

No. 20-1419

In the Supreme Court of the United States

REB RUSSELL, II,

Petitioners,

v.

STATE OF NEW JERSEY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR
COURT OF NEW JERSEY, APPELLATE DIVISION

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

1. Petitioner Reb Russell, II filed an application for a permit to carry a handgun with the New Jersey State Police on March 29, 2019. pursuant to N.J. Stat. Ann. § 2C:58-4c. Supp. App. 1a. That statute prohibits the approval of a permit to carry a handgun “unless the applicant demonstrates that he. . . has a justifiable need to carry a handgun.”

Petitioner lives in Pennsylvania. Supp. App. 1a. He has a carry permit in that state. Supp. App. 20a. He applied for a permit in New Jersey because he spends several days a week there to visit with his girlfriend and parents. Supp. App. 20a.

On June 4, 2019, Lieutenant Stephen Mazzagatti of the New Jersey State Police initially approved the application. Supp. App. 17a. Since, pursuant to N.J. Stat. Ann. § 2C:58-4(d), only a Superior Court judge may issue a carry permit, the matter was forwarded to the Hunterdon County Superior Court, Criminal Part. Supp. App. 19a-23a.

2. Judge Angela F. Borkowski conducted an evidentiary hearing on July 24, 2019. Supp. App. 96a. Petitioner appeared *pro se* at the hearing. He testified that he required a carry permit in New Jersey because his ex-wife is physically and verbally abusive and that she suffered from borderline personality disorder. Supp. App. 106a. Petitioner provided no documentation of his allegations about his ex-wife, including any medical records or police reports. It is undisputed that he never sought an order of protection against her, or reported her to the police. Petitioner testified that he did not do these things because he was embarrassed

to do so because he is a man, an ex-marine, and a football player. Supp. App. 106a.

Petitioner and his ex-wife share joint custody of their children. Supp. App. 104a. He acknowledged that she has never attacked Petitioner, though he claimed that she has threatened him during custody exchanges. Supp. App. 104a. The last threat occurred about one year before the hearing. Since then, Petitioner had not spoken to her when he picks up their children. Supp. App. 107a. Petitioner did not present any evidence regarding whether his ex-wife has any weapons. Supp. App. 108a. He acknowledged that she has never approached him with a weapon. Supp. App. 108a.

Although Petitioner's ex-wife lives in Doylestown, Pennsylvania, he stated that he needed the permit in New Jersey. Supp. App. 102a. The court asked Petitioner if his ex-wife ever followed him into New Jersey. Petitioner could not present any evidence of that, but claimed that this did not mean that she had not done so and expressed concern she knows where his parents live. Supp. App. 103a. Though unable to point to any specific threat, Petitioner testified that he feels more vulnerable in New Jersey because his ex-wife knows that he has a permit to carry in Pennsylvania, but not New Jersey. Supp. App. 105a.

At no point in the hearing did Petitioner argue that New Jersey's permit requirement for carrying a firearm violated his right to bear arms under the United States Constitution.

At the conclusion of the hearing, Judge Borkowski denied the permit application, finding that Appellant

failed to establish that he met the statutory test in the State. Supp. App. 121a. She issued a written decision detailing her findings of fact and conclusions of law on July 25, 2019. App. 15-26.

3. Petitioner, represented by counsel, appealed to the Superior Court of New Jersey, Appellate Division. Petitioner did not raise any Second Amendment claims on appeal. Instead, he raised four state-law-based legal arguments:

- The Trial Court Erred in Finding that Plaintiff Failed to Show a Justifiable Need.
- More Deference Should Have Been Granted to the New Jersey State Police Superintendent.
- The Trial Court Failed to Consider All the Appropriate Facts Presented by Plaintiff.
- Plaintiff Had Not Retained Counsel Which Was To His Detriment and Ultimately Hindered His Ability to Properly Articulate His Argument.

[Supp. App. 3a]

Petitioner's reply brief raised the following additional points:

- The State Improperly Suggests that there is No Legal Authority to Support the Argument that Pro Se Applicants Should be Advised of their Rights During a Carry Permit Hearing.
- The State Improperly Suggests that Pro Se Applicants Should be Treated as if they Were Experienced Counsel.

[Supp. App. 46a].

On June 25, 2020, the Superior Court of New Jersey, Appellate Division, affirmed the trial court's conclusion that Petitioner failed to meet the statutory justifiable need standard. App. 14. The Appellate Division did not address whether the justifiable need requirement for the issuance of a carry permit violated the Second Amendment, as this issue was never presented.

4. Petitioner petitioned for certification to the New Jersey Supreme Court. He presented two questions for the court's consideration:

- Is Due Process and fundamental fairness denied when a law enforcement official fails to fully investigate an applicant resulting in “no deference” of a superintendent's decision to approve an application?
- Should a matter be remanded for a full investigation to be performed (rather than the application being denied) when a law enforcement official fails to fully investigate a permit application's qualifications as mandated under [N.J. Stat. Ann. §] 2C:58-4 and [N.J. Admin. Code §] 13:54-2.5?

[Supp. App. 59a].

In the “Error(s) Complained Of” section of his petition for certification, petitioner claimed: “The Court(s) Below Erred by Finding That Denial Of An Application Is Proper When The Investigative Authority Fails To Conduct A full Investigation As Required By Law,

When the Proper Remedy Is Remand For The Investigative Authority to Perform Its Statutorily-Mandated Duty So That Due Process Is Fulfilled.” (Supp. App. 60a). In other words, the only constitutional claim that Petitioner had ever presented to the New Jersey Supreme Court is one based on due process.

Petitioner’s sole reference to the Second Amendment through three levels of State court litigation is a passing reference in a single sentence on page 11 of his 12-page petition for certification to the New Jersey Supreme Court: “Presently at issue is the interest of justice regarding the Due Process and fundamental fairness afforded licensing applications, as well as, ultimately, the constitutional right to keep and bear arms since the license at issue provides the means by which citizens may exercise that fundamental, individual, constitutional right.” Supp. App.68a.

The New Jersey Supreme Court denied Petitioner’s request for certification on November 2, 2020. App. 27.

5. Petitioner filed a Petition for Writ of Certiorari to this Court on April 2, 2021. The instant Petition is the first time that Petitioner has substantively argued that the justifiable need requirement of New Jersey’s statute violates the Second Amendment. No courts below have ruled on this issue in this case.

REASONS FOR DENYING THE PETITION

This Court should decline to exercise jurisdiction because petitioner did not present any Second Amendment claims to the trial court or to the appellate court whose decision he now seeks certiorari. This Court has

“almost unfailingly refused to consider any federal law challenge to a state court decision” that was not “addressed by or properly presented to the state court that rendered the decision we have been asked to review,” *Howell v. Mississippi*, 543 U. S. 440, 445 (2003), and it should do the same here. Even if this Court had jurisdiction, it should hold this case pending review of a case raising a substantially similar question in *New York State Rifle & Pistol Association Inc. et.al. v. Keith M. Corlett*, No. 20-843.

I. THIS COURT SHOULD DECLINE JURISDICTION BECAUSE PETITIONER DID NOT RAISE A SECOND AMENDMENT CHALLENGE AT THE STATE LEVEL.

Although the petition is entirely based on the Second Amendment, Petitioner never raised that issue below, and the New Jersey courts never ruled upon it. This Court thus lacks jurisdiction to review the questions presented.

28 U.S.C. § 1257(a) gives this Court the power to review “final judgments or decrees rendered by the highest court of a State in which a decision could be had . . . where any . . . right is *specially set up or claimed* under the Constitution of the treaties or the statutes . . . of the United States.” But here, the right petitioner claims under the Second Amendment was not “specifically set up or claimed” in the courts below. Petitioner made no Second Amendment claim before the trial court, nor to the Superior Court of New Jersey Appellate Division. Instead, Petitioner only ad-

vanced state law claims—namely, that he met the requirements for the permit, or that an inadequate investigation was conducted below.

Therefore, both of these courts, when ruling on the merits, did not address the Second Amendment. Petitioner’s brief for certification before the New Jersey Supreme Court similarly did not raise the Second Amendment as a question presented, or in its substantive argument. Petitioner’s only mention of the Second Amendment is in passing, in a single sentence in his brief. When the New Jersey Supreme Court denied review in a single page order, it also did not address the Second Amendment. There is no ambiguity that Petitioner never presented, and thus the courts below did not consider or rule upon, the Second Amendment claim he now advances.

This Court has “almost unfailingly refused to consider any federal-law challenge to a state-court decision unless the federal claim was either addressed by or properly presented to the state court that rendered the decision we have been asked to review.” *Howell v. Mississippi*, 543 U. S. 440, 443 (2005). In these circumstances, this Court has a “long line of cases clearly stating” that the failure to present a federal claim in state court is jurisdictional. *Howell*, 543 U.S. at 445; *Lee v. Kemna*, 534 U.S. 362, 388 (2002); *Exxon Corp. v. Eagerton*, 462 U.S. 176, 181, n.3 (1983); *Cardinale v. Louisiana*, 394 U.S. 437, 438-39 (1969). As the *Cardinale* Court noted, the Judiciary Act of 1789 vests the Supreme Court with no jurisdiction unless a federal question was raised and decided in the state court below. “If both of these do not appear on the record, the

appellate jurisdiction fails.” *Cardinale*, 394 U.S. at 438 (citing *Oswings v. Norwoods Lessee*, 5 Cranch 344 (1809)). That is true here.

The burden of proving that the issue was properly presented rests on the petitioner. See *Adams v. Robertson*, 520 U.S. 83, 86–87 (1997) (dismissing writ of certiorari as improvidently granted because “petitioners have failed to establish that they properly presented the issue to [the state] court”). Here, the decisions of the trial court and the appellate division, as well as the denial of certification by the New Jersey Supreme Court, are all devoid of references to Second Amendment claims. Thus, “when, as here, the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary.” *Street v. New York*, 394 U.S. 576, 582 (1969). Petitioners have made no such showing.

Prudential reasons also favor denial of certiorari. As the *Cardinale* Court noted, there are “sound reasons” to reject petitions where the question presented was not raised below. 394 U.S. at 439. “Questions not raised below are those on which the record is very likely to be inadequate, since it certainly was not compiled with those questions in mind.” *Id.* Although this Court has reserved “only in exceptional cases, and then only in cases coming from the federal courts, that it considers questions urged by a petitioner or appellant not pressed or passed upon in the courts below,” *McGoldrick v. Compagnie Generale Transatlantique*,

309 U.S. 430, 434 (1940), this case is neither an exceptional one nor one that came from the federal courts.

When, as here, a state statute is challenged, the requirement that the challenge be raised in state courts below is even more crucial. “[I]t is important that state courts be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their constitutionality.” *Cardinale*, 394 U.S. at 439. The Court added that it is possible that “the issue may be blocked by an adequate state ground,” and although “States are not free to avoid constitutional issues on inadequate state grounds, they should be given the first opportunity to consider them.” *Id.* After all, as this Court has repeatedly admonished, comity requires that challenges first be presented to the state court, as “‘it would be unseemly in our dual system of government’ to disturb the finality of state judgments on a federal ground that the state court did not have occasion to consider.” *Adams*, 520 U.S. at 90 (quoting *Webb v. Webb*, 451 U.S. 493, 500 (1981)).

That the state court presentation and review requirement is critical is evident in *Illinois v. Gates*, 462 U.S. 213 (1983), where this Court requested—after briefing and argument—the parties to address an additional question presented the application of the exclusionary rule to a Fourth Amendment case. But after review of the record, the Court concluded that this additional question “was not presented to the Illinois courts and, accordingly,” could not be reviewed by the Court. *Id.* at 217. The Court so held even though the

plaintiffs in *Gates* “expressly raised, at every level of the Illinois judicial system, the claim that the Fourth Amendment had been violated by the actions of the Illinois police and that the evidence seized by the officers should be excluded from their trial.” *Id.* at 220. However, because the State—which petitioned for certiorari—did not “raise[] or address[] the question whether the federal exclusionary rule should be modified” in the courts below, this Court could not review the issue. *Id.* (“Whether the ‘not pressed or passed upon below’ rule is jurisdictional, as our earlier decisions indicate, or prudential, as several of our later decisions assume, nor whether its character might be different in cases like this from its character elsewhere, we need not decide.”). In the instant petition, no party raised the Second Amendment issue in the state courts below.

Whether this Court relies upon jurisdictional or prudential grounds, the result should be the same: the petition should be denied due to petitioner’s failure to present his Second Amendment claim to the very state court whose judgement he now seeks to reverse.

II. IN THE ALTERNATIVE, THIS PETITION SHOULD BE HELD PENDING *CORLETT*.

The jurisdictional defect in this case requires denial of the petition. But even if the defect did not exist, this Court should not grant this petition because a similar question is presented in a case where certiorari has already been granted.

On April 26, 2021, this Court granted a petition for a writ of certiorari in *New York State Rifle & Pistol Association Inc. et.al. v. Keith M. Corlett*, No. 20-843.

The Court limited the grant to the following question: “Whether the State’s denial of petitioners’ applications for concealed carry-licenses for self-defense violated the Second Amendment.” That case is pending this Court’s review.

The resolution of *Corlett* would at the very least guide the decision in this case, which similarly asks this Court to determine “Whether the Second Amendment protects the right to carry arms outside of the home for self-defense” and “Whether the government may deny law-abiding citizens their exercise of the right to carry a handgun outside of their homes by conditioning the exercise of the right on showings of need.” Pet. i. The statute under challenge in *Corlett* limits the issuance of a right to carry “when proper cause exists for the issuance thereof.” N.Y. Penal Law § 400.00(2)(f). The New Jersey statute challenged by petitioner has a similar standard. It prohibits the approval of a permit to carry a handgun “unless the applicant demonstrates that he. . . has a justifiable need to carry a handgun.” N.J. Stat. Ann. § 2C:58-4.

Since *Corlett* presents a similar question as this case, this Court should place this case on hold. After the *Corlett* is decided, the Court can then issue an order to dispose of the matters in light of the Court’s decision in that case.

CONCLUSION

For these reasons, this Court should deny the petition.

Respectfully submitted.

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July 15, 2021

SUPPLEMENTAL APPENDIX

1a
SUPPLEMENTAL APPENDIX A

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-005414-18 T2

IN RE CARRY PERMIT FOR REB
RUSSELL, II.

:
: ON APPEAL FROM:
:
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: CRIMINAL PART
: HUNTERDON COUNTY
:
: Sat Below:
: Hon. Angela F. Borkowski, J.S.C.
:
:

LETTER BRIEF AND APPENDIX
FOR
APPELLANT REB RUSSELL, II

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October 25, 2019

Honorable Judges, Appellate Division
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 006
Trenton, NJ 08625

Re: In Re Carry Permit for Reb Russell, II
Docket No. A-005414-18 T2

Your Honors:

Pursuant to R. 2:6-2(b), kindly accept this letter in lieu
of a formal brief in support of plaintiff's appeal.

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PRELIMINARY STATEMENT

Plaintiff-appellant, Reb Russell, II (herein after "plaintiff") appeals a written decision from July 25, 2019 denying his application for a carrying permit for a handgun. Although plaintiff attempted to present specific facts demonstrating a justifiable need to carry a handgun it is the plaintiff's position that, 1) the trial court erred in finding that plaintiff failed to show a justifiable need for a handgun, 2) more deference should have been granted to the New Jersey State Police Superintendent, 3) the trial court failed to consider all the facts presented by plaintiff and 4) plaintiff had not retained counsel which was to his detriment and ultimately hindered his ability to properly articulate his arguments. Plaintiff submits that the carrying permit be granted or in the alternative, the matter be remanded for further proceedings.

PROCEDURAL HISTORY

On March 29, 2019 plaintiff filed an application to carry a handgun with the New Jersey State Police (Pa1). The application was approved on June 4, 2019, by Lieutenant Stephen Mazzagatti acting on behalf of the Superintendent of the New Jersey State Police (Pa1-2). Subsequently, this application was submitted to

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the Hunterdon County Superior Court, Criminal Division (Pa1-7). A hearing was conducted on July 24, 2019, in front of the Honorable Angela F. Borkowski, J.S.C. who denied the application at the conclusion of the hearing (1T¹). Additionally, Judge Borkowski issued a written decision on July 25, 2019 denying the application based on the lack of justifiable need (Pa8-16).

On August 14, 2019, plaintiff filed Notice of Appeal (Pa17). On August 30, 2019, plaintiff filed an Amended Notice of Appeal (Pa20).

STATEMENT OF FACTS

Plaintiff officially resides in Doylestown, Pennsylvania and is currently employed for Jazz Pharmaceuticals (1T:4). Plaintiff is a nationwide certified firearms instructor and instructs both in New Jersey and Pennsylvania (Pa3-7; 1T:4). Plaintiff is also certified by the Maryland State Police as a concealed carrying instructor and has his concealed carry permit in both Maryland and Pennsylvania (1T:4). Plaintiff currently has a New Jersey firearms purchaser identification card (1T:20-21). Plaintiff is seeking a concealed carrying permit in the State of New Jersey because he fears his abusive ex-wife and needs to feel personal protection (Pa3-4; 1T:5). They have been divorced since March

1 1T = transcript of July 24, 2019

8a

of 2017 (1T:9). Plaintiff and his ex-wife also have three (3) children together (1T:14).

Plaintiff's ex-wife lives in Doylestown, Pennsylvania, the same town as plaintiff (1T:7). Plaintiff spends 95% of his time in New Jersey based on his job and his relationship but has not switched his residency over to New Jersey due to fears that his ex-wife will find him (1T:7). Plaintiff's ex-wife knows that he does not have a carrying permit in New Jersey, only Pennsylvania (1T:6).

Although the last incident in which he was outwardly threatened was over a year ago, Plaintiff's fears are continuous (1T:12). Plaintiff indicated his ex-wife's volatile nature is due to mental illness. (Pa3-4). He understands that the chance is small, but explained that it is "100% lethal if it happens" (1T:8). Plaintiff also asserts that his ex-wife has hit him and thrown stuff at him but has never used a weapon so far (1T:13).

Plaintiff has never sought a restraining order or reported his ex-wife's actions to police due to being embarrassed since he a man and an ex-marine and did not want the shame or stigma that would accompany such a report (1T:11). Additionally, plaintiff does not believe a restraining order would stop any harm from being done to him due to his ex-wife's uncontrollable emotional outbursts (1T:6; 1T:12).

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ARGUMENT

In reviewing this appeal, appellant courts should defer any fact finding made by the trial court regarding any evidence. In re Return of Weapons to J.W.D., 149 N.J. 108, 116-117 (1997). The standard of review for any legal determinations however, must be made de novo. Manakapan Realty, L.P. v. Twp. Comm. Of Manalapan, 140 N.J. 366,378 (1995)

Under N.J.S.A. 2C:58-4, in order to carry a handgun, an application must be approved by the chief of police or the superintendent and an applicant must not be subject to any disabilities found in N.J.S.A. 2C:58-3(c). Furthermore, the applicant must show that he/she is, "familiar with the safe handling and use of handguns and that he has a justifiable need to carry a handgun". N.J.S.A. 2C:58-4(c). Ultimately though, it is the superior court who has the power to issue such a permit, "after applicants first obtain approval from their local chief of police" In re Preis, 118 N.J. 564, 569 (1990). The court must consider whether, 1) the applicant is of good character, 2) not subject to any disabilities found under N.J.S.A. 2C:58-4(c), 3) the applicant is familiar with the safe handling and use of handguns, and 4) the applicant must show a justifiable need to carry a handgun. N.J.S.A. 2C:58-4(d).

In the matter at hand, the State did not object to

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Plaintiff's good character and none of the disabilities listed under N.J.S.A. 2C:58-4(c) applied. The trial court also found that plaintiff satisfied the third prong by his familiarity with the safe handling and use of handguns due to his multiple certifications as a firearms instructor (Pa4-7; Pa12).

