municipality in which the exhibition or demonstration is held, or if not held on property under the control of a particular municipality, the superintendent, provided that performer has given at least 30 days' notice to the superintendent.

(5) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to the transportation of unloaded antique cannons directly to or from exhibitions or demonstrations authorized under paragraph (4) of subsection d. of this section, provided that the transportation is in compliance with safety regulations the superintendent may promulgate. Those subsections shall not apply to

transportation directly to or from exhibitions or demonstrations authorized under the law of another jurisdiction, provided that the superintendent has been given 30 days' notice and that the transportation is in compliance with safety regulations the superintendent may promulgate.

e. Nothing in subsections b., c., and d. of N.J.S.2C:39-5 shall be construed to prevent a person keeping or carrying about the person's place of business, residence, premises or other land owned or possessed by the person, any firearm, or from carrying the same, in the manner specified in subsection g. of this section, from any place of purchase to the person's residence or place of business, between the person's dwelling and place of business, between one place of business or residence and another when moving, or between the person's dwelling or place of business and place where the firearms are repaired, for the purpose of repair. For the purposes of this section, a place of business shall be deemed to be a fixed location.

f. Nothing in subsections b., c., and d. of N.J.S.2C:39-5 shall be construed to prevent:

(1) A member of any rifle or pistol club organized in accordance with the rules prescribed by the National Board for the Promotion of Rifle Practice, in going to or from a place of target practice, carrying firearms necessary for target practice, provided that the club has filed a copy of its charter with the superintendent and annually submits a list of its members to the superintendent and provided further that the firearms are carried in the manner specified in subsection g. of this section;

(2) A person carrying a firearm or knife in the woods or fields or upon the waters of this State for the purpose of hunting, target practice or fishing, provided that the firearm or knife is legal and appropriate for hunting or fishing purposes in this State and the person has in the person's possession a valid hunting license, or, with respect to fresh water fishing, a valid fishing license;

(3) A person transporting any firearm or knife while traveling:

(a) Directly to or from any place for the purpose of hunting or fishing, provided the person has in the person's possession a valid hunting or fishing license; or

(b) Directly to or from any target range, or other authorized place for the purpose of practice, match, target, trap or skeet shooting exhibitions, provided in all cases that during the course of the travel all firearms are carried in the manner specified in subsection

g. of this section and the person has complied with all the provisions and requirements of Title 23 of the Revised Statutes and any amendments thereto and all rules and regulations promulgated thereunder; or

(c) In the case of a firearm, directly to or from any exhibition or display of firearms which is sponsored by any law enforcement agency, any rifle or pistol club, or any firearms collectors club, for the purpose of displaying the firearms to the public or to the members of the organization or club, provided, however, that not less than 30 days prior to the exhibition or display, notice of the exhibition or display shall be given to the Superintendent of the

State Police by the sponsoring organization or club, and the sponsor has complied with any reasonable safety regulations the superintendent may promulgate. Any firearms transported pursuant to this section shall be transported in the manner specified in subsection g. of this section;

(4) A person from keeping or carrying about a private or commercial aircraft or any boat, or from transporting to or from the aircraft or boat for the purpose of installation or repair of a visual distress signaling device approved by the United States Coast Guard.

g. Any weapon being transported under paragraph (2) of subsection b., subsection e., or paragraph (1) or (3) of subsection f. of this section shall be carried unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile in which it is being transported, and in the course of travel shall include only deviations as are reasonably necessary under the circumstances.

h. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any employee of a public utility, as defined in R.S.48:2-13, doing business in this State or any United States Postal Service employee, while in the actual performance of duties which specifically require regular and frequent visits to private premises, from possessing, carrying or using any device which projects, releases or emits any substance specified as being noninjurious to canines or other animals by the Commissioner of Health and which immobilizes only on a temporary basis and produces only temporary physical discomfort through being vaporized or otherwise dispensed in

the air for the sole purpose of repelling canine or other animal attacks.

The device shall be used solely to repel only those canine or other animal attacks when the canines or other animals are not restrained in a fashion sufficient to allow the employee to properly perform the employee's duties.