I. THE TRIAL COURT ERRED IN FINDING THAT PLAINTIFF FAILED TO SHOW A JUSTIFIABLE NEED (Pa8-16;1T).

The Trial Court's July 25, 2019, Statement of Reasons for Denial indicates that plaintiff failed to show a justifiable need because of the "lack of specific detail provided in his application and testimony of justifiable need," more specifically, "the generalized nature of the threats, the lack of immediacy or urgency of any threats, and the lack of supporting documents" (Pa14). However, the court did not give plaintiff the opportunity to delve deeper into specifics regarding his claim. If the court required more specific details, the court should have inquired during the time of the hearing so plaintiff could have elaborated. Alternatively, the trial court should have adjourned the hearing to allow time for plaintiff to obtain the proper documentation. Plaintiff was never made aware by either the court or the police that further documentation was needed and therefore, he should be given the

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opportunity to properly prepare for another hearing on the matter. Plaintiff proceeded *pro se* without the experience nor the guidance that was required to properly argue his case before the trial court. Plaintiff was under the impression that since his application was approved by the police superintendent, that he only needed to furnish to the trial court the same documentation and statements that he presented to the police superintendent. Approval of the police superintendent and the trial court requires consideration by each of nearly the exact same elements. Therefore, plaintiff did not have a chance to prepare adequately in order to satisfy the trial court and should be given an opportunity to do so.

In regards to specific instances of threats, plaintiff did provide the court with testimony that indicated that the carrying permit is necessary for protection against his ex-wife (1T:14). Plaintiff also testified that, "she has an emotional disregualtion (sic) issue where she can just fly into rages" (1T:6). This was expressed to the court when plaintiff acknowledged that the probability of such an occurrence was small however, if it were to occur, "it's 100% lethal" (1T:8).

The trial court stated in it's Statement of Reasons for Denial, that plaintiff "provided very little background information about his ex-wife" (Pa14). However, the trial court

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did not explain what else was required, nor followed up with additional questions. Furthermore, background information about a possible threat is not an element that is needed under N.J.S.A. 2C:58-4 to obtain a carrying permit. In order to show a justifiable need, generalized fears are not enough. In re Preis, 118 N.J. 564, 573 (1990). The applicant must show that his life is in danger, by serious threats or past attacks. Siccardi v. State, 59 N.J. 545 (1971). Plaintiff testified that in the past his ex-wife had been violent towards him, including hitting him and throwing stuff (1T:13). He also asserted that his ex-wife of 23 years is someone he is terrified of due to her rage, impulsive behavior, lies, manipulation, and abuse (1T:8). Specifically, that the last time they met, she has threatened him by saying that, "there is a special place in hell for [him] and she will personally ensure [he] get there quickly" (Pa3).

II. MORE DEFERENCE SHOULD HAVE BEEN GRANTED TO THE NEW JERSEY STATE POLICE SUPERINTENDENT (Pa8-16; 1T).

N.J.S.A. 2C:58-4(c) requires that in order for an applicant to be granted a carrying permit for a handgun, the application must first "be approved by the chief police officer or the superintendent". N.J.S.A. 2C:58-4(c). In the case at hand, plaintiff received the approval of Lieutenant Stephen

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Mazzagatti, who was acting on behalf of the superintendent of the New Jersey State Police on June 4, 2019. Approval also requires that the applicant demonstrate to the superintendent, in this case Lieutenant Mazzagatti, that there is a justifiable need for the aforementioned carrying permit. N.J.S.A. 2C:58-4(c). While this is not the only requirement under this statute, it is a large hurdle that plaintiff successfully cleared based on his individual circumstances. Plaintiff concedes that courts have held that absolute deference should not be granted to the appropriate police agency regarding gun permits. In re Pantano, 429 N.J. Super. 478, 484 (App. Div. 2013). However, based on the plain language of N.J.S.A. 2C:58-4(c), the courts must take into consideration the police superintendent's approval. The trial court dismissed Lieutenant Mazzagatti's recommendation solely on it's own independent finding citing that there was an "[absence] of express determination of justifiable need" supplied from the Lieutenant Mazzagatti (Pa12). Plaintiff should not be held responsible due to the failure of the police to submit their proper documentation. At the very least, plaintiff should be given the opportunity to procure supplemental documents by the police superintendent to satisfy the court.

III. THE TRIAL COURT FAILED TO CONSIDER ALL THE APPROPRIATE FACTS PRESENTED BY THE PLAINTIFF (Pa8-16; 1T).

Throughout the written decision, the trial court judge cited the lack of prior restraining orders, police reports, convictions, or other evidence that shows that plaintiff has sought reasonable means before attempting to obtain a handgun carrying permit (Pa14). While this may or may not be true, again this is not the standard described under N.J.S.A. 2C:58-4, therefore, should not have been a factor in the trial court's decision. Furthermore, the court stated that plaintiff did not provide any documentation in support of his claim that his ex-wife suffers from a mental illness which would "legitimize the fears of the applicant" (Pa14). The court goes on to state that it *assumes* that this mental illness would be mentioned in prior evaluations relating to the divorce and custody of their children (Pa14). Plaintiff's ex-wife's mental health records are confidential - he could not possibly have access to these records. It is unreasonable to hold him to the impossible standard of requiring he submit documentation to which he has no access and which would be in violation of the Health Insurance Portability and Accountability ACT (HIPAA). Additionally, mental health evaluations may or may not have been part of the former couples' divorce proceeding. If they were not present, it does

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not nullify the idea that a serious and dangerous mental illness exists. An absence of evidence is not evidence of absence.

The trial court also cited in its denial, that there was no supporting evidence that shows an "urgent" need. Again, urgency is not a requirement of N.J.S.A. 2C:58-4 (Pa15). In Pantano, the court held that since an incident was over four years ago, that was insufficient to show a justifiable need. In re Pantano, 429 N.J. Super. at 483. However, in the present matter plaintiff testified that the last time he was threatened was a about a year ago (1T:12). Even though the threat was made a year ago, the trial court viewed the threat as an isolated incident when it should have been view as continuous. Plaintiff testified that his ex-wife threatens him when he visits his children (1T:10). Plaintiff will continuously have to keep in contact with his ex-wife in order to visit his children. This fear is so intense that it prevents him from switching his address to where he resides in New Jersey, even though he spends 95% of his time there (1T:7). This is all due to the fact that he is terrified of his ex-wife finding him (1T:7). Plaintiff was married to his ex-wife for twenty-three (23) years and presumably knows her and her dangerous proclivities better than anyone. Due to his frequent contact with his ex-wife because of their children, plaintiff is continuously in fear for his safety.

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IV. PLAINTIFF HAD NOT RETAINED COUNSEL WHICH WAS TO HIS DETRIMENT AND ULTIMATELY HINDERED HIS ABILITY TO PROPERLY ARTICULATE HIS ARGUMENT (Pa3;1T) .

Plaintiff proceeded *pro se* and therefore was not able to articulate his argument fully. Plaintiff was under the impression that he did not need counsel since he was approved by the New Jersey Police Superintendent already. Only after his denial did he retain counsel in order to file this appeal. In the interest of justice, plaintiff must be given the chance to adequately prepare with the aid of experienced counsel.

Conclusion

For the forgoing reasons, plaintiff respectfully requests that this Court reverse the trial court's July 25, 2019 decision and grant the carrying permit, or in the alternative, be remanded for further proceedings.

Respectfully submitted,

LAW OFFICES OF JEF HENNINGER
Attorneys for the Plaintiff-appellant, Reb Russell, II

By: *Jef Henninger*
Jef Henninger, Esq.
JH/jp

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CLEAR FORM

STATE OF NEW JERSEY

APPLICATION FOR PERMIT TO CARRY A HANDGUN

This form is prescribed by the Superintendent for use by applicants for a Permit to Carry a Handgun. Any alteration to this form is expressly forbidden.

☒ NEW ☐ RENEWAL

Municipal Code _____

Each person applying for a Permit to Carry a Handgun must supply a letter of need, specific in content, as to why they have a need to carry a firearm in the State of New Jersey. If this application is employment-related, then your employer must supply this letter.

List the reason for this application: _____

(1) Last Name (if female, include maiden) First Middle
Russell II REB John

(2) Resident Address (Number - Street - City - State - Zip)
23 571 Hayfield Court, Doylestown, PA 18901

(3) Date of Birth (Month - Day - Year) (4) Age (Place of Birth - City - State or Country)
12 / 17 / 1968 50 Riverside, NJ.

(5) U.S. Citizen ☒ Yes ☐ No (6) Social Security Number
 [REDACTED]

(7) Sex Height Weight Eyes Race Hair Complexion (8) Distinguishing Physical Characteristics
M 6'0" 205 H2 White Br. Light Hip replacement Scar & Appendectomy Scar

(9) Name of Employer
Self and Jazz Pharma

(10) Employer's Address (Number - Street - City - State - Zip)
2005 Market St. Philadelphia, PA 19103

(11) Occupation
A) Firearms Instructor and B) Scientist, Oncology

(12) Home Telephone (13) Business Telephone
(315) 416-7642 (315) 416-7642

(14) Driver's License Number & State
25 919 036 PA

(15) If you possess a N.J. Firearms Purchaser ID Card, list the number
 [REDACTED]

(16) Have you ever been adjudged a juvenile delinquent? ☐ Yes ☒ No If Yes, List Date(s) _____

(17) Have you ever been convicted of a disorderly persons offense, that has not been expunged or sealed? ☐ Yes ☒ No If Yes, List Date(s) _____

(18) Have you ever been convicted of a criminal offense, that has not been expunged or sealed? ☐ Yes ☒ No If Yes, List Date(s) _____

(19) Have you ever had a firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun refused or revoked? ☐ Yes ☒ No If Yes, By Whom? _____

(20) Have you ever had an Employee of Firearms Dealer License refused or revoked? ☐ Yes ☒ No If Yes, By Whom? _____

(21) Are you an Alcoholic? ☐ Yes ☒ No

(22) 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

(23) Are you dependent upon the use of any narcotic or other controlled dangerous substance? ☐ Yes ☒ No

(24) Are you now being treated for a drug abuse problem? ☐ Yes ☒ No

(25) 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 conditions? If Yes, give the name & location of the doctor, psychiatrist, hospital or institution and the date(s) of such occurrence. ☐ Yes ☒ No

(26) Do you suffer from a physical defect or sickness? ☐ Yes ☒ No

(27) If answer to question 26 is yes, does this make it unsafe for you to handle firearms? If not, explain. ☐ Yes ☒ No

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

(29) Have you ever been convicted of any domestic violence 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 weapon? If Yes, explain. ☐ Yes ☒ No

(30) Are you presently, or have you ever been a member of any organization which advocates or approves the commission of acts of violence, either to overthrow the government of the United States or of this State, or to deny others of 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) here. ☐ Yes ☒ No

APPLICANT: DO NOT WRITE BELOW THIS SPACE

To the Judge of the Superior Court of Hunterdon County: I have investigated or caused to be investigated the applicant, and from the results of such investigation, the applicant is: _____ (Attach investigation Report when submitting to Superior Court.)

APPROVED [Signature] This 4th Day of June, 2019
[Signature] Supt.
New Jersey State Police Title
 Department of Police

DISAPPROVED ☐

The foregoing application, having been presented to me, and the determination made of the sufficiency thereof, and the need of the applicant to carry a handgun, I hereby:
☒ Grant a permit, pursuant to Section 2C:58-4 of the New Jersey Statutes.
☐ Deny This _____ Day of _____, 20____ NJ
 _____ Judge of the Superior Court County _____

S.P. 642 (Rev. 03/15) Page One of Two Pages

Reason for Disapproval 4/16/19
☐ 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. LACK OF JUSTIFIABLE NEED
☐ H. OTHER (SPECIFY) _____

GRANTED ON APPEAL ☐ **SBI Number:** 9874586
Permit Number: _____
Restrictions: ☐ Yes (List on Page 2) ☒ No

Sanerville 5/30/19

NOTICE: If Internet form, print Page 1, return to printer and print Page 2 on reverse side

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STATE OF NEW JERSEY Firearms Applicant Investigation Report



ATTACHED IS A NOTARIZED LETTER OF FIREARMS PROFICIENCY. THE APPLICANT SUCCESSFULLY COMPLETED A HANDGUN QUALIFICATION COURSE, WITH A GLOCK 19, SERIAL #BHTRMS UNDER THE DIRECTION OF INSTRUCTOR REB RUSSELL II, INSTRUCTORS CERTIFICATE #0100010670000.

ATTACHED IS THE CONSENT FOR MENTAL HEALTH RECORDS SEARCH. NO INFORMATION WAS REVEALED THAT THE APPLICANT IS SUBJECT TO ANY DISABILITIES AS SET FORTH IN NJSA 2C-30.3.

ALL CHECKS IN BLOCK #12 WERE CONDUCTED WITH NEGATIVE RESULTS.

BLOCKS #9, 10 AND 11 CONTAIN THE APPLICANT REFERENCES WHICH HAVE ALL INDICATED THAT THEY KNOW THE APPLICANT FOR THREE OR MORE YEARS. ALL THREE REFERENCES CONCUR THAT THE APPLICANT IS OF A REPUTABLE CHARACTER AND DO NOT KNOW APPLICANT TO HAVE A CRIMINAL BACKGROUND, DOMESTIC VIOLENCE HISTORY OR ANY HISTORY OF ABUSE OF ALCOHOL OR DRUGS.

IN THE EVENT THE APPLICANT'S PERMIT TO CARRY A FIREARM IN THE STATE OF NEW JERSEY IS APPROVED, THE RESTRICTIONS SHOULD BE THAT THE APPLICANT CAN ONLY CARRY A WEAPON IN THE PERFORMANCE OF HIS DUTIES DURING WORKING HOURS. IN THE EVENT THE APPLICANT TERMINATES HIS EMPLOYMENT, THIS PERMIT WILL BE NULL AND VOID AND MUST IMMEDIATELY BE RETURNED TO THE SUPERINTENDENT OF THE NEW JERSEY STATE POLICE.

06/04/2019

On the above date, I contacted the applicant reference the counseling that he stated he received in his letter of need. The applicant advised that he did not see a doctor or psychiatrist and did not receive any treatment for mental or psychiatric conditions. The applicant advised that he saw counselors with his ex wife and kids in order to learn and understand more about borderline personality disorder that his ex wife was diagnosed with. (JH7209)

(14) DATE OF REPORT 05/24/2019	(15) RANK NAME TPR I S C MATHEW	BADGE #6039	STATION B130	(16) REVIEWER SFC R R BERTRAND
(17) PERMIT TO PURCHASE NUMBER	DATE OF ISSUE	(18) FID CARD-SHI NUMBER 9874580	(19) REPORT NUMBER B130-2009-000249	
Check Type MONEY ORDER	Check/Money Order # 17-890695717	Amount \$ 50.00		
		Total \$ 50.00		
Report Date: 05/24/2019 TPR I S C MATHEW #6039 Signature: 	1st. Approval: Date: 05/24/2019 SFC R R BERTRAND #5564 Signature: 		2nd. Approval: Date: 06/04/2019 DET. I J A HEARNE #7209 Signature: 	

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Your Honor,

My Name is Reb Russell II. I am respectfully applying for a concealed carry permit for the reasons I will share below. First a little about me. I was born in Riverside NJ 50 years ago and grew up in Edgewater, NJ until 2nd grade when we moved to upstate NY. I grew up playing football in high school and earning my Eagle Scout. I'm the oldest of four children. During college I was on an NROTC scholarship with the unit at Cornell University where I was focused on serving my country and giving back until a military ending knee injury with the Marines Office School in Quantico, VA change my career path. I went on to get my Ph.D. working in the pharmaceutical industry on teams focused on cancer cures. I am humbled to have been part of the team at Bristol Myers Squibb to develop and obtain approval for the first immunoncology medicines, Yervoy and Opdivo, to give patients real hope of cures. It's changed the way we now approach cancers. After 15 years at BMS I left to join Jazz Pharmaceuticals where I work on medicines for rare cancers in children. It gives me joy to be part of team giving children and parents hope. My passion in life has been serving others. Also after my divorce, I started a business focused on safety and protection as I am a certified range safety officer and certified pistol instructor teaching safety, responsibility, and judgement.

There has been a part of my life that most people never see. It's been something that many years has been embarrassing and shameful as victim of domestic abuse especially for a man. I never fought back as I would never strike a woman it been something I that's was instilled in me as a young boy. I never reported anything due to the social stigma. It's taken me a very long time to be even to say this, I was an abused husband for 23 years. Something I never talk about because of the sigma and feelings of pain and embarrassment.

After staying for the kids, I finally left my abusive ex wife. She is someone who scares me with her rage, impulsive behaviors, lies, manipulation and abuse. Counseling (couples and individual) prior to and post divorce helped me understand her abusive nature and her as an acting out borderline personality disorder (BPD). BPD as a mental illness is well documented in the literature where they are impulsive, prone to self violent (acting in) or outward violence (acting out), view others as object to posses and control etc. they are extremely recalcitrant and to this day she will not get treatment. I included a brief article that helps to provide context around the real and constant risk she represents to me especially since I have move on in a committed relationship. This relationship has further enraged my ex wife. I have taken her verbal threats very seriously as I know what's she is capable of from experience and now with a view on individuals with boarder line personality disorder that validates what she is capable of (e.g. telling me ,there is a special place in hell for me and she will personal ensure I get there quickly and if I can't have you no one will). I believe her and the real risk she represents to me and I would kindly ask you to read the attached article or please perform your own research on outward borderline personalities to understand the constant threat I'm under and one that as long as she doesn't get help will continue. Finally after 23 years, I left her, her abuse and want nothing to do with her. To her, I remain as an possession one she will not let go of. I fear for my personal safety and I

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don't want to be victimized again. It's something that seems like it will never go away after what professional and clinical literature report about people with BPD.

I am requesting the legal means to protect myself while in NJ. I spend significant time in NJ sometimes a week or two at a time. My girlfriend with whom I have a committed relationship lives in basking ridge I'm there several days a week. My parents live in Brooklawn, NJ where I also frequent. In PA, I have the legal means to protect my person where I have some sense of safety and peace and I am requesting the same in NJ. I shouldn't have to live in fear and should be free from the real and constant threat my ex wife is to me. I realize the best I get is the chance to protect myself about the potential violence. I left my abusive ex wife and would like feel a little safer as long as she alive and untreated. The threat I live with every is real and I never thought I would be one of those individuals who for decades suffered silently. While I broke free, I will truly never be free given how she try's to keep engaged. It's further enraged her That I've move on and want nothing to do with her.

This is something you can't imagine unless you have experienced personally. Being a man there is bias and shame that has not allowed me to now to come forward. It's one that says your a man and she's just a woman and why should you be afraid there's no real danger. The potential for danger is real and those biases are not. I am not young nor agile after my hip replacement. I would give so much not to be in this position but that been taken out of my control. I humbly ask to be granted this request and be allowed the means to protect myself.

Very Respectfully,

Reb J Russell, Ph.D.

Should I ever terminate my business as a firearms instructor, the New Jersey State Police and Superior Court Judge that issued the permit shall be notified. In addition the Permit to Carry will be surrendered to the NJ State Police.

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THE NATIONAL RIFLE ASSOCIATION OF AMERICA

CERTIFIES THAT

REB RUSSELL

*Has successfully met the requirements established by the
National Rifle Association of America and is hereby designated an*

NRA INSTRUCTOR

and is authorized to teach the following basic courses:
Certified Pistol



NRA

INSTRUCTOR


JOHN C. FRAZER, SECRETARY
NATIONAL RIFLE ASSOCIATION

Valid through: 1/31/2021

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THE NATIONAL RIFLE ASSOCIATION OF AMERICA

CERTIFIES THAT

REB RUSSELL

*Has successfully met the requirements established by the
National Rifle Association of America and is hereby designated an*

NRA RANGE SAFETY OFFICER

RANGE SAFETY OFFICER



NRA


JOHN C. FRAZER, SECRETARY
NATIONAL RIFLE ASSOCIATION

Valid through: 1/31/2021

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SIGSAUER® ACADEMY

Certificate of Achievement


This is to certify that

Reb Russell

has successfully completed the course of instruction in

Handgun 103

and is awarded this certificate in recognition thereof.


Vice President, Academy
Steve "Mato" Matulewicz

February 4, 2019


Director of Training
Scott Reidy

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FILED, Clerk of the Appellate Division, August 14, 2019, A-005414-18

SUPERIOR COURT OF NEW JERSEY
SOMERSET, HUNTERDON AND WARREN COUNTIES
VICINAGE 13

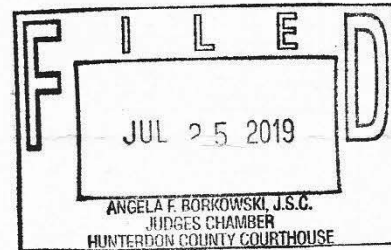
ANGELA F. BORKOWSKI
JUDGE



HUNTERDON COUNTY JUSTICE CENTER
65 PARK AVENUE
FLEMINGTON, NJ 08822
(908) 824-9750

July 25, 2019

Reb Russell, II
26 Cross Road
Basking Ridge, NJ 07920



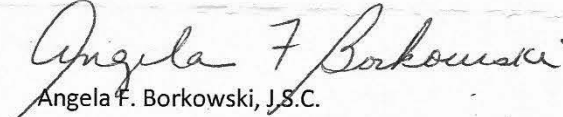
In Re: Carry Permit for Reb Russell, II

Case Identifier: GP-HNT-19-001

Dear Mr. Russell,

The court received your application for a New Jersey Permit to Carry a Handgun on June 17, 2019. On July 24, 2019, this court held a hearing regarding your permit application. Pursuant to N.J.S.A. 2C:58-4, this court denies your application. The court does not find that you have a justifiable need to carry a handgun. Please see this court's statement of reasons for denial attached to this letter. You have the right to appeal this decision pursuant to N.J.S.A. 2C:58-4(d).

Very truly yours,


Angela F. Borkowski, J.S.C.

AFB:jad
Cc: Matthew S. Ah Kao, A.P.
Stephen Mazzagatti, Lieutenant, NJSP
CCM

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On March 29, 2019, R.R. filed an Application for Permit to Carry a Handgun with the New Jersey State Police. Lieutenant Stephen Mazzagatti acting on behalf of the Superintendent of the New Jersey State Police approved the application on June 4, 2019. The application was submitted to the Superior Court of New Jersey, Hunterdon County, Criminal Division, for final approval. This court after reviewing the application and supporting materials and holding a hearing on July 24, 2019 does not find that R.R. has a justifiable need to have a permit to carry in the State of New Jersey; therefore, his application is denied.

LEGAL STANDARD

N.J.S.A. § 2C:58-4 governs the granting of a permit to carry a handgun, and states: “[n]o application shall be approved by the chief police officer or the superintendent unless the applicant demonstrates that he is not subject to any of the disabilities set forth in 2C:58-3c., that he is thoroughly familiar with the safe handling and use of handguns, and that he has a justifiable need to carry a handgun.” N.J.S.A. § 2C:58-4(c). Although the application is first submitted to the chief police officer in a municipality or the superintendent of the state police for approval, only the court may issue the permit. In re Pantano, 429 N.J. Super. 478, 485, (App.Div. 2013), cert. dismissed as improvidently granted, 2014 N.J. Lexis 904, (2014). If an appeal is filed or the application is approved by the chief police officer or superintendent, the Court must conduct its own evaluation and be satisfied that the applicant is:

1. a person of good character
2. not subject to any of the disabilities set forth in section N.J.S.A. 2C:58-3c,
3. thoroughly familiar with the safe handling and use of handguns
4. has a justifiable need to carry a handgun

[N.J.S.A. 2C:58-4(d)]

(d) Each application form shall also be accompanied by a written certification of justifiable need to carry a handgun, which shall be under oath and which:

1. In the case of a private citizen shall specify in detail the urgent necessity for self-protection, as evidenced by serious threats, specific threats, or previous attacks, which demonstrate a special danger to the applicant's life that cannot be avoided by reasonable means other than by issuance of a permit to carry a handgun. Where possible the applicant shall corroborate the existence of any specific

threats or previous attacks by reference to reports of such incidents to the appropriate law enforcement agencies; or

N.J.A.C. 13:54-2.4(d)(1)

The determination of the applicant's "justifiable need" to carry a handgun is made on a case-by-case basis. In re Preis, 118 N.J. 564, 576 (1990). The Supreme Court has referred to New Jersey's gun-control laws as a "careful grid" of regulatory provisions. State v. Ingram, 98 N.J. 489, 495 (1985). New Jersey laws "draw careful lines between permission to possess a gun in one's home or place of business, N.J.S.A. 2C:39-6e, and permission to carry a gun, N.J.S.A. 2C:39-6a and N.J.S.A. 2C:39-6c." Id. at 568-569. The permit to carry a gun is the most closely-regulated aspect of gun-control laws. Id.

Very few persons are exempt from the criminal provisions for carrying a gun without a permit. Id.¹. Private-security officers, not being exempt from our gun-control laws, must obtain a license to carry a gun. Id. Only employees of armored-car companies are singled out for special treatment. See N.J.S.A. 2C:58-4.1. "So concerned is the Legislature about this licensing process that it allows only a Superior Court judge to issue a permit, after applicants first obtain approval from their local chief of police or superintendent. Id. "The New Jersey Legislature has long been aware of the dangers inherent in the carrying of handguns and the urgent necessity of their regulation..." Siccardi v. State, 59 N.J. 545, 553 (1971). Moreover, absolute deference is not extended to the police chief's decision to approve the permit. In re Pantano, 429 N.J. Super. 478, 484 (App.Div. 2013)

The Siccardi court has acknowledged "a strict policy which wisely confines the issuance of carrying permits to persons specifically employed in security work and to such other limited personnel who can establish an urgent necessity for carrying guns for self-protection." Siccardi, 59 N.J. at 553. An applicant whose life is in real danger, as evidenced by serious threats or earlier attacks, may perhaps qualify for a permit to carry. Id. at 557. Generalized fears for personal safety are inadequate as a basis for a permit. Preis, 118 N.J. at 573.

¹ Members of the armed forces of the United States or National Guard, federal-law-enforcement officers, State Police, sheriff's officers, correction officers, or *regular* members of municipal and county police forces have authority to carry guns both on and off duty. N.J.S.A. 2C:39-6a. Other designated occupations, such as bank guards, railway policemen, park rangers, and campus-police officers, are exempt from the gun-control act's criminal provisions "while in the actual performance of [such] duties." N.J.S.A. 2C:39-6c

FACTUAL FINDINGS AND LEGAL ANALYSIS

The court makes the following findings of fact and conclusions of law. Preliminarily, the court finds, and the state does not object, that the applicant is a person of good character and is not subject to any of the disabilities set forth in section N.J.S.A. 2C:58-3c. See N.J.S.A. 2C:58-4(d). The court notes that the applicant has certified himself on the firearms he requests to carry. Although N.J.A.C. 13:54-2.4(b) and N.J.S.A. 2C:58-4d are silent on whether someone other than the applicant must certify that the applicant is “thoroughly familiar with the safe handling and use of handguns,” common sense dictates that applicants should not certify themselves. However, the applicant provided sworn testimony under oath and provided documentation to the court that he is certified by the National Rifle Association and designated as an instructor that is authorized to teach the basic pistol course. He is also certified as a range safety officer, authorizing him to run firing ranges. Additionally he testified that he has had a concealed carry permit in Pennsylvania since 1999. The court finds the testimony of the applicant to be credible and finds the documentation provided at the hearing to be authentic; same was not objected to by the state. Therefore, after review of this documentation and the sworn testimony of the applicant the court is satisfied that the applicant is “thoroughly familiar with the safe handling and use of handguns.” Id.

This application comes before the court having been approved by Lieutenant Stephen Mazzagatti acting on behalf of the Superintendent of the New Jersey State Police. Pursuant to N.J.S.A. 2C:58-4c, “no application shall be approved by the...superintendent unless the applicant demonstrates that...he has a justifiable need to carry a handgun.” The court finds that the applicant has not provided the specific detail necessary to conclude that there is an urgent necessity as required by statute or code. N.J.A.C. 13:54-2.4(d)(1). Although, the court does consider the endorsement of the superintendent, the court would be derelict in its duty if it did not make its own independent finding. Despite the superintendent’s endorsement, it is the court that has the final determination of granting a permit to carry.

Although a justifiable need determination is required by statute the application and investigation report prepared by the superintendent is noticeably absent of any express determination of justifiable need. The only mention of justifiable need is the remark in the investigation report that “an attached letter from the applicant explains why he thinks he needs to possess a carry permit in the state of New Jersey.” The State Police investigation report concludes

“in the event the applicant’s permit to carry a firearm in the state of New Jersey is approved. The restrictions should be that the applicant can only carry a weapon in the performance of his duties during working hours. In the event the applicant terminates his employment, this permit will be null and void and must immediately be returned to the superintendent of the New Jersey State Police.” The applicant certified that he is both a self-employed firearms instructor and a scientist at Jazz Pharma in Philadelphia. Although the investigation report from the superintendent recommends a restriction on the applicant’s permit that he only be allowed to carry during work hours, the applicant testified that his primary need for a carry permit is to protect himself from his ex-wife and his secondary need is regarding his self-employment as a firearms instructor for convenience. However, the court does not find that applicant’s generalized fear supports granting the applicant’s permit to carry. Preis, 118 N.J. at 573. Nor does the applicant’s self-employment as a firearms instructor as explained by the applicant support a justifiable need to grant a carry permit.

The applicant attached to the application a notarized certification alleging his justifiable need to carry a firearm. In sum, the applicant asserted that after his divorce he started a business as a certified range safety officer and certified pistol instructor teaching safety responsibility, and judgement. The applicant outlined the abusive relationship that he was in for 23 years. The applicant asserted that his ex-wife is “someone who scares [him] with her rage, impulsive behaviors, lies, manipulation, and abuse.” The applicant claimed that his ex-wife suffers from untreated borderline personality disorder (BPD) and that she is prone to impulsive violent behavior due to this mental illness. Applicant certified that he has moved on to a committed relationship which has further enraged his ex-wife. He claimed that he has been threatened by his ex-wife, specifically she has told him “there is a special place in hell for [him] and she will personally ensure [he] get there quickly and if [she] can’t have [him] no one will,” however during the hearing the applicant asserted that the last time he was threatened by his ex-wife was a year ago. The applicant stated that he is under a constant threat as long as she remains untreated. The applicant claimed that he spends up to a week or two at a time in New Jersey and that he frequents Brook Lawn and Basking Ridge, New Jersey where his girlfriend and parents reside. However at the hearing, the applicant testified that now he only resides at his residence in Doylestown three or four times a month and that he spends the majority of his time, “95%” in New Jersey with his new partner. Applicant requests that the court grant his permit to carry to protect himself while in New

Jersey, a right that he already has in Pennsylvania.

The applicant has provided a few generalized threats that occurred over the course of multiple years. The applicant provided very little background information about his ex-wife, and did not provide the exact dates or circumstances of the alleged threats. He testified, however, that he had been separated from his ex-wife since March 2017 and that the divorce was finalized in December of 2018. He testified that they currently share joint custody of their children; he having agreed to the arrangement. He stated he was last verbally threatened by her one year ago and that he does not know if his ex-wife is in possession of a weapon; she has never approached him with a weapon. He did not testify to details regarding any specific instances of abuse, having documented only one. The applicant does not provide any evidence of restraining orders sought against his ex-wife or police reports or convictions against his ex-wife or other documentation evidencing that he has sought reasonable means other than the issuance of a permit to carry a handgun. He testified that he has not noticed his ex-wife following him but could not confirm that she has not followed him or stalked him in the past. Moreover he testified that he refuses to give his mailing address to his ex-wife, refuses to communicate with her over the phone, and only communicates with her over email currently. There is no evidence that the ex-wife is aware of where the applicant resides in Doylestown or in Basking Ridge. The applicant testified that his wife currently resides in their former marital home in Doylestown, PA with one or more of his children and at times have used them "as weapons" against him. There is no specific documentation or evidence to support that the ex-wife has ever made contact with the applicant in New Jersey since their divorce in 2018. Moreover, although the applicant asserted that the ex-wife suffers from BPD, there is no documentation to support that she suffers from this mental illness, and there is no certification or testimony from an unbiased third party that substantiates this illness or legitimizes the fears alleged by the applicant. The court would have at least assumed that this would be mentioned in evaluations or other documents of the divorce when children were involved. There is simply no corroborating evidence to support that the need for protection is urgent. See In re Pantano, 429 N.J. Super. at 483 (Upholding the trial court's finding that an incident that occurred over 4 years ago was insufficient to establish a justifiable need to carry a handgun.).

The defendant's own actions contradict his fear of his wife. Although recognizing a victim of domestic violence may hesitate to report abuse because of the stigma attached, prior to resorting

to carrying a weapon for protection, the applicant never reported any past or, more pertinent to this action, any present abusive conduct, has never requested a temporary or final restraining order, has chosen to reside and operate his business in the same town where his ex-wife lives although he testified that he rarely spends time there, did not contest his ex-wife having joint custody of his children. Moreover, the applicant characterized his ex-wife's disorder and behavior as being stable most of the time. He also testified that he was advised when she throws rages and acts on impulses it can result in lethal consequences, however he asserted that the "risk [of lethal consequences] is probably small." The last verbal threat was approximately one year ago. The code requires the applicant to demonstrate a "special danger to the applicant's life that cannot be avoided by reasonable means other than by issuance of a permit to carry a handgun". The applicant has not satisfied that burden. Therefore, the court does not find the applicant's described fear of his ex-wife provides a justifiable need to carry a firearm in this state as he has not demonstrated an urgent threat exists.

Regarding applicant's self-employment as a firearms instructor, there is no evidence or certification that supports the applicant has ever been involved in any business in New Jersey that justifies he carry a firearm. He testified that he has trained people in New Jersey on at least one occasion and that he has a firearms identification permit in New Jersey, but that he does not have a hand gun purchase permit because he is not a resident. He also testified that he is currently permitted under New Jersey law to transport weapons from his residence in Pennsylvania to a range in New Jersey, however he is only authorized to travel to and from with no deviations in travel. Pursuant to N.J.S.A. 2C:58-3.2, 2C:39-6f.(3), and 2C:39-9i.(3) the court finds that applicant is lawfully permitted to transport firearms directly from his place of residence in Pennsylvania to any range in New Jersey for the purposes of his job as a firearms instructor. However, a handgun carry permit is not required or necessary for applicant to transport weapons in the state of New Jersey to and from the range. The applicant testified that he has two offices in which he works out of in Ewing, NJ and in Philadelphia, PA. However those offices are for his job as a scientist and not as a firearms instructor. The court finds that there is no justifiable need for applicant to conceal carry a handgun to Ewing, NJ. Based on his testimony, it would merely be a convenience to the applicant for him to travel directly from work to the range. However this is not a justifiable need. Therefore, the courts finds that the applicant's self-employment as a firearm instructor does not establish a justifiable need to carry in this state.

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FILED, Clerk of the Appellate Division, August 14, 2019, A-005414-18

The court denies the applicant's request for a permit to carry because of a lack of specific detail provided in his application and testimony of justifiable need, the generalized nature of the threats, the lack of immediacy or urgency of any threats, and the lack of supporting documents. Although the applicant has demonstrated that he is of good character, suffers from no impediments to owning or carrying a firearm and is knowledgeable about the safe and proper use of a firearm, the court finds that he has not shown he has a justifiable need to carry a firearm. In essence the applicant failed to establish that he will be subjected to a substantial threat of serious bodily harm and carrying a handgun is necessary to reduce the threat of unjustifiable serious bodily injury.

CONCLUSION

For the reasons stated herein, the applicant's Application for Permit to Carry a Handgun is **DENIED**. The applicant has a right to appeal this decision pursuant to N.J.S.A. 2C:58-4(d).



New Jersey Judiciary
Superior Court - Appellate Division
Notice of Appeal

TITLE IN FULL (AS CAPTIONED BELOW)

IN THE MATTER OF CARRY PERMIT FOR REB RUSSELL, II

ATTORNEY / LAW FIRM / PRO SE LITIGANT

NAME

JEF D HENNINGER, Esq.

STREET ADDRESS

788 SHREWSBURY AVE SUITE 2209

CITY

TINTON FALLS

STATE

NJ

ZIP

07724

PHONE NUMBER

732-383-6242

EMAIL ADDRESS

JEFLAWOFFICE@GMAIL.COM**JEFHENNINGER@GMAIL.COM**

ON APPEAL FROM

TRIAL COURT JUDGE

ANGELA BORKOWSKI, JSC

TRIAL COURT OR STATE AGENCY

HUNTERDON

TRIAL COURT OR AGENCY NUMBER

GP-HNT-19-001

Notice is hereby given that **REB RUSSELL** appeals to the Appellate Division from a ☐ Judgment or ☒ Order entered on **07/25/2019** in the ☐ Civil ☒ Criminal or ☐ Family Part of the Superior Court ☐ Tax Court or from a ☐ State Agency decision entered on _____

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

Reb Russell, II was denied his New Jersey Permit to carry a Handgun on June 17, 2019.

This appeal is from a ☐ conviction ☐ post judgment motion ☐ post-conviction relief ☐ pre-trial detention
If post-conviction relief, is it the ☐ 1st ☐ 2nd ☐ other _____ specify

Is defendant incarcerated? ☐ Yes ☒ No

Was bail granted or the sentence or disposition stayed? ☐ Yes ☒ No

If in custody, name the place of confinement:

Defendant was represented below by:

☐ Public Defender ☒ self ☐ private counsel _____ specify

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge	ANGELA BORKOWSKI, JSC	08/14/2019
Trial Court Division Manager	HUNTERDON	08/14/2019
Tax Court Administrator		
State Agency		
Attorney General or Attorney for other Governmental body pursuant to R. 2:5-1(a), (e) or (h)		

Other parties in this action:

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
STATE OF NEW JERSEY	MATTHEW S AH KAO, Esq. HUNTERDON COUNTY PROSECUTORS OFFICE 65 PARK AVENUE P0 BOX 756 FLEMINGTON NJ 08822-0756 908-788-1129 MAHKAO@CO.HUNTERDON.NJ.US	08/14/2019

Attached transcript request form has been served where applicable on the following:

	Name	Date of Service
Trial Court Transcript Office	HUNTERDON	08/14/2019
Clerk of the Tax Court		
State Agency		

Exempt from submitting the transcript request form due to the following:

☐

☐ Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).

List the date(s) of the trial or hearing:

☐ Motion for abbreviation of transcript filed with the court or agency below. Attach copy.

☐ Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.

08/14/2019

Date

s/ JEF D HENNINGER, Esq.


Signature of Attorney or Pro Se Litigant

BAR ID #

029532004

EMAIL ADDRESS **MAIL.COM**

JEFLAWOFFICE@GMAIL.COM, JEFHENNINGER@G

	<p>New Jersey Judiciary Superior Court - Appellate Division Notice of Appeal</p>
Additional appellants continued below	
Additional respondents continued below	
Additional parties continued below	
Appellant's attorney email address continued below	
Respondent's attorney email address continued below	
Additional Party's attorney email address continued below	



New Jersey Judiciary
Superior Court - Appellate Division
Amended Notice of Appeal

TITLE IN FULL (AS CAPTIONED BELOW)

IN RE CARRY PERMIT FOR REB RUSSELL, II

ATTORNEY / LAW FIRM / PRO SE LITIGANT

NAME

JEF D HENNINGER, Esq.

STREET ADDRESS

788 SHREWSBURY AVE SUITE 2209

CITY

TINTON FALLS

STATE

NJ

ZIP

07724

PHONE NUMBER

732-383-6242

EMAIL ADDRESS

JEFLAWOFFICE@GMAIL.COM**JEFHENNINGER@GMAIL.COM**

ON APPEAL FROM

TRIAL COURT JUDGE

ANGELA BORKOWSKI, JSC

TRIAL COURT OR STATE AGENCY

HUNTERDON

TRIAL COURT OR AGENCY NUMBER

GP-HNT-19-001

Notice is hereby
given that

REB RUSSELL

appeals to the Appellate

Division from a ☐ Judgment or ☒ Order entered on **07/25/2019** in the ☐ Civil☒ Criminal or ☐ Family Part of the Superior Court ☐ Tax Court or from a☐ State Agency decision entered on _____

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being
appealed.

***EXPLAIN BRIEFLY THE REASON FOR AMENDING THE NOTICE OF APPEAL

**Wrong caption. The system would not allow me to write the correct caption when it was first filed. Now
amending to the correct caption.**

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or
disposition imposed:

Reb Russell, II was denied his New Jersey Permit to carry a Handgun on June 17, 2019.