Any device used pursuant to this act shall be selected from a list of products, which consist of active and inert ingredients, permitted by the Commissioner of Health.

i. (1) Nothing in N.J.S.2C:39-5 shall be construed to prevent any person who is 18 years of age or older and who has not been convicted of a crime, from possession for the purpose of personal self-defense of one pocket-sized device which contains and releases not more than three-quarters of an ounce of chemical substance not ordinarily capable of lethal use or of inflicting serious bodily injury, but rather, is intended to produce temporary physical discomfort or disability through being vaporized or otherwise dispensed in the air. Any person in possession of any device in violation of this subsection shall be deemed and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine of not less than \$100.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, nothing in N.J.S.2C:39-5 shall be construed to prevent a health inspector or investigator operating pursuant to the provisions of section 7 of P.L.1977, c. 443 (C.26:3A2-25) or a building inspector from possessing a device which is capable of releasing more than three-quarters of an ounce of a chemical substance, as described in paragraph (1) of this

subsection, while in the actual performance of the inspector's or investigator's duties, provided that the device does not exceed the size of those used by law enforcement.

j. A person shall qualify for an exemption from the provisions of N.J.S.2C:39-5, as specified under subsections a. and c. of this section, if the person has satisfactorily completed a firearms training course approved by the Police Training Commission. The exempt person shall not possess or carry a firearm until the person has satisfactorily completed a firearms training course and shall annually qualify in the use of a revolver or similar weapon. For purposes of this subsection, a "firearms training course" means a course of instruction in the safe use, maintenance and storage of firearms which is approved by the Police Training Commission. The commission shall approve a firearms training course if the requirements of the course are substantially equivalent to the requirements for firearms training provided by police training courses which are certified under section 6 of P.L.1961, c. 56 (C.52:17B-71). A person who is specified in paragraph (1), (2), (3), or (6) of subsection a. of this section shall be exempt from the requirements of this subsection.

k. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any financial institution, or any duly authorized personnel of the institution, from possessing, carrying or using for the protection of money or property, any device which projects, releases or emits tear gas or other substances intended to produce temporary physical discomfort or temporary identification.

l. Nothing in subsection b. of N.J.S.2C:39-5 shall be construed to prevent a law enforcement officer who retired in good standing, including a retirement because of a disability pursuant to section 6 of P.L.1944, c. 255 (C.43:16A-6), section 7 of P.L.1944, c. 255 (C.43:16A-7), section 1 of P.L.1989, c. 103 (C.43:16A-6.1), or any substantially similar statute governing the disability retirement of federal law enforcement officers, provided the officer was a regularly employed, full-time law enforcement officer for an aggregate of four or more years prior to the officer's disability retirement and further provided that the disability which constituted the basis for the officer's retirement did not involve a certification that the officer was mentally incapacitated for the performance of the officer's usual law enforcement duties and any other available duty in the department which the officer's employer was willing to assign to the officer or does not subject that retired officer to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3 which would disqualify the retired officer from possessing or carrying a firearm, who semi-annually qualifies in the use of the handgun the officer is permitted to carry in accordance with the requirements and procedures established by the Attorney General pursuant to subsection j. of this section and pays the actual costs associated with those semi-annual qualifications, who is 75 years of age or younger, and who was regularly employed as a full-time member of the State Police;  
a full-time member of an interstate police force; a full-time member of a county or municipal police department in this State;  
a full-time member of a State law enforcement agency; a full-time sheriff, undersheriff or sheriff's

officer of a county of this State; a full-time State or county correctional police officer; a full-time State correctional police officer or county correctional police officer; a full-time State or county park police officer; a full-time special agent of the Division of Taxation; a fulltime Human Services police officer; a full-time transit police officer of the New Jersey Transit Police Department; a full-time campus police officer exempted pursuant to paragraph (10) of subsection c. of this section; a full-time State conservation police officer exempted pursuant to paragraph (4) of subsection a. of this section; a full-time Palisades Interstate Park officer appointed pursuant to R.S.32:14-21; a full-time Burlington County Bridge police officer appointed pursuant to section 1 of P.L.1960, c. 168 (C.27:19-36.3); a full-time housing authority police officer exempted pursuant to paragraph (16) of subsection c. of this section; a full-time juvenile correctional police officer exempted pursuant to paragraph (9) of subsection a. of this section; a fulltime parole officer exempted pursuant to paragraph (13) of subsection c. of this section; a full-time railway policeman exempted pursuant to paragraph (9) of subsection c. of this section; a full-time county prosecutor's detective or investigator; a full-time federal law enforcement officer; or is a qualified retired law enforcement officer, as used in the federal "Law Enforcement Officers Safety Act of 2004," Pub.L. 108-277, domiciled in this State from carrying a handgun in the same manner as law enforcement officers exempted under paragraph (7) of subsection a. of this section. A retired law enforcement officer shall be entitled to carry a handgun pursuant to this subsection under the following conditions:

- (1) The retired law enforcement officer shall make



application in writing to the Superintendent of State Police for approval to carry a handgun every two years. A renewal application shall be submitted in the same manner.