This appeal is from a ☐ conviction ☐ post judgment motion ☐ post-conviction relief ☐ pre-trial detention

If post-conviction relief, is it the ☐ 1st ☐ 2nd ☐ other _____
specify

Is defendant incarcerated? ☐ Yes ☒ No

Was bail granted or the sentence or disposition stayed? ☐ Yes ☒ No

If in custody, name the place of confinement:

Defendant was represented below by:

☐ Public Defender ☒ self ☐ private counsel _____

specify

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge	ANGELA BORKOWSKI, JSC	08/16/2019
Trial Court Division Manager	HUNTERDON	08/16/2019

Tax Court Administrator

State Agency

Attorney General or Attorney for other
Governmental body pursuant to
R. 2:5-1(a), (e) or (h)

Other parties in this action:

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
STATE OF NEW JERSEY	MATTHEW S AH KAO, Esq. HUNTERDON COUNTY PROSECUTORS OFFICE 65 PARK AVENUE P0 BOX 756 FLEMINGTON NJ 08822-0756 908-788-1129 MAHKAO@CO.HUNTERDON.NJ.US	08/16/2019

Attached transcript request form has been served where applicable on the following:

	Name	Date of Service
Trial Court Transcript Office	HUNTERDON	08/16/2019
Court Reporter (if applicable)		
Supervisor of Court Reporters		
Clerk of the Tax Court		
State Agency		

Exempt from submitting the transcript request form due to the following:

☐

☐ Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).


List the date(s) of the trial or hearing:

☐ Motion for abbreviation of transcript filed with the court or agency below. Attach copy.

☐ Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.

<u>08/16/2019</u>		<u>s/ JEF D HENNINGER, Esq.</u>
Date		Signature of Attorney or Pro Se Litigant
BAR ID #	029532004	EMAIL ADDRESS JEFLAWOFFICE@GMAIL.COM, JEFHENNINGER@GMAIL.COM

	<p>New Jersey Judiciary Superior Court - Appellate Division Amended Notice of Appeal</p>
Additional appellants continued below	
Additional respondents continued below	
Additional parties continued below	
Appellant's attorney email address continued below	
Respondent's attorney email address continued below	
Additional Party's attorney email address continued below	

FILED, Clerk of the Appellate Division, August 22, 2019, A-005414-18, 40a

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
PO BOX 006
RICHARD J. HUGHES JUSTICE COMPLEX
TRENTON, N.J. 08625-0006

NOTICE OF DOCKETING

Date: August 22, 2019

ATTN: JEF HENNINGER ESQ - JEF D HENNINGER
788 SHREWSBURY AVE
SUITE 2209
TINTON FALLS, NJ 07724

Title: IN RE CARRY PERMIT FOR REB RUSSELL, II

Docket Number: A-005414-18 TEAM 02

Appeal Filed: 08/14/2019

1. The above docket number must appear on all documents submitted.
2. Respondent shall file a case information statement within 15 days after service of the notice of appeal. R. 2:5-1(a).
3. IF YOUR APPEAL INCLUDES A TRANSCRIPT, IT WILL BE SUBJECT TO DISMISSAL IF THE TRANSCRIPT IS NOT FILED WITHIN 35 DAYS OF THE FILING OF THE NOTICE OF APPEAL. UNLESS, PRIOR TO THAT DATE, YOU ADVISE THE CLERK'S OFFICE THAT THE TRANSCRIPT HAS NOT BEEN DELIVERED TO YOU AND INDICATE THE DATE YOU HAVE BEEN PROMISED FILING AND DELIVERY. THERE WILL BE NO FURTHER NOTICE.
4. If this is an appeal of a state agency decision, the agency must submit a Statement of Items Comprising the Record within 30 days of service of the Notice of Appeal. R. 2:5-4(b). Upon receipt of the Statement of Items Comprising the Record and transcript (if applicable), a scheduling order for the brief and appendix will be issued.
5. Certain civil and state agency appeals may be selected for the Civil Appeals Settlement Program (CASP). Unless this appeal is selected for a settlement conference or unless otherwise stated in a scheduling order, the time limits provided by R. 2:6-11 for perfection of the appeal must be complied with by all parties. Upon appellant's failure to comply, the appeal will be subject to dismissal. Upon respondent's failure to comply, the brief will be subject to suppression.

6. If oral argument is desired, it must be requested timely by a separate captioned document. R. 2:11-1(b). If oral argument is requested, notify the Clerk's office of any period of time during which you expect to be unavailable.

**PLEASE REFER ALL INQUIRIES TO YOUR CASE MANAGER:
KACI BERNIS (609-815-2950 x 52658)**

JOSEPH H. ORLANDO
CLERK OF THE APPELLATE DIVISION

Trial Court Docket No: HUNTERDON GP-HNT-19-001

cc: HUNTERDON COUNTY PROSECUTORS OFFICE - MATTHEW S AH KAO

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Jef Henninger, Esq.
Ciro Spina, Esq.
Joe Compitello, Esq.*
Christopher Caserio, Esq.*
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Dominique Tonacchio, Esq.^
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Jeflawoffice@gmail.com

By Appointment Only: Freehold | Toms River | Metropark (Woodbridge)
Princeton | East Brunswick | Newark | Jersey City

August 23, 2019

via regular mail

Honorable Angela F. Borkowski, J.S.C.
Hunterdon County Courthouse
65 Park Avenue
Flemington, NJ 08822

Re: In RE: Carry Permit for Reb Russell, II
Case Identifier: GP-HNT- 19-001

Dear Judge Borkowski:

This office has been retained by the above captioned defendant, Reb Russell, II, to appeal the order dated July 25, 2019. At this time, I am writing to inquire if Your Honor has issued or intends to issue written findings, an opinion, memorandum, or amplification of a prior statement, opinion or memorandum pursuant to R. 2:5-1(b).

I appreciate the Court's attention to this matter.

Very truly yours,

Jef Henninger

Jef Henninger, Esq.
JH/dt

Cc: Matthew S. Ah Kao, AP

(via regular mail)

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FILED, Clerk of the Appellate Division, August 30, 2019, A-005414-18

SUPERIOR COURT OF NEW JERSEY
SOMERSET, HUNTERDON AND WARREN COUNTIES
VICINAGE 13

ANGELA F. BORKOWSKI
JUDGE



HUNTERDON COUNTY JUSTICE CENTER
65 PARK AVENUE
FLEMINGTON, NJ 08822
(908) 824-9750

August 26, 2019

Jef Henninger, Esq.
Law Offices of Jef Henninger, Esq
788 Shrewsbury Ave, Suite 2209
Tinton Falls, NJ 07724

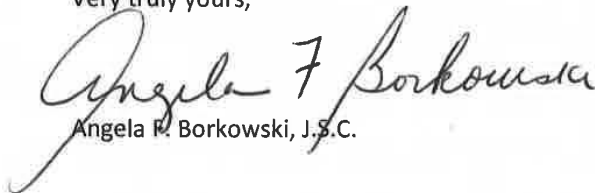
In Re: Carry Permit for Reb Russell, II

Case Identifier: GP-HNT-19-001

Dear Mr. Henninger,

The court is in receipt of your letter dated August 23, 2019. Pursuant to your request, please see the attached letter and statement of reasons that were mailed to Mr. Russell on July 25, 2019.

Very truly yours,


Angela F. Borkowski, J.S.C.

AFB:jad
Cc: Matthew S. Ah Kao, A.P.

CCM

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ADMINISTRATIVE OFFICE OF THE COURTS
State of New Jersey

CERTIFICATION OF TRANSCRIPT COMPLETION AND DELIVERY

INSTRUCTIONS :

* A copy of this document is required to be included in your appendix per R.2:6-1(a)(1)(G).

Requesting Party: JEF D HENNINGER, ESQ.

IMO CARRY PERMIT FOR VS REB RUSSELL, II	APPELLATE COURT DOCKET NUMBER: A -005414-18-T7
	LOWER COURT DOCKET NUMBER: GP-HNT-19-001
COUNTY: HUNTERDON	LOWER COURT: CIVIL

TRANSCRIPT INFORMATION					
PROCEEDING DATE	PROCEEDING TYPE	COURT REPORTER / TRANSCRIBER	TRANSMITTED PAGES	TRANSMITTED DATES	REJECTION REASON
07/24/2019	HEARING	BURKE COURT REPORTING CO.	28	08/21/2019	

CERTIFIED BY Kelly Gassler on 08/26/2019

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FILED, Clerk of the Appellate Division, August 30, 2019, A-005414-18

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-005414-18
IN RE CARRY PERMIT FOR REB RUSSELL, II

SCHEDULING ORDER

An appeal having been filed in the above matter,

IT IS HEREBY ORDERED that the time for filing and serving briefs and appendices shall not be later than as follows:

- a) BRIEF-APPELLANTS BRIEF AND APPENDIX (due date:10/15/2019)
JEF HENNINGER ESQ - JEF D HENNINGER
- b) BRIEF-RESPONDENTS BRIEF AND APPENDIX (due date:11/14/2019)
HUNTERDON COUNTY PROSECUTORS OFFICE - MATTHEW S AH KAO
- c) BRIEF-REPLY BRIEF (due date:11/25/2019)
JEF HENNINGER ESQ - JEF D HENNINGER

IT IS FURTHER ORDERED that three paper copies of each brief and appendix shall be filed with the Clerk once the brief and appendix have been approved for filing, along with three copies of all filed transcripts and any exhibits; and

IT IS FURTHER ORDERED that in the event of default by appellant regarding any provision of this order, THE APPEAL WILL BE SUBJECT TO DISMISSAL WITHOUT FURTHER NOTICE; and

IT IS FURTHER ORDERED that if any respondent fails to file a brief within the time directed by this order, such respondent will be subject to preclusion from further participation in the appeal.

WITNESS, the Honorable Carmen Messano, Presiding Judge for Administration, at Trenton, this 30th day of August, 2019.

s/JOSEPH H. ORLANDO
JOSEPH H. ORLANDO
CLERK OF THE APPELLATE DIVISION

SUPPLEMENTAL APPENDIX B

Jef Henninger, Esq.
Ciro Spina, Esq.
Joe Compitello, Esq.*
Morgan Rice, Esq.^
Christopher Caserio, Esq.*
Bevin Padgett, Esq.
Dominique Tonacchio, Esq.^

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^Admitted in NJ & NY

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Cherry Hill • Trenton • Clifton
By Appointment Only: Freehold | Toms River | Metropark (Woodbridge)
Princeton | East Brunswick | Newark | Jersey City

January 7, 2020

Honorable Judges, Appellate Division
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 006
Trenton, NJ 08625

Re: In Re Carry Permit for Reb Russell, II
Appellate Docket No. A-005414-18T2
Law Division - Criminal Part - Hunterdon County
Sat Below: Judge Angela F. Borkowski, J.S.C.

Dear Honorable Judges:

Pursuant to R. 2:6-2(b), kindly accept this letter in lieu
of a formal brief in reply to the State's response.

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Legal Argument

It is the Appellant's position that there is a flaw in the procedure that a prospective applicant has to face when coming to court for a hearing. In the current matter, this flaw in procedure directly affected the Appellant by ultimately hindering his ability to properly defend his application in violation of his Due Process Rights under the 14th Amendment.

I. The State improperly suggests that there is no legal authority to support the argument that pro se applicants should be advised on their rights during a carry permit hearing.

The State relies on the argument that the "Appellant faults the trial judge for not informing him of his burden in obtaining a carrying permit" and goes to to state that, "no authority that requires a trial judge to so advise a pro se applicant for a gun carry permit". However this is incorrect, there are many examples throughout our legal system to suggest otherwise.

There are many examples of procedures that are designed to put pro se litigants on notice and advise them they can seek counsel to represent them in court. In criminal matters, at the time of arraignment, the court advises defendants of the charges against them and informs them that they have the right to an

attorney and other information in order for an ordinary citizen to make an informed decision.

Under New jersey Court Rule 3:9-1, which outlines pretrial procedure, the rules involving arraignments state:

At the arraignment, the judge shall (i) advise the defendant of the substance of the charge; (ii) confirm that if the defendant is represented by the public defender, discovery has been obtained, or if the defendant has retained private counsel, discovery has been requested pursuant to R. 3:13-3(b)(1), or counsel has affirmatively stated that discovery will not be requested; (iii) confirm that the defendant has reviewed with counsel the indictment and, if obtained, the discovery; (iv) if so requested, allow the defendant to apply for pretrial intervention; and (v) inform all parties of their obligation to redact confidential personal identifiers from any documents submitted to the court in accordance with Rule 1:38-7(b).

[R. 3:9-1(b)(2)]

With regard to purchase permits and firearms ID cars, the New Jersey Supreme Court has stated that before an official action of denying the application can take place, the police chief must create, "...an opportunity to discuss the matter [with him], to be informed of the reasons for the denial and to offer any pertinent explanation or information for the purpose of meeting the objections being raised." Weston v. State, 60 N.J. 36, 43-44 (1972). Again, this is another example of putting an applicant, who has no notice of procedures, an opportunity to discuss the matter before an official denial.

Moreover, in final restraining orders hearings, the court advises both the plaintiff and defendant how trials work, the consequences of a restraining order, and again their right to seek legal counsel. Courts have held that due process protections apply in the domestic violence matters, see N.J.S.A. 2C:25-29a, that are imposed by the statute, see H.E.S. v. J.C.S., 175 N.J. 309, 321-23, (2003). "At a minimum, due process requires that a party in a judicial hearing receive `notice defining the issues and an adequate opportunity to prepare and respond.'" Id. At 321, (quoting McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 559, (1993)). "It is clearly improper to base a finding of domestic violence upon acts or a course of conduct not even mentioned in the complaint in all cases the trial court must ensure that defendant is afforded an adequate opportunity to be apprised of those allegations and to prepare. L.D. v. W.D., 327 N.J.Super. 1, 4, (App.Div.1999).

Furthermore, upon conviction of a criminal offense, the court ensures that the defendant understands that he has forty-five (45) days to appeal and that if post-conviction relief is sought, the defendant is given five (5) years to file. NJ Ct. R. 2:4-1(2). Additionally, the court must,

[a]fter imposing sentence, whether following the defendant's

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plea of guilty or a finding of guilty after trial, the court shall advise the defendant of the right to appeal and, if the defendant is indigent, of the right to appeal as an indigent. The court shall also inform the defendant of the time limitations in which to file petitions for post-conviction relief.

[NJ Ct. R. 3:21-4(h)]

The New Jersey Supreme Court has even held that it was not enough for the court to explain a defendant's right to appeal but to also provide a defendant with written notice that he must sign and, "as part of the sentencing colloquy, [the court] is to review the appeal rights form with the defendant, satisfy itself that the defendant understands his or her appeal rights and has executed the appeal rights form knowingly and intelligently, and place that conclusion on the record." Quoting State v. Molina, 187 N.J. 531, 208 (2006). There is a clear emphasis by the courts that a defendant understand their rights in order for them to properly proceed.

There are many more examples throughout the legal system in order to protect an ordinary citizen who presumably has absolutely no experience or knowledge on how to navigate the complex court process. These protections are intertwined throughout the legal system in order to provide to the average citizen some semblance of a guide through the dynamic world of disputes.

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The procedure, or lack there of, is that of proper notice given to a carry permit applicant. The Appellant in this case did not have the opportunity to receive such notice and therefore, was deprived his 14th Amendment rights under the Due Process Clause of the United States Constitution, which ultimately heavily contributed to the denial of his application. He applied for a carry permit and was approved by the police. He then received notice that there was a court date. However, nothing about this notice advised the Appellant of what was in store for him.

The State argues that he and other applicants stand in the same shoes of an attorney. However, the case law quoted above clearly shows that this is not the framework that has been established to protect a litigant's due process in a wide variety of matters. The State also doesn't explain how an applicant's due process rights are protected by the current procedure. How is anyone in this position supposed to know that, despite the approval by law enforcement, they now have to fight for this permit and that the trial court will require evidence, witnesses, legal argument, etc.? How is one supposed to know that they should bring an attorney because they have to otherwise understand the rules of court and the rules of evidence? How is

one supposed to know what the case law is and the high burden that one has to show in these cases? The State does not answer these questions. The answers are all the same: no one will know because there is absolutely no notice that an ordinary citizen is walking into a contested trial despite the previous approval by law enforcement.

The procedures in place right now, which does not afford an applicant notice as to what this trial will be like, are flawed because they completely deprive the applicant of his or her due process rights. In this case, the Appellant was at a severe disadvantage before his argument was even heard. The State was ready for trial but he wasn't. The Court faulted him for not providing enough evidence despite the fact that there was no notice to him that he had to bring any evidence. This is a clear violation of Due Process under the 14th Amendment. The lower court erred by not taking this under consideration and failing to provide an opportunity for Appellant to prepare adequately.

II. The state improperly suggests that pro se applicants should be treated as if they were experienced counsel.

The State asserts that, "[i]n exercising the choice to represent himself, Appellant was charged with the understanding

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that he is required to follow accepted rules and to know, and follow, the statutory law of this State". This however, assumes that he has been provided notice of his rights to seek counsel or obtain evidence in support of his position, which in this case he was not. Therefore, a pro se applicant is unable to comply with rules and procedures that do not exist.

The current procedures in place created a "trap" for the Appellant. Once he was approved by the New Jersey State Police, there was absolutely no guidance on how he should have proceeded and what to expect. This left the Appellant at a severe disadvantage. There was no guidance provided by the court or otherwise. The current procedure left Appellant with a false sense of success only to find his application being denied for lack of supporting evidence when he was not informed that it was needed in the first place.

The legal system does not assume that an average citizen knows their rights or how the court system works. This process therefore, should be no different than the countless other safeguards put in place by statutes and case law to protect citizens and afford them the opportunity to provide an equitable defense.

Conclusion

54a

For the forgoing reasons, Appellant respectfully requests that this Court remand this matter for further proceedings in order for the Appellant to properly create a record now that he understands his rights since he has hired counsel. To avoid further problems with other applicants, it is respectfully requested that this Court refer this matter to the appropriate practice committee so that the proper procedures can be implemented.

Respectfully submitted,

LAW OFFICES OF JEF HENNINGER
Attorneys for the Appellant, Reb Russell, II

By: *Jef Henninger*
Jef Henninger, Esq.

SUPPLEMENTAL APPENDIX C

IN THE MATTER OF THE
APPLICATION OF CARRY
PERMIT FOR
REB RUSSEL, II

:
:
:
:

SUPREME COURT OF NEW JERSEY
Docket No. Not Yet Assigned

CRIMINAL ACTION

ON PETITION FOR CERTIFICATION
OF THE OPINION OF THE
SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-5414-18T2

Sat Below:

Hon. Clarkson S. Fisher, J.A.D.
Hon. Allison E. Accurso, J.A.D.

**PETITION FOR CERTIFICATION AND APPENDIX
ON BEHALF OF REB RUSSELL, II, APPELLANT-PETITIONER**

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On the Petition

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JUDGMENT SOUGHT TO BE REVIEWED

On June 25, 2020, the Superior Court of New Jersey - Appellate Division affirmed the July 25, 2019, denial of an application by petitioner for a New Jersey Permit to Carry a Handgun pursuant to N.J.S.A. 2C:58-4. [SCPA17; SCPA18; SCPA26]¹

STATEMENT OF THE MATTER INVOLVED

On March 29, 2019, petitioner applied to the Superintendent of New Jersey State Police for a New Jersey Permit to Carry a Handgun. [Petitioner Appellate Brief page 1, Pa1; SCPA22]

On June 4, 2019, Lieutenant Stephen Mazzagatti, acting on behalf of the Superintendent, approved petitioner's application. [SCPA4]

On July 25, 2019, the Hon. Angela F. Borkowski, J.S.C., denied petitioner's application pursuant to N.J.S.A. 2C:58-4 with a Statement of Reasons. [SCPA18; SCPA19] Specifically, the trial court did not "find that petitioner had a justifiable need to carry a handgun." [SCPA18] This opinion was based on the fact that:

Although a justifiable need determination is required by statute the application and investigation report prepared by the superintendent is noticeably absent of any express determination of justifiable need. [SCPA22 at line 27.]

¹"SCPA" refer to Supreme Court Petitioner Appendix.

Petitioner appealed to the New Jersey Superior Court - Appellate Division, which on June 25, 2020, affirmed the trial court's opinion finding:

She [the trial court] was obviously correct that no deference was due Lieutenant Mazzagatti's approval of the application on behalf of the superintendent in the absence of any express finding by the lieutenant that Russell had established justifiable need in accordance with N.J.S.A. 2C:48-4(c) and N.J.A.C. 13-54-2.4(d)(1). [SCPA14 at line 6.]

Petitioner submits that the remedy for the law enforcement official's failure to perform his full investigation in support of his determination to approve the application as required under N.J.S. 2C:58-4 and N.J.A.C. 13:54-2.5 is not a denial of petitioner's application, but a remand to the law enforcement official to perform his statutorily-mandated investigatory duty.

QUESTIONS PRESENTED

1. Is Due Process and fundamental fairness denied when a law enforcement official fails to fully investigate an applicant resulting in "no deference" of a superintendent's decision to approve an application?
2. Should a matter be remanded for a full investigation to be performed (rather than the application being denied) when a law enforcement official fails to fully investigate a permit applicant's qualifications as mandated under N.J.S. 2C:58-4 and N.J.A.C. 13:54-2.5?

ERROR(S) COMPLAINED OF

THE COURT(S) BELOW ERRED BY FINDING THAT DENIAL OF AN APPLICATION IS PROPER WHEN THE INVESTIGATIVE AUTHORITY FAILS TO CONDUCT A FULL INVESTIGATION AS REQUIRED BY LAW, WHEN THE PROPER REMEDY IS REMAND FOR THE INVESTIGATIVE AUTHORITY TO PERFORM ITS STATUTORILY-MANDATED DUTY SO THAT DUE PROCESS IS FULFILLED.
[Raised below at SCPA15 at line 6; SCPA22 at line 27]

Under N.J.S. 2C:58-4, the initial decision whether to grant permits to carry a firearm is made by the police chief or, for out-of-state residents, by the Superintendent of State Police. As recognized by Your Honors in Weston v. State, 60 N.J. 36, 43-45 (1972), these highest-ranking law enforcement agents play a critical role in the consideration of firearm permit applications.

N.J.A.C. 13:54-2.5 entitled "Approval of application," which governs permits to carry, states in full:

The chief of police or the Superintendent, as the case may be, shall cause the applicant to be thoroughly investigated. The investigation shall include, but not be limited to, ascertaining that the applicant satisfies all of the requirements contained in this chapter for obtaining a permit to purchase a handgun or a firearms purchaser identification card, that the applicant has or has not demonstrated a thorough familiarity with the safe handling and use of handguns as evidenced by the application and accompanying materials, and that the applicant has or has not factually demonstrated a justifiable need to carry a handgun. The chief of police or the Superintendent shall approve or disapprove the application after completion of the investigation. If the application is approved, it shall be forwarded to the county clerk for presentation to a judge of the Superior Court of the county where the applicant resides, or if a nonresident or an employee of an

armored car company, to a county where he or she intends to carry the handgun. (Emphasis added.)

N.J.S. 2C:58-4c, states:

c. Investigation and approval. Each application shall in the first instance be submitted to the chief police officer of the municipality in which the applicant resides, or to the superintendent..

No application shall be approved by the chief police officer or the superintendent unless the applicant demonstrates that he is not subject to any of the disabilities set forth in 2C:58-3c., that he is thoroughly familiar with the safe handling and use of handguns, and that he has a justifiable need to carry a handgun. If the application is not approved by the chief police officer or the superintendent within 60 days of filing, it shall be deemed to have been approved, unless the applicant agrees to an extension of time in writing. (Emphasis added.)

As noted in the above, N.J.S. 2C:58-3 is incorporated in *pari materia* to N.J.S. 2C:58-4. In Weston and In re Dubov, 410 N.J. Super. 190 (App. Div. 2009), regarding N.J.S. 2C:58-3 firearm qualifications, Your Honors and the Appellate Division have held:

In performing his administrative function the chief of police [or superintendent] proceeds informally, acting either personally or through members of his department in gathering the information upon which his decision is then based. If upon completion of the investigation he decides to deny the application, in the absence of any statutory requirement, we see no obligation to hold a trial-type hearing before doing so. However, since the statute directs issuance of the purchaser identification card unless good cause to the contrary appears, in our judgment an opportunity should be given to the applicant to discuss the matter with the Chief, to be informed of the reasons for the denial and to offer any pertinent explanation or

information for the purpose of meeting the objections being raised. Weston at 44-45 (1972). (Emphasis added.)

The function of the Police Chief as the local administrative official charged with responsibility for the original decision to grant or withhold the firearms purchaser identification card involves largely the exercise of an informal discretion. Both his investigation of the application and his decision are made ex parte (except for the conference referred to above which the Chief should hold with the applicant in the future in instances where he decides to deny the application). In re Dubov, 410 N.J. Super. 190 (App. Div. 2009), citing Weston at 45. (Emphasis added.)

As noted in Weston, the Court is required to "give appropriate consideration to the Chief's investigative experience and to any expertise he [or she] appears to have developed in administering the statute." Id. at 46. See also, In re Application of Boyadjian, 362 N.J. Super. 463, 476 (App. Div.), stating the court "must [] nevertheless act with appropriate regard for the local interest factor to the extent legitimately reflected in the police chief's denial," certif. denied, 178 N.J. 250 (2003).

Thereby, the New Jersey Legislature and Judiciary recognize that the administrative officials best know the permit applicants since they have the best opportunity to investigate and make determinations as to whether applications should be granted.

A full investigatory background check is plainly an essential part of the application process. Per the above, the superintendent (or chiefs) must investigate that applicants have no 58-3 disqualifiers and, per 58-4, whether the additional factors of safe handling of a firearm, use of handgun, and justifiable need have been met.

In the present case, however, the trial court found:

Although a justifiable need determination is required by statute the application and investigation report prepared by the superintendent is noticeably absent of any express determination of justifiable need. [SCPA22 at line 27.]

The superintendent approved Russell's application -- meaning that his investigation concluded that the applicant met the justifiable need standard - yet, according to the trial court, the record supporting this approval is barren. The Appellate Division also recognized the law enforcement official's failure, and found that the trial court correctly gave "no deference" to the superintendent's approval of the application due to this failure. [SCPA15 at line 6.]

The Court(s) below were correct in affording no deference to a superintendent's approval of an application if the investigative authority failed to do his job. The remedy, however, is not denial of a petitioner's application, but remand so that Due Process is fulfilled by the applicant receiving a full investigation as required by law.

Due Process regarding handgun carry permit applications requires full investigations regarding all permit qualifications. The Court, of course, does not have to agree with chiefs' or superintendent's determinations after their investigations, but chiefs and superintendent are required to perform investigations and make determinations based upon their investigations upon which the Courts are to base their opinions. Applicants rightfully expect authorities to follow the statutory requirements and to be "thoroughly investigated" in accordance with N.J.A.C. 13:54-2.5. Here, as determined by the trial court and Appellate Division, there was an utter failure in that regard. Petitioner, however, should not be prejudiced by the investigative authority's failure to do his job and conduct a thorough investigation.

Why would the Legislature include this investigation step if it is not important and part of procedural Due Process? The role of police investigation is vital here. The Court requires the investigation to make its evaluation. The trial court could not review the superintendent's bases for finding justifiable need here because of the failure of the investigative authority to fully investigate. Ignoring that the investigative authorities must complete a full investigation countermands the importance placed upon the superintendent's and chiefs' "investigative experience," "expertise he [or she] appears to

have developed in administering the statute," and "regard for the local interest factor." See *supra*, Weston and Boyadjian. If "no deference" is to be given to chiefs/superintendent, then why do we even require them to investigate and make determinations?

The Courts below did not give "limited deference," but rather "no deference" to the superintendent's approval of the application. Either the investigative authority failed to do its job and prejudiced the petitioner at the investigatory level by failing make the statutorily required, competent determination of justifiable need, or the investigation was done as part of the application process and the Court giving no deference to the superintendent's determination was wrong. The Court needs to give the deference that is due to the superintendent's determination to approve the application or the petitioner was wrongfully prejudiced by the official's failure to do his duty. In the present case, it appears to be the later since the investigational record is barren.

Here, the superintendent approved petitioner's application. Under N.J.S. 2C:58-4, no permit shall be approved unless the applicant shows "justifiable need." To approve without such a showing, law enforcement authorities may be found in criminal violation of the law. See, State v. Constantino, 129 N.J. Super. 111 (App. Div. 1974 (police chief charged criminally for failing

to fulfill affirmative duties placed upon him by firearm licensing statutes).

Public policy demands that the authorities perform their statutorily required and conduct full investigations. Also, appropriate justifiable need investigations would in many cases avoid the need for judicial review since applicants would be on notice as to their deficiencies and decide not to appeal or, upon appeal, applicants would receive proper Due Process notice of what is lacking in their applications and provide or prepare accordingly.

Due Process particularly should be provided when constitutional rights are at issue, such as in the present case which concerns the exercise of U.S. CONST. Amend. II. Even when constitutional rights are not at issue, however, New Jersey's doctrine of fundamental fairness is triggered when there has nevertheless been some significantly unfair treatment. State v. Lazarchick, 314 N.J. Super. 500, 517 (App. Div. 1998).

Your Honor's Administrative Directive #06-19 entitled "Criminal - Procedures for Processing Gun Permits," was issued in part to "establish uniformity in how the vicinages handle permits to carry a handgun as well as minimize delays in that process." Uniformity is important. Either deference is given to chiefs' and superintendent's determinations based on their mandatory investigations per Weston, Dubov, N.J.S. 2C:58-4 and

N.J.A.C. 13:54-2.5, or there was an utter failure of the superintendent in the present case to do his job and investigate the applicant before the application was approved, in which case the matter should be remanded for that investigation to occur.

The simple and overriding fact is that the Legislature considers the chief/superintendent investigation to be critical in determining the fitness of an applicant for a permit. "To either grant or deny a permit on less than complete information would hardly serve the legislative purpose." Adler v. Livak, 308 N.J. Super 219, 224 (1998).

Based on the above, the Court(s) below erred since the matter should be remanded for the superintendent to perform the full investigation of the applicant-petitioner as mandated under case law, statutory law, and administrative code.

REASONS FOR CERTIFICATION

Police chiefs and superintendents should be held accountable to perform their statutorily mandated duties, and Courts should likewise give police chiefs and superintendents the deference afforded to law enforcement officials under the law.

Presently at issue is the interest of justice regarding the Due Process and fundamental fairness afforded licensing applications, as well as, ultimately, the constitutional right to keep and bear arms since the license at issue provides the means by which citizens may exercise that fundamental, individual, constitutional right.

Based on the above, this case presents questions of "general public importance" pursuant to R. 2:12-4, as well as "a substantial question involving a substantial question arising under the Constitution of the United States."

COMMENTS AS TO THE APPELLATE DIVISION DECISION

The Court(s) below failed to ensure that police chiefs and superintendents perform their statutorily mandated duties and wrongfully denied the petitioner Due Process for the investigative authority's failure to perform said duties.

CONCLUSION

For the foregoing reasons, it is respectfully requested that certification be granted in this matter.

CERTIFICATION

I hereby certify this petition presents a substantial question, is filed in good faith, and not for delay.

Respectfully Submitted,
EVAN P. NAPPEN ATTORNEY AT LAW, P.C.

By:  Louis P. Nappen, Esq.
For the Firm

c: New Jersey Superior Court of New Jersey - Appellate Division
Jeffrey L. Weinstein and Michael J. Williams, Esqs.,
Hunterdon County Prosecutor's Office (Appellate)
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IN THE MATTER OF THE
 APPLICATION OF CARRY
 PERMIT FOR REB RUSSEL, II

SUPERIOR COURT OF NEW JERSEY
 APPELLATE DIVISION
 COUNTY OF HUNTERDON

DOCKET NO. A-5414-18T2

NOTICE OF PETITION FOR
 CERTIFICATION PURSUANT TO R. 2:12-3

To: Clerk
 Superior Court of New Jersey
 Appellate Division
 Hughes Justice Complex
 25 Market Street, CN-006
 Trenton, NJ 08625

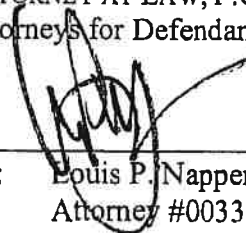
Clerk
 Supreme Court of New Jersey
 Hughes Justice Complex
 25 Market Street, PO. Box 970
 Trenton, NJ 08625-0970

Jeffrey L. Weinstein and Michael J. Williams, Esqs.
 Hunterdon County Prosecutor's Office (Appellate Division)
 PO Box 756
 65 Park Ave
 Flemington, NJ 08822-1128

PLEASE TAKE NOTICE that petitioner, Reb Russell, II,¹ will petition the Supreme Court of New Jersey for certification to the Appellate Division from its judgment of June 25, 2020, by the Hon. Clarkson S. Fisher, J.A.D., and the Hon. Allison E. Accurso, J.A.D. This judgment affirmed the July 25, 2019, denial of petitioner's application for a New Jersey Permit to Carry a Handgun by the New Jersey Superior Court, Law Division, before the Hon. Angela F. Borkowski, J.S.C.

Respectfully Submitted,
 EVAN F. NAPPEN
 ATTORNEY AT LAW, P.C.
 Attorneys for Defendant-Petitioner

Dated: July 10, 2020

By: 
 Louis P. Nappen, Esquire
 Attorney #00332-2006
 For the Firm

¹ PLEASE NOTE: The Appellate Division's Opinion caption, recreated here, misspells petitioner's name. Petitioner spells his surname with two Ls.

**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-5414-18T2

IN THE MATTER OF THE
APPLICATION OF CARRY
PERMIT FOR REB RUSSEL, II

Argued telephonically May 19, 2020 –
Decided June 25, 2020

Before Judges Fisher and Accurso.

On appeal from the Superior Court of New Jersey,
Law Division, Hunterdon County, Docket No. GP-
HNT-19-001.

Jef Henninger argued the cause for appellant Reb
Russell, II.

Jeffrey L. Weinstein, Special Deputy Attorney
General/Acting Assistant Prosecutor, argued the
cause for respondent State of New Jersey (Michael
J. Williams, Acting Hunterdon County Prosecutor,
attorney; Jeffrey L. Weinstein, on the brief).

PER CURIAM

Reb Russell, II appeals from the trial court's July 25, 2019 order denying
his application for a carry-permit, finding he failed to establish justifiable need

to carry a handgun in New Jersey. See N.J.S.A. 2C:58-4. Russell contends the court erred in that finding, that it failed to consider "all the appropriate facts" he presented, should have accorded more deference to the Superintendent of State Police, that Russell's failure to have retained counsel to represent him at the hearing conducted by the court hindered "his ability to properly articulate his argument," and that a remand is required in light of the Supreme Court's recent opinion in In re Carlstrom, 240 N.J. 563, 565 (2020), holding a hearing must be held whenever the Law Division "contemplates denying a handgun carry-permit that has been approved by the police chief or superintendent." We find no merit in any of Russell's arguments and affirm, substantially for the reasons provided in Judge Borkowski's comprehensive opinion entered after a hearing.

Russell holds a Ph.D. in the sciences and works in the pharmaceutical industry. After his twenty-three-year marriage ended in divorce in 2018, he started a side business as a firearms instructor. When he applied to State Police for a carry-permit, he resided in Doylestown, Pennsylvania, the same town in which his ex-wife resides. Russell has held a concealed-carry permit in Pennsylvania for twenty years.

Lieutenant Stephen Mazzagatti, acting on behalf of the Superintendent, approved the application on June 4, 2019. The approval noted that Russell "successfully completed a handgun qualification course, with a Glock 19, . . . under the direction of Instructor Reb Russell, II." The approval also noted that Russell's application was endorsed by three individuals all of whom indicated they had known him for more than three years and could attest to his reputable character and behavior. See N.J.A.C. 13:54-2.4. The approval stated that no information suggested Russell was subject to any disability included in N.J.S.A. 2C:58-3(c), but did not address his justifiable need to carry a handgun, N.J.S.A. 2C:58-4(c). It did, however, state that in the event Russell's application was approved, "the restrictions should be that the applicant can only carry a weapon in the performance of his duties during working hours," and that it would be "null and void" if that employment terminated.

Following approval by the State Police, Russell submitted his application to the Superior Court on June 17, 2019, see N.J.S.A. 2C:58-4(d), which was opposed by the Hunterdon County Prosecutor. In support of the application, Russell submitted a two-page single-spaced letter detailing his background, education and work history. The bulk of the letter was devoted to addressing his need for the permit.

Russell explained that he'd been the "victim of domestic abuse" for the entire length of his twenty-three-year marriage, although he "never reported anything due to the social stigma." He claimed his ex-wife wife suffered from borderline personality disorder and refused treatment. Russell stated she had threatened him, saying "there is a special place in hell for [him] and she will personal[ly] ensure [he] get there quickly and if [she] can't have [him] no one will." He claimed he took her threats seriously, knowing "what she is capable of from experience," especially as he had "move[d] on in a committed relationship," which had "further enraged" her.

Russell explained both his parents and the woman he was seeing lived in New Jersey and that he spent several days a week at the latter's home. He contended his ex-wife was "someone who scares [him] with her rage, impulsive behaviors, lies, manipulation and abuse." He noted he had "the legal means" to protect his person in Pennsylvania where he had "some sense of safety and peace" and was requesting the same in New Jersey. Russell asserted he "shouldn't have to live in fear and should be free from the real and constant threat [his] ex-wife is to [him]." He closed by saying "[t]he potential for danger is real" and the bias and shame that had prevented him from previously coming forward "are not."

The court conducted a hearing on the application on July 24, 2019. Judge Borkowski began the hearing by explaining the carry-permit statute assigned the decision of whether the permit should issue to the court, notwithstanding input from the State Police "as to whether or not a carry permit should be permitted and whether or not there is a justifiable reason for that," which is why the court was conducting a hearing. The prosecutor was permitted to question Russell and began by asking whether they could talk about the letter Russell submitted to the court as to why he "should have a carry permit" in New Jersey. Russell responded "that it's tough, but [he] realize[d] [he] ha[d] to."

Russell explained his primary reason for seeking the permit was his "abusive ex-wife." He testified that he stayed in his marriage "for the kids," although his wife was verbally abusive and "became physically abusive." He explained that because he was "bigger than she is" he "didn't think about it much from that perspective" and explained it also was "an embarrassment." He testified she would be happy at times and "would apologize, . . . but they make you think — she made me think it was my fault at times until finally it was enough." He claimed his ex-wife is "a good person," but "still really weaponizes the kids" and, as he "understand[s] it from working with people,

she has an emotional dysregulation issue where she can just fly into rages." He explained that he'd had a carry-permit in Pennsylvania since 1999, and although he'd worked in New Jersey for over a decade, it was only recently when he began spending more time at his girlfriend's, seeing what his ex-wife was "capable of, and understanding what's really going on" that he sought a carry-permit here.

In response to the prosecutor's questions as to whether Russell's ex-wife had ever followed him into New Jersey or caused alarm to him here, Russell responded that he "can't say [he'd] noticed that she's followed [him], but [he] can't say that she hasn't." He expressed the belief "that probably most of the time as [he understood] this disorder she's stable but when she runs into rages and becomes impulsive . . . I mean the risk is probably small, but it's 100 percent lethal if it happens." Asked by the prosecutor whether he felt local law enforcement in New Jersey would be able to protect him were his ex-wife to appear in New Jersey, although he had not seen her here, Russell responded that he didn't feel they could "in most cases" because "there's a response time, right, to everything."

The judge also engaged Russell at length. She noted he had certified himself as to his proficiency with a handgun and asked how the prosecutor

might confirm his ability to safely handle a firearm in that circumstance.

When Russell explained he could certify himself because the National Rifle Association had certified him as an instructor, the judge noted he had not submitted those documents to the court. Russell had a photo of his certification on his phone, which the court reviewed and read into the record.

Turning to justifiable need, the judge asked whether Russell had ever sought a restraining order against his ex-wife or the assistance of the police. When Russell said he had done neither, instead choosing to stay away from her and mentioned she had their children call him because he wouldn't speak to her, the court inquired as to whether his ex-wife had been awarded custody of their children. Russell explained they had joint custody, which he had not opposed. When the judge asked whether he felt comfortable with the children being in his ex-wife's custody given what he had testified to about her, he replied that he did not feel comfortable. He noted, however, that the children were "older now" and he had been advised by counsel there was little to do in such cases, "I don't have the evidence, ma'am."

When the judge asked whether his ex-wife had ever attacked him, Russell responded that she had not attacked him since they separated over two years before, but that she knew in Pennsylvania "that would be a bad thing —

but she also knows in New Jersey, you know, based on my history that I wouldn't have the same capabilities." Asked what he meant, Russell responded that his ex-wife knew he "had a concealed carry in Pennsylvania, but [he'd] never had one in New Jersey."

When the judge pointed out that Russell could seek a restraining order that would protect him if threatened by his ex-wife, he responded saying, "yeah, you can put that in place I'm assuming, but that doesn't stop people." In response to the court's question as to the last time his ex-wife had threatened him, Russell responded that "it's probably about a year ago." When he expressed that he just did not "feel comfortable with her, ma'am, especially given [her] condition," the judge noted his ex-wife would be held in contempt if she violated the restraining order and asked whether that wouldn't "be a different way to deal with it rather than obtaining a carry permit." Russell replied that the judge's question "assumes that that wouldn't be a terminal effect at that point . . . I mean you can violate a restraining order . . . and it's fine if the outcome isn't extreme." Russell admitted, however, that his wife had never approached him with a weapon, and he did not know whether she possessed one.