(2) Upon receipt of the written application of the retired law enforcement officer, the superintendent shall request a verification of service from the chief law enforcement officer of the organization in which the retired officer was last regularly employed as a full-time law enforcement officer prior to retiring. The verification of service shall include:

- (a) The name and address of the retired officer;
- (b) The date that the retired officer was hired and the date that the officer retired;
- (c) A list of all handguns known to be registered to that officer;
- (d) A statement that, to the reasonable knowledge of the chief law enforcement officer, the retired officer is not subject to any of the restrictions set forth in subsection c. of N.J.S.2C:58-3; and
- (e) A statement that the officer retired in good standing.

(3) If the superintendent approves a retired officer's application or reapplication to carry a handgun pursuant to the provisions of this subsection, the superintendent shall notify in writing the chief law enforcement officer of the municipality wherein that retired officer resides. In the event the retired officer resides in a municipality which has no chief law enforcement officer or law enforcement agency, the superintendent shall maintain a record of the approval.

(4) The superintendent shall issue to an approved

retired officer an identification card permitting the retired officer to carry a handgun pursuant to this subsection. This identification card shall be valid for two years from the date of issuance and shall be valid throughout the State. The identification card shall not be transferable to any other person. The identification card shall be carried at all times on the person of the retired officer while the retired officer is carrying a handgun. The retired officer shall produce the identification card for review on the demand of any law enforcement officer or authority.

(5) Any person aggrieved by the denial of the superintendent of approval for a permit to carry a handgun pursuant to this subsection may request a hearing in the Superior Court of New Jersey in the county in which the person resides by filing a written request for a hearing within 30 days of the denial. Copies of the request shall be served upon the superintendent and the county prosecutor. The hearing shall be held within 30 days of the filing of the request, and no formal pleading or filing fee shall be required. Appeals from the determination of the hearing shall be in accordance with law and the rules governing the courts of this State.

(6) A judge of the Superior Court may revoke a retired officer's privilege to carry a handgun pursuant to this subsection for good cause shown on the application of any interested person. A person who becomes subject to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3 shall surrender, as prescribed by the superintendent, the person's identification card issued under paragraph (4) of this subsection to the chief law enforcement officer of the municipality wherein

the person resides or the superintendent, and shall be permanently disqualified to carry a handgun under this subsection.

(7) The superintendent may charge a reasonable application fee to retired officers to offset any costs associated with administering the application process set forth in this subsection.

m. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent duly authorized personnel of the New Jersey Division of Fish and Wildlife, while in the actual performance of duties, from possessing, transporting or using any device that projects, releases or emits any substance specified as being non-injurious to wildlife by the Director of the Division of Animal Health in the Department of Agriculture, and which may immobilize wildlife and produces only temporary physical discomfort through being vaporized or otherwise dispensed in the air for the purpose of repelling bear or other animal attacks or for the aversive conditioning of wildlife.

n. Nothing in subsection b., c., d. or e. of N.J.S.2C:39-5 shall be construed to prevent duly authorized personnel of the New Jersey Division of Fish and Wildlife, while in the actual performance of duties, from possessing, transporting or using hand held pistol-like devices, rifles or shotguns that launch pyrotechnic missiles for the sole purpose of frightening, hazing or aversive conditioning of nuisance or depredating wildlife; from possessing, transporting or using rifles, pistols or similar devices for the sole purpose of chemically immobilizing wild or non-domestic animals; or, provided the duly

authorized person complies with the requirements of subsection j. of this section, from possessing, transporting or using rifles or shotguns, upon completion of a Police Training Commission approved training course, in order to dispatch injured or dangerous animals or for non-lethal use for the purpose of frightening, hazing or aversive conditioning of nuisance or depredating wildlife.