Asked by the court whether he was asserting justifiable need on any ground other than personal protection, Russell replied it would be easier with his firearm instruction business. If he had a carry-permit he would not be limited to transporting a gun to a firing range from his home, but could carry the weapon to work, for example, and meet a student at the range after work, without having to return home first to retrieve his weapon. He testified, however, that while it would make things easier for him, that was not why he was seeking the permit. The court also inquired as to the recommendation by State Police that the permit be restricted so as to only allow Russell to carry a handgun "in the performance of his duties during working hours," when his application reflected he only traveled to New Jersey to visit his parents or his girlfriend and not for work. The prosecutor offered that the restriction was not specific to Russell but something he believed the State Police "put . . . in every application."

Judge Borkowski issued a written opinion denying the application the day after the hearing. In a comprehensive opinion discussing the law governing the issuance of carry-permits and making clear factual findings based on Russell's application and the evidence and arguments adduced at the hearing, the judge found Russell was a person of good character and not

subject to any of the disabilities in N.J.S.A. 2C:58-3(c). And although noting that "common sense dictates that applicants should not certify themselves" as to their familiarity with the safe handling and use of handguns required by N.J.S.A. 2C:58-4(d) and N.J.A.C. 13:54-2.4(b), the court found Russell's testimony as to his qualifications credible and the documentation he submitted at the hearing authentic. The court accordingly found Russell was also "thoroughly familiar with the safe handling and use of handguns," satisfying the requirements of N.J.S.A. 2C:58-4(d).

Although noting that Russell's application had been approved by the Division of State Police, thus implying a required finding of justifiable need pursuant to N.J.S.A. 2C:58-4(c), Judge Borkowski found an "express determination of justifiable need" was "noticeably absent" from the Division's investigation report and approval. Based on her own review of Russell's application and his testimony at the hearing, Judge Borkowski concluded Russell had "not provided the specific detail necessary to conclude that there is an urgent necessity" for self-protection as required by statute, and that Russell's "generalized fear" of his ex-wife could not support issuance of a carry-permit under In re Preis, 118 N.J. 564, 571 (1990).

Specifically, the court noted Russell provided only a few generalized verbal threats from his ex-wife, the most recent occurring a year ago. He could not say that she had followed him since their divorce or ever threatened him with a weapon. Indeed, he was not aware of whether she even possessed one. And although he contends his ex-wife suffers from bi-polar disorder, he offered no documentation of that or any certification or testimony from a qualified and unbiased third-party to substantiate she suffers from that illness or legitimize the fear Russell expressed. The judge noted defendant's testimony that he had never sought the assistance of the police or attempted to obtain a restraining order against his ex-wife, or taken other reasonable means of protecting himself before seeking a carry permit.

The court concluded Russell's

own actions contradict his fear of his wife. Although recognizing a victim of domestic violence may hesitate to report abuse because of the stigma attached, prior to resorting to carrying a weapon for protection, the applicant never reported any past or, more pertinent to this action, any present abusive conduct, has never requested a temporary or final restraining order, has chosen to reside and operate his business in the same town where his ex-wife lives although he testified that he rarely spends time there, did not contest his ex-wife having joint custody of his children. Moreover, the applicant characterized his ex-wife's disorder and behavior as being stable most of the time. He also testified that he was advised

when she throws rages and acts on impulses it can result in lethal consequences, however he asserted that the "risk [of lethal consequences] is probably small." The last verbal threat was approximately one year ago. The code requires the applicant to demonstrate a "special danger to the applicant's life that cannot be avoided by reasonable means other than by issuance of a permit to carry a handgun." The applicant has not satisfied that burden. Therefore, the court does not find the applicant's described fear of his ex-wife provides a justifiable need to carry a firearm in this state as he has not demonstrated an urgent threat exists.

As to Russell's side business as a firearms instructor, the court found no evidence to support his need for a carry-permit in connection with that endeavor. The judge noted Russell did not need a carry-permit to lawfully transport a firearm from his residence in either Pennsylvania or New Jersey directly to any range in New Jersey. Although Russell testified he maintained an office in Ewing, that office was for Russell's pharmaceutical work, not his firearms instruction. Based on Russell's testimony, the judge concluded it would be convenient for Russell to travel directly from work to the range, but his convenience could not support a justifiable need for a carry-permit in connection with his self-employment as a firearms instructor.

The court summarized her denial of Russell's application as follows:

The court denies the applicant's request for a permit to carry because of a lack of specific detail

provided in his application and testimony of justifiable need, the generalized nature of the threats, the lack of immediacy or urgency of any threats, and the lack of supporting documents. Although the applicant has demonstrated that he is of good character, suffers from no impediments to owning or carrying a firearm and is knowledgeable about the safe and proper use of a firearm, the court finds that he has not shown he has a justifiable need to carry a firearm. In essence the applicant failed to establish that he will be subjected to a substantial threat of serious bodily harm and carrying a handgun is necessary to reduce the threat of unjustifiable serious bodily injury.

"The permit to carry a gun is the most closely-regulated aspect" of the "careful grid" of New Jersey's gun-control laws. Preis, 118 N.J. 564, 568 (quoting State v. Ingram, 98 N.J. 489, 495 n. 1 (1985)). Under the rule established by our Supreme Court in Siccardi v. State, 59 N.J. 545, 557 (1971), and reaffirmed in Preis, an applicant must "establish an urgent necessity for carrying guns for self-protection" under the statute. "The requirement is of specific threats or previous attacks demonstrating a special danger to the applicant's life that cannot be avoided by other means." Preis, 118 N.J. at 571. The law is well settled that "[g]eneralized fears for personal safety are inadequate" to establish the need for a carry-permit in this State. Ibid.; In re Wheeler, 433 N.J. Super. 560, 614 (App. Div. 2013). In reviewing a trial court's decision to grant or deny the permit, we are bound to accept those

factual findings with substantial credible support in the record. In re Return of Weapons to J.W.D., 149 N.J. 108, 116-17 (1997). Our review of the trial court's legal conclusions, of course, is plenary. Id. at 117.

Applying those standards here, we find no basis to question Judge Borkowski's conclusion that Russell failed to establish justifiable need for a carry-permit. She was obviously correct that no deference was due Lieutenant Mazzagatti's approval of the application on behalf of the superintendent in the absence of any express finding by the lieutenant that Russell had established justifiable need in accordance with N.J.S.A. 2C:48-4(c) and N.J.A.C. 13:54-2.4(d)(1). Moreover, the statute regulating issuance of a carry-permit makes clear that although the superintendent may approve an application, only a Superior Court judge may issue the permit, making the judge's exercise of her independent judgment critical. See In re Pantano, 429 N.J. Super. 478, 485-86 (App. Div. 2013).

Contrary to Russell's arguments on appeal, a review of the hearing transcript and Judge Borkowski's careful findings makes clear the judge considered all the facts he put forth in support of his application. Although we cannot say whether Russell's choice to not retain counsel "hindered his ability to properly articulate his argument," counsel has not suggested what that

argument might be in light of the facts Russell presented in support of his application.

Finally, we reject the argument that the Court's recent decision in Carlstrom requires a remand here. Russell was afforded a prompt hearing on his application for a carry-permit. See Carlstrom, 240 N.J. at 572. And, as his response to the prosecutor's initial questions at that hearing makes clear, he knew and was prepared to address the critical issue of whether the condition and behavior of his ex-wife was sufficient to establish his need for a carry-permit in New Jersey. See ibid. Judge Borkowski afforded him the opportunity to present his reasons as to why he satisfied the statutory standard, and he responded to her questions at length. Ibid. Further, Judge Borkowski permitted Russell to submit pertinent documents stored on his phone in the course of the hearing, which she relied on in finding he satisfied the requirements of N.J.S.A. 2C:58-4(d). See Carlstrom, 240 N.J. at 572-73. Finally, she sent Russell a detailed statement of reasons for her denial of the permit the day after the hearing. See id. at 572. Russell was provided the full and fair hearing contemplated by the Court in Carlstrom as required by Administrative Directive #06-19. Nothing more was required.

Because Judge Borkowski's conclusion that Russell did not establish justifiable need for a carry-permit is in accord with well-settled law, and Russell has provided us no basis to reverse that conclusion, we affirm, substantially for the reasons expressed by Judge Borkowski in her thorough and thoughtful statement of reasons of July 25, 2019.

Affirmed.

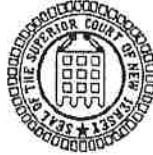
I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
SOMERSET, HUNTERDON AND WARREN COUNTIES
VICINAGE 13

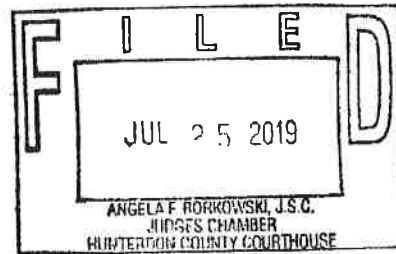
ANGELA F. BORKOWSKI
JUDGE



HUNTERDON COUNTY JUSTICE CENTER
65 PARK AVENUE
FLEMINGTON, NJ 08822
(908) 824-9750

July 25, 2019

Reb Russell, II
26 Cross Road
Basking Ridge, NJ 07920



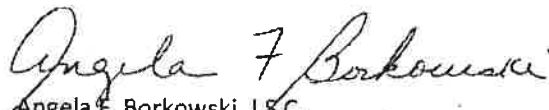
In Re: Carry Permit for Reb Russell, II

Case Identifier: GP-HNT-19-001

Dear Mr. Russell,

The court received your application for a New Jersey Permit to Carry a Handgun on June 17, 2019. On July 24, 2019, this court held a hearing regarding your permit application. Pursuant to N.J.S.A. 2C:58-4, this court denies your application. The court does not find that you have a justifiable need to carry a handgun. Please see this court's statement of reasons for denial attached to this letter. You have the right to appeal this decision pursuant to N.J.S.A. 2C:58-4(d).

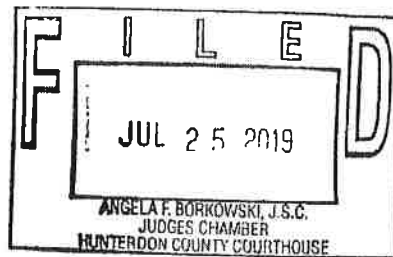
Very truly yours,


Angela F. Borkowski, J.S.C.

AFB:jad

Cc: Matthew S. Ah Kao, A.P.

Stephen Mazzagatti, Lieutenant, NJSP
CCM



NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON
OPINIONS

PREPARED BY THE COURT
Hon. Angela F. Borkowski, J.S.C.

In Re: Carry Permit for Reb Russell, II

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CRIMINAL PART
HUNTERDON COUNTY

STATEMENT OF REASONS FOR
DENIAL

On March 29, 2019, R.R. filed an Application for Permit to Carry a Handgun with the New Jersey State Police. Lieutenant Stephen Mazzagatti acting on behalf of the Superintendent of the New Jersey State Police approved the application on June 4, 2019. The application was submitted to the Superior Court of New Jersey, Hunterdon County, Criminal Division, for final approval. This court after reviewing the application and supporting materials and holding a hearing on July 24, 2019 does not find that R.R. has a justifiable need to have a permit to carry in the State of New Jersey; therefore, his application is denied.

LEGAL STANDARD

N.J.S.A. § 2C:58-4 governs the granting of a permit to carry a handgun, and states: “[n]o application shall be approved by the chief police officer or the superintendent unless the applicant demonstrates that he is not subject to any of the disabilities set forth in 2C:58-3c., that he is thoroughly familiar with the safe handling and use of handguns, and that he has a justifiable need to carry a handgun.” N.J.S.A. § 2C:58-4(c). Although the application is first submitted to the chief police officer in a municipality or the superintendent of the state police for approval, only the court may issue the permit. In re Pantano, 429 N.J. Super. 478, 485, (App.Div. 2013), certif. dismissed as improvidently granted, 2014 N.J. Lexis 904, (2014). If an appeal is filed or the application is approved by the chief police officer or superintendent, the Court must conduct its own evaluation and be satisfied that the applicant is:

1. a person of good character
2. not subject to any of the disabilities set forth in section N.J.S.A. 2C:58-3c,
3. thoroughly familiar with the safe handling and use of handguns
4. has a justifiable need to carry a handgun

[N.J.S.A. 2C:58-4(d)]

(d) Each application form shall also be accompanied by a written certification of justifiable need to carry a handgun, which shall be under oath and which:

1. In the case of a private citizen shall specify in detail the urgent necessity for self-protection, as evidenced by serious threats, specific threats, or previous attacks, which demonstrate a special danger to the applicant's life that cannot be avoided by reasonable means other than by issuance of a permit to carry a handgun. Where possible the applicant shall corroborate the existence of any specific

threats or previous attacks by reference to reports of such incidents to the appropriate law enforcement agencies; or

N.J.A.C. 13:54-2.4(d)(1)

The determination of the applicant's "justifiable need" to carry a handgun is made on a case-by-case basis. In re Preis, 118 N.J. 564, 576 (1990). The Supreme Court has referred to New Jersey's gun-control laws as a "careful grid" of regulatory provisions. State v. Ingram, 98 N.J. 489, 495 (1985). New Jersey laws "draw careful lines between permission to possess a gun in one's home or place of business, N.J.S.A. 2C:39-6e, and permission to carry a gun, N.J.S.A. 2C:39-6a and N.J.S.A. 2C:39-6c." Id. at 568-569. The permit to carry a gun is the most closely-regulated aspect of gun-control laws. Id.

Very few persons are exempt from the criminal provisions for carrying a gun without a permit. Id.¹. Private-security officers, not being exempt from our gun-control laws, must obtain a license to carry a gun. Id. Only employees of armored-car companies are singled out for special treatment. See N.J.S.A. 2C:58-4.1. "So concerned is the Legislature about this licensing process that it allows only a Superior Court judge to issue a permit, after applicants first obtain approval from their local chief of police or superintendent. Id. "The New Jersey Legislature has long been aware of the dangers inherent in the carrying of handguns and the urgent necessity of their regulation..." Siccardi v. State, 59 N.J. 545, 553 (1971). Moreover, absolute deference is not extended to the police chief's decision to approve the permit. In re Pantano, 429 N.J. Super. 478, 484 (App.Div. 2013)

The Siccardi court has acknowledged "a strict policy which wisely confines the issuance of carrying permits to persons specifically employed in security work and to such other limited personnel who can establish an urgent necessity for carrying guns for self-protection." Siccardi, 59 N.J. at 553. An applicant whose life is in real danger, as evidenced by serious threats or earlier attacks, may perhaps qualify for a permit to carry. Id. at 557. Generalized fears for personal safety are inadequate as a basis for a permit. Preis, 118 N.J. at 573.

¹ Members of the armed forces of the United States or National Guard, federal-law-enforcement officers, State Police, sheriff's officers, correction officers, or *regular* members of municipal and county police forces have authority to carry guns both on and off duty. N.J.S.A. 2C:39-6a. Other designated occupations, such as bank guards, railway policemen, park rangers, and campus-police officers, are exempt from the gun-control act's criminal provisions "while in the actual performance of [such] duties." N.J.S.A. 2C:39-6c

FACTUAL FINDINGS AND LEGAL ANALYSIS

The court makes the following findings of fact and conclusions of law. Preliminarily, the court finds, and the state does not object, that the applicant is a person of good character and is not subject to any of the disabilities set forth in section N.J.S.A. 2C:58-3c. See N.J.S.A. 2C:58-4(d). The court notes that the applicant has certified himself on the firearms he requests to carry. Although N.J.A.C. 13:54-2.4(b) and N.J.S.A. 2C:58-4d are silent on whether someone other than the applicant must certify that the applicant is "thoroughly familiar with the safe handling and use of handguns," common sense dictates that applicants should not certify themselves. However, the applicant provided sworn testimony under oath and provided documentation to the court that he is certified by the National Rifle Association and designated as an instructor that is authorized to teach the basic pistol course. He is also certified as a range safety officer, authorizing him to run firing ranges. Additionally he testified that he has had a concealed carry permit in Pennsylvania since 1999. The court finds the testimony of the applicant to be credible and finds the documentation provided at the hearing to be authentic; same was not objected to by the state. Therefore, after review of this documentation and the sworn testimony of the applicant the court is satisfied that the applicant is "thoroughly familiar with the safe handling and use of handguns." *Id.*

This application comes before the court having been approved by Lieutenant Stephen Mazzagatti acting on behalf of the Superintendent of the New Jersey State Police. Pursuant to N.J.S.A. 2C:58-4c, "no application shall be approved by the...superintendent unless the applicant demonstrates that...he has a justifiable need to carry a handgun." The court finds that the applicant has not provided the specific detail necessary to conclude that there is an urgent necessity as required by statute or code. N.J.A.C. 13:54-2.4(d)(1). Although, the court does consider the endorsement of the superintendent, the court would be derelict in its duty if it did not make its own independent finding. Despite the superintendent's endorsement, it is the court that has the final determination of granting a permit to carry.

Although a justifiable need determination is required by statute the application and investigation report prepared by the superintendent is noticeably absent of any express determination of justifiable need. The only mention of justifiable need is the remark in the investigation report that "an attached letter from the applicant explains why he thinks he needs to possess a carry permit in the state of New Jersey." The State Police investigation report concludes

"in the event the applicant's permit to carry a firearm in the state of New Jersey is approved. The restrictions should be that the applicant can only carry a weapon in the performance of his duties during working hours. In the event the applicant terminates his employment, this permit will be null and void and must immediately be returned to the superintendent of the New Jersey State Police." The applicant certified that he is both a self-employed firearms instructor and a scientist at Jazz Pharma in Philadelphia. Although the investigation report from the superintendent recommends a restriction on the applicant's permit that he only be allowed to carry during work hours, the applicant testified that his primary need for a carry permit is to protect himself from his ex-wife and his secondary need is regarding his self-employment as a firearms instructor for convenience. However, the court does not find that applicant's generalized fear supports granting the applicant's permit to carry. Preis, 118 N.J. at 573. Nor does the applicant's self-employment as a firearms instructor as explained by the applicant support a justifiable need to grant a carry permit.

The applicant attached to the application a notarized certification alleging his justifiable need to carry a firearm. In sum, the applicant asserted that after his divorce he started a business as a certified range safety officer and certified pistol instructor teaching safety responsibility, and judgement. The applicant outlined the abusive relationship that he was in for 23 years. The applicant asserted that his ex-wife is "someone who scares [him] with her rage, impulsive behaviors, lies, manipulation, and abuse." The applicant claimed that his ex-wife suffers from untreated borderline personality disorder (BPD) and that she is prone to impulsive violent behavior due to this mental illness. Applicant certified that he has moved on to a committed relationship which has further enraged his ex-wife. He claimed that he has been threatened by his ex-wife, specifically she has told him "there is a special place in hell for [him] and she will personally ensure [he] get there quickly and if [she] can't have [him] no one will," however during the hearing the applicant asserted that the last time he was threatened by his ex-wife was a year ago. The applicant stated that he is under a constant threat as long as she remains untreated. The applicant claimed that he spends up to a week or two at a time in New Jersey and that he frequents Brook Lawn and Basking Ridge, New Jersey where his girlfriend and parents reside. However at the hearing, the applicant testified that now he only resides at his residence in Doylestown three or four times a month and that he spends the majority of his time, "95%" in New Jersey with his new partner. Applicant requests that the court grant his permit to carry to protect himself while in New

Jersey, a right that he already has in Pennsylvania.

The applicant has provided a few generalized threats that occurred over the course of multiple years. The applicant provided very little background information about his ex-wife, and did not provide the exact dates or circumstances of the alleged threats. He testified, however, that he had been separated from his ex-wife since March 2017 and that the divorce was finalized in December of 2018. He testified that they currently share joint custody of their children; he having agreed to the arrangement. He stated he was last verbally threatened by her one year ago and that he does not know if his ex-wife is in possession of a weapon; she has never approached him with a weapon. He did not testify to details regarding any specific instances of abuse, having documented only one. The applicant does not provide any evidence of restraining orders sought against his ex-wife or police reports or convictions against his ex-wife or other documentation evidencing that he has sought reasonable means other than the issuance of a permit to carry a handgun. He testified that he has not noticed his ex-wife following him but could not confirm that she has not followed him or stalked him in the past. Moreover he testified that he refuses to give his mailing address to his ex-wife, refuses to communicate with her over the phone, and only communicates with her over email currently. There is no evidence that the ex-wife is aware of where the applicant resides in Doylestown or in Basking Ridge. The applicant testified that his wife currently resides in their former marital home in Doylestown, PA with one or more of his children and at times have used them "as weapons" against him. There is no specific documentation or evidence to support that the ex-wife has ever made contact with the applicant in New Jersey since their divorce in 2018. Moreover, although the applicant asserted that the ex-wife suffers from BPD, there is no documentation to support that she suffers from this mental illness, and there is no certification or testimony from an unbiased third party that substantiates this illness or legitimizes the fears alleged by the applicant. The court would have at least assumed that this would be mentioned in evaluations or other documents of the divorce when children were involved. There is simply no corroborating evidence to support that the need for protection is urgent. See In re Pantano, 429 N.J. Super. at 483 (Upholding the trial court's finding that an incident that occurred over 4 years ago was insufficient to establish a justifiable need to carry a handgun.).

The defendant's own actions contradict his fear of his wife. Although recognizing a victim of domestic violence may hesitate to report abuse because of the stigma attached, prior to resorting

to carrying a weapon for protection, the applicant never reported any past or, more pertinent to this action, any present abusive conduct, has never requested a temporary or final restraining order, has chosen to reside and operate his business in the same town where his ex-wife lives although he testified that he rarely spends time there, did not contest his ex-wife having joint custody of his children. Moreover, the applicant characterized his ex-wife's disorder and behavior as being stable most of the time. He also testified that he was advised when she throws rages and acts on impulses it can result in lethal consequences, however he asserted that the "risk [of lethal consequences] is probably small." The last verbal threat was approximately one year ago. The code requires the applicant to demonstrate a "special danger to the applicant's life that cannot be avoided by reasonable means other than by issuance of a permit to carry a handgun". The applicant has not satisfied that burden. Therefore, the court does not find the applicant's described fear of his ex-wife provides a justifiable need to carry a firearm in this state as he has not demonstrated an urgent threat exists.

Regarding applicant's self-employment as a firearms instructor, there is no evidence or certification that supports the applicant has ever been involved in any business in New Jersey that justifies he carry a firearm. He testified that he has trained people in New Jersey on at least one occasion and that he has a firearms identification permit in New Jersey, but that he does not have a hand gun purchase permit because he is not a resident. He also testified that he is currently permitted under New Jersey law to transport weapons from his residence in Pennsylvania to a range in New Jersey, however he is only authorized to travel to and from with no deviations in travel. Pursuant to N.J.S.A. 2C:58-3.2, 2C:39-6f.(3), and 2C:39-9i.(3) the court finds that applicant is lawfully permitted to transport firearms directly from his place of residence in Pennsylvania to any range in New Jersey for the purposes of his job as a firearms instructor. However, a handgun carry permit is not required or necessary for applicant to transport weapons in the state of New Jersey to and from the range. The applicant testified that he has two offices in which he works out of in Ewing, NJ and in Philadelphia, PA. However those offices are for his job as a scientist and not as a firearms instructor. The court finds that there is no justifiable need for applicant to conceal carry a handgun to Ewing, NJ. Based on his testimony, it would merely be a convenience to the applicant for him to travel directly from work to the range. However this is not a justifiable need. Therefore, the courts finds that the applicant's self-employment as a firearm instructor does not establish a justifiable need to carry in this state.

The court denies the applicant's request for a permit to carry because of a lack of specific detail provided in his application and testimony of justifiable need, the generalized nature of the threats, the lack of immediacy or urgency of any threats, and the lack of supporting documents. Although the applicant has demonstrated that he is of good character, suffers from no impediments to owning or carrying a firearm and is knowledgeable about the safe and proper use of a firearm, the court finds that he has not shown he has a justifiable need to carry a firearm. In essence the applicant failed to establish that he will be subjected to a substantial threat of serious bodily harm and carrying a handgun is necessary to reduce the threat of unjustifiable serious bodily injury.

CONCLUSION

For the reasons stated herein, the applicant's Application for Permit to Carry a Handgun is **DENIED**. The applicant has a right to appeal this decision pursuant to N.J.S.A. 2C:58-4(d).

SUPPLEMENTAL APPENDIX D

SUPERIOR COURT OF NEW JERSEY
HUNTERDON COUNTY
LAW DIVISION
DOCKET NO. GP-HNT-19-001
APPELLATE DOCKET NO. A-005414-18

IN THE MATTER OF:)
APPLICATION OF CARRY)
PERMIT FOR REB RUSSELL,)
II) TRANSCRIPT OF HEARING

Place: Hunterdon County Court House
 71 Main Street
 Flemington, NJ 08822-2900

Date: July 24, 2019

BEFORE:

HONORABLE ANGELA BORKOWSKI, J.S.C.

TRANSCRIPT ORDERED BY:

JEFF D. HENNINGER, ESQ.
(LAW OFFICE OF JEFF D. HENNINGER)

APPEARANCES:

MATTHEW AH KAO, ESQ.
Prosecutor for Hunterdon County
Attorney for the State

MARY E. DRING, AD/T 582
Burke Court Reporting, LLC
1044 Route 23, Suite 206
Wayne, New Jersey 07470

Audio Recorded
Recording Operator,
JUDY CASE

I N D E X

WITNESSES

DIRECT

CROSS

REDIRECT

RECROSS

FOR THE COURT:

Reb John Russell, II 4

THE COURT:

Page:

Decision to be written

26

1 THE COURT: All right. This is the application
2 for a carry permit. May I have appearances, please.

3 MR. AH KAO: Good morning, Your Honor. Matthew
4 Ah Kao for the State.

5 THE COURT: Sir, your name?

6 MR. RUSSELL: Good morning, Your Honor. Reb
7 Russell.

8 THE COURT: All right. This matter is on as the
9 statute indicates the Court has the final decision
10 regardless of input from the State Police as to whether or
11 not a carry permit should be permitted and whether or not
12 there is a justifiable reason for that, and that's why the
13 Court has this hearing today.

14 So the first thing I'm going to do is ask that
15 you be sworn.

16 MR. RUSSELL: Yes, ma'am.

17 THE CLERK: Please raise your right hand.

18 R E B J O H N R U S S E L L, I I, COURT'S WITNESS
19 SWORN

20 THE CLERK: For the record state your full name
21 and spell your last.

22 MR. RUSSELL: Reb John Russell, II,
23 R-U-S-S-E-L-L.

24 THE COURT: All right. I'm going to allow you
25 to remain where you are, and you may be seated. And the

1 first thing we'll do is we'll have the prosecutor --
2 again, he did submit a letter. Do you have any questions
3 for the applicant?

4 MR. AH KAO: I do, Your Honor.

5 MR. RUSSELL: Yes, sir.

6 DIRECT EXAMINATION BY MR. AH KAO:

7 Q So, Mr. Russell, you reside in Doylestown
8 Pennsylvania; is that correct?

9 A That's correct. That's my official residence.

10 Q Okay. And where are you currently employed?

11 A I work at Jazz Pharmaceuticals, and I also am a
12 certified firearm instructor with my own side business.

13 Q And where are those businesses located?

14 A The business -- like today I'll go to Ewing, New
15 Jersey, our office in Ewing, and then tomorrow I'll go to
16 Philadelphia. Most times I work at home at my
17 girlfriend's, her house, in Basking Ridge.

18 Q And you are a firearm instructor in New Jersey
19 or in Pennsylvania?

20 A Well it's a nationwide certification, so I'm a
21 firearm instructor in both. I've taught people in both
22 states.

23 I also am a -- I just was recently certified by the
24 Maryland State Police as a certified firearms instructor
25 for them for their concealed carry permit in Maryland as

1 part of my business. So I train other people in concealed
2 carry.

3 Q Okay. And I know you did a -- as part of your
4 application submitted a letter stating reasons that you
5 believe --

6 A Yes.

7 Q -- that you should have a carry permit in the
8 State of New Jersey. I'd like to talk about that a little
9 more if that's okay with you.

10 A Yes, sir, that's -- it's tough, but I realize I have
11 to.

12 Q Okay. So what is the reason you are asking the
13 Court?

14 A The primary reason is because of my abusive ex-wife.
15 You know, over time, you know, I stayed in a relationship
16 for the kids, she was verbally abusive, she became
17 physically abusive. I believed it was the right thing at
18 the time to stay in for the kids.

19 I mean I'm bigger than she is so I didn't think about
20 it much from that perspective, it also is an
21 embarrassment, you know, and she would go through times
22 where, you know, when she was happy I was the best thing
23 in the world and she would apologize, and you know, but
24 they make you think -- she made me think it was my fault
25 at times until finally it was enough.

1 And then with what was going on with the kids and
2 what was going on with her, we went to marriage
3 counseling, and I went to counselors afterwards to deal
4 with the kids, she still really weaponizes the kids, she
5 still -- she's a good person, but she, as I understand it
6 from working with people, she has an emotional
7 disregulation issue where she can just fly into rages.
8 I've seen it, I've been affected by it, I've talked to the
9 counselors, and this is a divorce that just keeps going
10 on, she keeps engaging. I won't talk to her on the phone,
11 I just -- I mean recently I asked her too, because I'm
12 very much now in Doylestown if she could just email me
13 things instead of mailing them and she wants my mailing
14 address and I'm not going to give her my address where I'm
15 located by any means.

16 I just -- I don't want to be around her, I don't
17 trust her, I don't know what she's capable of. But now,
18 you know, understanding what they are capable of I just
19 spend so much time in New Jersey.

20 Like previously I've had a concealed carry permit in
21 Pennsylvania since '99 and I've never -- you know, I
22 worked in New Jersey for more than a decade at BMS, and
23 it's only recently that when I came over to New Jersey
24 spending a lot more time over here, seeing what she's
25 capable of, and understanding what's really going on that

1 I'm asking for it based on she won't get help, there's a
2 calsitrane (phonetic) around it, and you know, I wish I
3 weren't in this position. I wish I weren't here. I wish
4 I weren't having to tell this story in public.

5 Q And where does your ex-wife currently reside?

6 A Doylestown.

7 Q Doylestown, Pennsylvania?

8 A She still has the old house and she's still there.

9 Q Okay. And in read your letter --

10 A Yes.

11 Q -- you state that primarily you travel to New
12 Jersey to visit I guess the current working relationship
13 but also to visit your parents; is that correct?

14 A That is. To be honest at this point I only go back
15 to Doylestown maybe three or four times a month. Like
16 today I'm driving in from Basking Ridge.

17 When I have the letter from the court I asked them to
18 send it to her place because that's where I -- I'm there
19 95 percent of the time in New Jersey. I haven't declared
20 official residency because I don't want my address
21 associated with a place she can find me.

22 Q Now, you state that your ex-wife currently
23 resides in Doylestown.

24 A Yes.

25 Q Has she ever followed you into New Jersey or

1 caused alarm to you as you were inside the State of New
2 Jersey?

3 A I can't say I've noticed that she's followed me, but
4 I can't say that she hasn't. But to your question I've
5 never observed it, but that doesn't mean -- she knows
6 where my parents live and she certainly at one point --
7 you know, my son was, where does she live, where does she
8 live, my new girlfriend, and she has it -- you know, I'm
9 just not giving up that information, she uses the
10 children.

11 So again, I think probably most of the time as I
12 understand this disorder she's stable, but when she runs
13 into rages and becomes impulsive I just -- I mean the risk
14 is probably small, but it's 100 percent lethal if it
15 happens.

16 Q Okay. And do you feel that the local law
17 enforcement here in New Jersey would adequately be able to
18 protect you in the event that she were to appear in New
19 Jersey, even though you did say that you haven't seen her
20 in the state?

21 A You know, the reason I don't think they can is
22 there's a response time, right, to everything. Unless
23 they're right there at a given time. I mean these are the
24 cases where, you know, in most cases I don't feel that
25 they could, because if it's going to snap she's going to

1 snap and there's -- I mean if she's there there's nothing
2 I can do. It's not like I can call up to phone and say,
3 here, come here in ten minutes. You know, I'd like to --
4 I want to stay away from her, I don't want her to know
5 where I am.

6 MR. AH KAO: Your Honor, I have nothing further
7 for Mr. Russell.

8 THE COURT: Do you have a restraining order
9 against her?

10 MR. RUSSELL: No, I don't, ma'am. I'm just
11 staying away. I just want to -- I mean I just don't want
12 anything to do with her. She has the children now call
13 and because I won't respond to her, I won't talk to her.

14 THE COURT: Has she been given custody of the
15 children?

16 MR. RUSSELL: We have joint custody, yes, ma'am,
17 around that. And I thought it was the right thing to do
18 because I signed off on it. I thought she was going to be
19 a good mom, but now she's used the children as weapons.

20 THE COURT: Uh-huh. When were you divorced?

21 MR. RUSSELL: March -- I left her in March of
22 2017, about two and a half years ago. The divorce I think
23 officially went through in December now.

24 THE COURT: And since the divorce has she ever
25 specifically attacked you?

1 MR. RUSSELL: Not attacked, but she's threatened
2 me when I was picking up the -- after the kids went inside
3 she threatens me. And she knows in PA because of my --
4 that would be a bad thing -- but she also knows in New
5 Jersey, you know, based on my history that I wouldn't have
6 the same capabilities.

7 THE COURT: What do you mean by based on your
8 history?

9 MR. RUSSELL: Oh, well I mean based on my
10 history that I don't have a -- she knew I had a concealed
11 carry in Pennsylvania, but I'd never had one in New
12 Jersey.

13 THE COURT: But if she threatens you you can ask
14 for a temporary restraining order or a final restraining
15 order --

16 MR. RUSSELL: I mean --

17 THE COURT: -- that would protect you.

18 MR. RUSSELL: And that would be if someone was
19 willing to not have these emotional outbursts. I mean
20 there's an emotional 'disregulation control where she has
21 no boundaries, and yeah, you can put that in place I'm
22 assuming, but that doesn't stop people.

23 THE COURT: Well --

24 MR. RUSSELL: The counselors have told me that
25 she's at the extreme from what I understand of behaviors.

1 THE COURT: But you still feel comfortable with
2 your children being in her custody?

3 MR. RUSSELL: I don't, ma'am. Well they're
4 older now.

5 THE COURT: Uh-huh.

6 MR. RUSSELL: I mean I -- I've never seen her
7 with the children, but then to be honest what happened, I
8 never thought the children saw stuff, and then about March
9 of last year, maybe it was before then, the kids had
10 gotten progressively aggressive towards me, and then my
11 14-year-old daughter started being physical with me like
12 her mother was, and I had to talk to their counselors
13 about it, then after that they stopped. They're old
14 enough now that they can choose.

15 I don't feel comfortable, but I've been advised
16 by counsel there's very little to do in these cases, I
17 don't have the evidence, ma'am.

18 THE COURT: Uh-huh. So you've never reported it
19 to police in the past?

20 MR. RUSSELL: No, ma'am, and I'm embarrassed --

21 THE COURT: There's no documentation?

22 MR. RUSSELL: No, I'm embarrassed about it,
23 ma'am. I mean being a man, especially an ex-marine, a
24 football player, I mean there's a shame there and you're
25 like well this doesn't hurt as much as football or the

1 marines do, and then it took me a while -- took me a long
2 time to go, it's just not right whether or not it hurts or
3 not or whether or not she's doing damage right now.

4 THE COURT: And when was the last time she
5 threatened you?

6 MR. RUSSELL: It was probably -- the last time I
7 stopped talking to her when picking up the kids, it's
8 probably about a year ago because I won't call her, I
9 won't do anything, but she still wants to engage.

10 She owed me money and she took me to court and
11 had all the lawyers do it and then she drops the -- she's
12 done this on multiple occasions to keep engaging, she just
13 -- then they dropped the court cases because they come
14 because there's no merit.

15 THE COURT: Uh-huh.

16 MR. RUSSELL: She just -- I just don't feel
17 comfortable with her, ma'am, especially given the
18 condition.

19 THE COURT: Well if she violated the restraining
20 order, if you were able to obtain one, then she would be
21 held in contempt. So that's --

22 MR. RUSSELL: Yeah, I don't know.

23 THE COURT: -- wouldn't that be a different way
24 to deal with it rather than obtaining a carry permit?

25 MR. RUSSELL: That assumes that that wouldn't be

1 a terminal effect at that point and that she would -- I
2 mean you can violate a restraining order if the outcome --
3 and it's fine if the outcome isn't extreme.

4 THE COURT: Does she have a weapon of sorts?
5 Does she have a carry permit?

6 MR. RUSSELL: I don't know anymore. I do not
7 know.

8 THE COURT: All right.

9 MR. RUSSELL: I do not know, and she certainly
10 has a car.

11 THE COURT: All right. But she's never
12 approached you with a weapon?

13 MR. RUSSELL: Other than hitting me and being
14 violent and throwing stuff, no.

15 THE COURT: All right. But that was over a year
16 ago since the last threat?

17 MR. RUSSELL: It has been, ma'am, but she's
18 still engaged in -- you know, she's I think sought to
19 erase me from my children's lives too.

20 THE COURT: Uh-huh.

21 MR. RUSSELL: I mean she creates a great deal of
22 trauma. The happiest I was when she was fighting with
23 other people because she wasn't taking it out on me.

24 THE COURT: Well if she -- if you have issues
25 regarding custody that should go back to Family Court, not

1 -- the solution is not to obtain a weapon.

2 MR. RUSSELL: Well that's not what the -- I'm
3 talking about me, ma'am, not my children at that point.

4 THE COURT: Well you're indicating that she's
5 using the children against you.

6 MR. RUSSELL: Well she uses the children from a
7 perspective of -- like she had my older son call the other
8 day and they're all four on the phone and she's like
9 demanding more money and she's -- I mean she just goes to
10 extremes.

11 THE COURT: Uh-huh.

12 MR. RUSSELL: I understand, and I've also been
13 advised by lawyers that this is -- the kids are all -- my
14 oldest son is 21, my next one is a senior in high school,
15 and the girl is, you know, a sophomore, they're going to
16 default to the children who are, you know, being under her
17 -- you know, I don't know, a spell, control.

18 THE COURT: All right.

19 MR. RUSSELL: Mine is the protection for myself
20 because I don't trust how extreme she could get and how it
21 could just snap.

22 THE COURT: Uh-huh.

23 MR. RUSSELL: From what I understand. I wish I
24 weren't here, ma'am.

25 THE COURT: All right.

1 MR. RUSSELL: I wish I weren't having to say
2 this.

3 THE COURT: And so that is the only justifiable
4 need that you're setting forth is the need because of
5 protection?

6 MR. RUSSELL: Well I mean the secondary one
7 would be it would be easier with my business, but I mean
8 that's not why I wrote it up.

9 THE COURT: Okay.

10 MR. RUSSELL: But you know, with the business
11 and my firearms instructing I do transport legally
12 according to laws, I did get a card, but it would make it
13 easier within the business itself because I'm also a
14 concealed firearms trainer, not for this state but for
15 other states.

16 THE COURT: Okay. But you're not for this
17 state.

18 MR. RUSSELL: I don't know. There's not a
19 program for this state. I mean I technically am because
20 my certification is independent states.

21 THE COURT: Uh-huh.

22 MR. RUSSELL: But certain states in the
23 requirement -- actually I am for New Jersey because the
24 State Police certified and accepted my qualification
25 scores because I am an instructor.

1 THE COURT: Uh-huh.

2 MR. RUSSELL: So I guess I am actually.

3 THE COURT: Well one of the questions I had is
4 you certified yourself.

5 MR. RUSSELL: Yes.

6 THE COURT: Do you think that's really best
7 practice when you're trying to prove something?

8 MR. RUSSELL: Well actually some of the --

9 THE COURT: To certify yourself? How does the
10 prosecutor confirm that if you're certifying yourself?

11 MR. RUSSELL: Well I guess a couple things
12 around that. So I understand that in that case. I sent
13 in the actual targets, pictures of the targets --

14 THE COURT: Uh-huh.

15 MR. RUSSELL: -- around there. It was the
16 fastest path that I could think of. But I've been
17 independently certified. I've been to multiple training
18 courses that are independent. I am an instructor by
19 definition, which is the requirement.

20 THE COURT: Uh-huh.

21 MR. RUSSELL: And I certainly have been -- like
22 I said, there's multiple courses, both as student and
23 instructor, I've been at, so I think there's a
24 professional certification around qualification itself by
25 that history.

1 And as I would understand it like other states
2 and New Jersey they want someone of that caliber to say
3 someone is certified, but if you're of that caliber in
4 other states you're automatically certified because you
5 have that training.

6 THE COURT: Well the requirement is that you
7 must -- someone must certify you that you are thoroughly
8 familiar with the safe handling and use of handguns, but
9 you certified yourself to that --

10 MR. RUSSELL: Well the NRA --

11 THE COURT: -- rather than an independent
12 certifier.

13 MR. RUSSELL: But the NRA as a firearms
14 instructor has certified me.

15 THE COURT: But I don't have that documentation.

16 MR. RUSSELL: But it's -- my instructor number
17 is on there by the NRA, I can show you it on my phone the
18 certification. I've got a picture of it. I also have the
19 Maryland certification. I've got my certification as a
20 range officer. May I bring up the photo and show you?

21 THE COURT: Sure.

22 MR. RUSSELL: Because I keep those on here. Let
23 me just find it. Favorites. So if you go up that's the
24 certification certificate. And if you scroll, scroll left
25 there's my one as a range officer too. And my

1 certification is -- and I can also show you the Maryland
2 one if Your Honor would like.

3 THE COURT: All right. Oops.

4 MR. RUSSELL: That's okay. There's nothing in
5 there that will embarrass me, ma'am. I mean I'm
6 embarrassed enough having to say this.

7 THE COURT: So the record indicates the National
8 Rifle Association of America certifies that Reb Russell
9 has successfully met the requirements established by the
10 National Rifle Association of America and is hereby
11 designated an NRA instructor and is authorized to teach
12 the following basic courses, certified pistol, and it's
13 valid through January 31st, 2021.

14 And you said swipe left?

15 MR. RUSSELL: Yeah, if you go to the next photo
16 it will show my certification as a range officer. So I
17 can literally -- you would know that -- you can run the
18 firing range.

19 THE COURT: Okay. So there's also a range
20 safety officer for January 31st, 2021.

21 MR. RUSSELL: And if you'd like my Maryland one
22 I can bring that up too, ma'am.

23 THE COURT: That's fine.

24 MR. RUSSELL: Thank you.

25 THE COURT: Now, I heard you at the beginning

1 say you have two offices, one in Ewing and one in
2 Pennsylvania.

3 MR. RUSSELL: Philadelphia, ma'am, downtown in
4 the city.

5 THE COURT: Okay.

6 MR. RUSSELL: So I've got groups -- my people
7 that report immediate to me are in California,
8 Philadelphia, I go to the Ewing office, Dublin, Ireland,
9 and Italy.

10 THE COURT: Okay. But you don't need the carry
11 permit for your Ewing office functions do you?

12 MR. RUSSELL: No, other than driving there and
13 back and --

14 THE COURT: Which you already have the
15 qualification to do that because you know how to safely --

16 MR. RUSSELL: Well I can't, ma'am. No, I don't
17 have the -- so --

18 THE COURT: You know how to safely package your
19 weapons.

20 MR. RUSSELL: Yeah. So I can, but as I
21 understand it I'm only legally able to bring it to and
22 from like the range or my house with no deviations, and if
23 I look it to work with a deviation, as I understood, I
24 could be in trouble with that.

25 THE COURT: What do you mean by that, with a

1 deviation?

2 MR. RUSSELL: Like if I stayed at -- like if I
3 went there -- say I came from Pennsylvania, went in work
4 Ewing, had the firearm in my truck and worked during the
5 day and then went to my final destination, my
6 understanding is that wouldn't be legal because I'm not on
7 a direct path to where I'm -- you know, my two points.

8 MR. AH KAO: He's correct, Your Honor. New
9 Jersey, how it works is it's either to the home or to the
10 range, but abscia (phonetic) resident does travel to New
11 Jersey even if he is legally -- has obtained it can carry
12 and possess that item. He's correct, if there's a
13 deviation he will be charged with a second-degree offense
14 in New Jersey.

15 MR. RUSSELL: And I can't do that without a
16 conceal --

17 THE COURT: But would he be able to obtain a
18 permit to purchase --

19 MR. AH KAO: Well --

20 THE COURT: -- for that -- but that would have
21 to his residence. Is that what you're saying?

22 MR. AH KAO: Right. So Mr. Russell can't obtain
23 the -- he can -- I'd have to look into it, the firearms

24 Do you have a firearms purchaser identification
25 card from New Jersey?

1 MR. RUSSELL: Yes, I do.

2 MR. AH KAO: You do.

3 MR. RUSSELL: Because so I can have it at my
4 girlfriend's house. So I do have that.

5 THE COURT: So he definitely can have it at his
6 girlfriend's house.

7 MR. RUSSELL: Yes.

8 MR. AH KAO: Correct. Right. That's fine.

9 MR. RUSSELL: Yes, but I can't travel with it
10 unless I'm going directly from two points, and I can't
11 deviate to stay at work and have it with me without a
12 concealed carry either, ma'am.

13 MR. AH KAO: Do you have a handgun purchase
14 permit?

15 MR. RUSSELL: I don't think I can get it as a PA
16 resident in New Jersey. I can only get the firearms
17 identification permit.

18 MR. AH KAO: Which you say you do have, correct?

19 MR. RUSSELL: I do have that one. I can show
20 you. And I think it's on the State Police form, lists the
21 number, because they did that. Let me show you that one.

22 MR. AH KAO: I mean I take your word for it, but
23 then my question is why do you feel you need the
24 unrestricted carry permit if you already have the firearms
25 purchase identification card and can have --

1 MR. RUSSELL: Because it's -- because I spend a
2 lot of time outside the house. Like I do work in New
3 Jersey, I do travel in between stuff, and I'm outside the
4 house.

5 So it's -- that's when I first got the card,
6 because that was the fastest way for where I am, and then
7 outside of the house that would be illegal unless I'm
8 traveling to the range or back to Pennsylvania to my
9 residence where it's stated -- where it's legal to have.

10 THE COURT: So is the State Police making it a
11 restricted carry permit and only allowing it for work? Is
12 that what they indicated -- is that whey they indicated
13 even though they didn't explain it that way?

14 MR. AH KAO: Your Honor --

15 THE COURT: That's what they indicated.

16 MR. AH KAO: That is what they indicated, but I
17 almost feel that point is really moot, because Mr. Russell
18 doesn't work in New Jersey, you know, at least by the
19 application itself. For the first time I'm hearing he has
20 an office in New Jersey.

21 Based on the application, unless he indicated to
22 the State Police otherwise, my understanding was that she
23 only traveled to New Jersey to visit his current partner
24 and his parents.

25 THE COURT: That's what's indicated in your

1 application.

2 MR. RUSSELL: It is, and I also do -- I do train
3 some people in New Jersey and have done it up in Randolph
4 at RTSP.

5 THE COURT: But that's not indicated in any
6 certification or considered by the State Police.

7 MR. AH KAO: Right.

8 MR. RUSSELL: Yeah.

9 MR. AH KAO: So I'm thinking that they just put
10 that in every application, Your Honor. If the Court is to
11 grant it they would request that restriction.

12 THE COURT: All right. So getting back to this
13 issue with if he goes to his significant others after work
14 and he only has the firearm identification card, if he
15 secures it in his trunk it is still not appropriate is
16 what you're saying.

17 MR. AH KAO: That's correct, judge. It's for
18 really residence only. If he's going to work with the
19 firearm that's not acceptable under New Jersey law.

20 The firearms purchase identification card only
21 is for the purchase of long guns and rifles. He would
22 need obviously a handgun purchase permit for a handgun,
23 but he cannot travel with that unless it's to a range or
24 some of the other --

25 THE COURT: Exceptions.

1 MR. AH KAO: Yes, which are in the statute, I
2 can pull.

3 THE COURT: Right. But so I guess my question
4 is, is he still able to drive from Pennsylvania, his
5 official residence, to his work?

6 MR. RUSSELL: Not in Ewing.

7 MR. AH KAO: No.

8 THE COURT: So -- but he has been doing that
9 he's telling us.

10 MR. RUSSELL: No. No, no, no. I have not done
11 that in Ewing. That's not what I've said.

12 THE COURT: So you haven't done that. Because
13 I --

14 MR. RUSSELL: I have not done that, because I
15 would not --

16 THE COURT: -- thought you had done that,
17 because you said that you taught people in New Jersey.
18 How are you teaching?

19 MR. RUSSELL: Oh, I have. Because I will go to
20 the -- I will meet them either at the house or go to the
21 range with them and meet them there where I can legally
22 transport it in that way.

23 So if I leave Pennsylvania and go directly to a
24 range either in PA or in New Jersey that's okay. I can't
25 go first to Ewing from Pennsylvania, work during the day

1 and then meet someone at night with a firearm in the
2 trunk.

3 THE COURT: Prosecutor, where is that exception
4 that allows him to go to the range?

5 (Pause)

6 MR. AH KAO: Your Honor, I would need to check
7 if it's in the 2(c) or the NJAC. I believe it's in 2(c),
8 but I'm not seeing it.

9 (Pause)

10 THE COURT: Do you want to grab your book,
11 please.

12 (Pause)

13 MR. AH KAO: It's 239. Also, Your Honor, it's
14 239-6(f)(1)(f)(3).

15 THE COURT: 39-6(f) --

16 MR. AH KAO: (1) and (f)(3).

17 (Pause)

18 THE COURT: So he could, based on this, he could
19 just make arrangements and drive directly to the range, he
20 doesn't have to go to Ewing first, according to this.

21 MR. AH KAO: Right. It needs to be a direct
22 route.

23 THE COURT: All right.

24 MR. AH KAO: No deviations.

25 THE COURT: All right. So there's really no

1 reason to go to Ewing then.

2 MR. RUSSELL: Well I work for my pharmaceutical
3 job in Ewing.

4 THE COURT: Oh, so you're not even doing this
5 job in Ewing.

6 MR. RUSSELL: No, part of -- it's -- you know, I
7 have my job working on oncology products, and you know, I
8 just don't want to be in violation of the law, ma'am, in
9 any case.

10 Like when I come from Philadelphia take my
11 firearm off my body when I get to the -- to my car, I
12 unload it, I put it in the trunk and then I drive, but in
13 Ewing if I go there and I want to take any firearm from
14 Pennsylvania to that night when I go to stay with my
15 girlfriend and I work in Ewing, I can't do that. I
16 can't --

17 MR. AH KAO: It's not justifiable need, Your
18 Honor.

19 THE COURT: Right. Sir, I'm finding a hard time
20 finding justifiable need for your request. I don't find
21 -- I'll prepare a written decision, but at this point I
22 don't find any justifiable need. I'll send out my written
23 decision regarding it.

24 Basically it's for just I guess ease of instead
25 of going back to your residence, and your residence isn't

1 in New Jersey at this point in time is what you're telling
2 me.

3 MR. RUSSELL: Well that's only for the business.
4 It still doesn't alleviate an ex-wife and that situation
5 there, ma'am.

6 THE COURT: Right.

7 MR. RUSSELL: Which is my primary reason that I
8 asked.

9 THE COURT: All right. Well the Court will
10 consider your arguments and will send out a written
11 decision.

12 MR. RUSSELL: All right. Thank you.

13 THE COURT: Do we have the address you want it
14 sent to.

15 MR. RUSSELL: Yeah. Could you send that to 26
16 Cross Road.

17 THE COURT: Cross?

18 MR. RUSSELL: Cross, C-R-O-S-S Road.

19 THE COURT: Cross Road.

20 MR. RUSSELL: Basking Risk, New Jersey 07920.

21 THE COURT: All right. All right, I'll send out
22 my written decision. Thank you.

23 MR. RUSSELL: Thank you, ma'am.

24 MR. AH KAO: Thank you, Your Honor.

25 MR. RUSSELL: Can I ask one question? When

1 would it -- would it be a month, would it be weeks or --

2 THE COURT: No, it should be a couple days.

3 MR. RUSSELL: All right. Thank you.

4 THE COURT: All right.

5 MR. AH KAO: Thank you, Your Honor.

6 THE COURT: It should be by the end of the week
7 that I should send something out.

8 MR. RUSSELL: Thank you, ma'am.

9 THE COURT: Thank you.

10 (End of matter.)

11 *****

12 CERTIFICATION

13 I, Mary E. Dring, the assigned transcriber, do
14 hereby certify that the foregoing transcript of
15 proceedings on July 24, 2019, index number from 10:20
16 a.m. to 10:53 a.m., is prepared in full compliance
17 with the current Transcript Format for Judicial
18 Proceedings and is a true and accurate non-compressed
19 transcript of the proceedings as recorded.

20

21

22 /s/ Mary E. Dring 8/21/2019

23 MARY E. DRING, AD/T 582 Date

24 Burke Court Reporting, LLC

124a

SUPERIOR COURT OF NEW JERSEY
HUNTERDON COUNTY
LAW DIVISION
DOCKET NO. GP-HNT-19-001
APPELLATE DOCKET NO. A-005414-18

IN THE MATTER OF:)
APPLICATION OF CARRY)
PERMIT FOR REB RUSSELL,)
II) TRANSCRIPT OF HEARING

Place: Hunterdon County Court House
 71 Main Street
 Flemington, NJ 08822-2900

Date: July 24, 2019

BEFORE:

HONORABLE ANGELA BORKOWSKI, J.S.C.

TRANSCRIPT ORDERED BY:

JEFF D. HENNINGER, ESQ.
(LAW OFFICE OF JEFF D. HENNINGER)

APPEARANCES:

MATTHEW AH KAO, ESQ.
Prosecutor for Hunterdon County
Attorney for the State

MARY E. DRING, AD/T 582
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Wayne, New Jersey 07470

Audio Recorded
Recording Operator,
JUDY CASE

I N D E X

WITNESSES

DIRECT

CROSS

REDIRECT

RECROSS

FOR THE COURT:

Reb John Russell, II 4

THE COURT:

Page:

Decision to be written

26

1 THE COURT: All right. This is the application
2 for a carry permit. May I have appearances, please.

3 MR. AH KAO: Good morning, Your Honor. Matthew
4 Ah Kao for the State.

5 THE COURT: Sir, your name?

6 MR. RUSSELL: Good morning, Your Honor. Reb
7 Russell.

8 THE COURT: All right. This matter is on as the
9 statute indicates the Court has the final decision
10 regardless of input from the State Police as to whether or
11 not a carry permit should be permitted and whether or not
12 there is a justifiable reason for that, and that's why the
13 Court has this hearing today.

14 So the first thing I'm going to do is ask that
15 you be sworn.

16 MR. RUSSELL: Yes, ma'am.

17 THE CLERK: Please raise your right hand.

18 R E B J O H N R U S S E L L, I I, COURT'S WITNESS
19 SWORN

20 THE CLERK: For the record state your full name
21 and spell your last.

22 MR. RUSSELL: Reb John Russell, II,
23 R-U-S-S-E-L-L.

24 THE COURT: All right. I'm going to allow you
25 to remain where you are, and you may be seated. And the

1 first thing we'll do is we'll have the prosecutor --
2 again, he did submit a letter. Do you have any questions
3 for the applicant?

4 MR. AH KAO: I do, Your Honor.

5 MR. RUSSELL: Yes, sir.

6 DIRECT EXAMINATION BY MR. AH KAO:

7 Q So, Mr. Russell, you reside in Doylestown
8 Pennsylvania; is that correct?

9 A That's correct. That's my official residence.

10 Q Okay. And where are you currently employed?

11 A I work at Jazz Pharmaceuticals, and I also am a
12 certified firearm instructor with my own side business.

13 Q And where are those businesses located?

14 A The business -- like today I'll go to Ewing, New
15 Jersey, our office in Ewing, and then tomorrow I'll go to
16 Philadelphia. Most times I work at home at my
17 girlfriend's, her house, in Basking Ridge.

18 Q And you are a firearm instructor in New Jersey
19 or in Pennsylvania?

20 A Well it's a nationwide certification, so I'm a
21 firearm instructor in both. I've taught people in both
22 states.

23 I also am a -- I just was recently certified by the
24 Maryland State Police as a certified firearms instructor
25 for them for their concealed carry permit in Maryland as

1 part of my business. So I train other people in concealed
2 carry.

3 Q Okay. And I know you did a -- as part of your
4 application submitted a letter stating reasons that you
5 believe --

6 A Yes.

7 Q -- that you should have a carry permit in the
8 State of New Jersey. I'd like to talk about that a little
9 more if that's okay with you.

10 A Yes, sir, that's -- it's tough, but I realize I have
11 to.

12 Q Okay. So what is the reason you are asking the
13 Court?

14 A The primary reason is because of my abusive ex-wife.
15 You know, over time, you know, I stayed in a relationship
16 for the kids, she was verbally abusive, she became
17 physically abusive. I believed it was the right thing at
18 the time to stay in for the kids.

19 I mean I'm bigger than she is so I didn't think about
20 it much from that perspective, it also is an
21 embarrassment, you know, and she would go through times
22 where, you know, when she was happy I was the best thing
23 in the world and she would apologize, and you know, but
24 they make you think -- she made me think it was my fault
25 at times until finally it was enough.

1 And then with what was going on with the kids and
2 what was going on with her, we went to marriage
3 counseling, and I went to counselors afterwards to deal
4 with the kids, she still really weaponizes the kids, she
5 still -- she's a good person, but she, as I understand it
6 from working with people, she has an emotional
7 disregulation issue where she can just fly into rages.
8 I've seen it, I've been affected by it, I've talked to the
9 counselors, and this is a divorce that just keeps going
10 on, she keeps engaging. I won't talk to her on the phone,
11 I just -- I mean recently I asked her too, because I'm
12 very much now in Doylestown if she could just email me
13 things instead of mailing them and she wants my mailing
14 address and I'm not going to give her my address where I'm
15 located by any means.

16 I just -- I don't want to be around her, I don't
17 trust her, I don't know what she's capable of. But now,
18 you know, understanding what they are capable of I just
19 spend so much time in New Jersey.

20 Like previously I've had a concealed carry permit in
21 Pennsylvania since '99 and I've never -- you know, I
22 worked in New Jersey for more than a decade at BMS, and
23 it's only recently that when I came over to New Jersey
24 spending a lot more time over here, seeing what she's
25 capable of, and understanding what's really going on that

1 I'm asking for it based on she won't get help, there's a
2 calsitrane (phonetic) around it, and you know, I wish I
3 weren't in this position. I wish I weren't here. I wish
4 I weren't having to tell this story in public.

5 Q And where does your ex-wife currently reside?

6 A Doylestown.

7 Q Doylestown, Pennsylvania?

8 A She still has the old house and she's still there.

9 Q Okay. And in read your letter --

10 A Yes.

11 Q -- you state that primarily you travel to New
12 Jersey to visit I guess the current working relationship
13 but also to visit your parents; is that correct?

14 A That is. To be honest at this point I only go back
15 to Doylestown maybe three or four times a month. Like
16 today I'm driving in from Basking Ridge.

17 When I have the letter from the court I asked them to
18 send it to her place because that's where I -- I'm there
19 95 percent of the time in New Jersey. I haven't declared
20 official residency because I don't want my address
21 associated with a place she can find me.

22 Q Now, you state that your ex-wife currently
23 resides in Doylestown.

24 A Yes.

25 Q Has she ever followed you into New Jersey or

1 caused alarm to you as you were inside the State of New
2 Jersey?

3 A I can't say I've noticed that she's followed me, but
4 I can't say that she hasn't. But to your question I've
5 never observed it, but that doesn't mean -- she knows
6 where my parents live and she certainly at one point --
7 you know, my son was, where does she live, where does she
8 live, my new girlfriend, and she has it -- you know, I'm
9 just not giving up that information, she uses the
10 children.

11 So again, I think probably most of the time as I
12 understand this disorder she's stable, but when she runs
13 into rages and becomes impulsive I just -- I mean the risk
14 is probably small, but it's 100 percent lethal if it
15 happens.

16 Q Okay. And do you feel that the local law
17 enforcement here in New Jersey would adequately be able to
18 protect you in the event that she were to appear in New
19 Jersey, even though you did say that you haven't seen her
20 in the state?

21 A You know, the reason I don't think they can is
22 there's a response time, right, to everything. Unless
23 they're right there at a given time. I mean these are the
24 cases where, you know, in most cases I don't feel that
25 they could, because if it's going to snap she's going to

1 snap and there's -- I mean if she's there there's nothing
2 I can do. It's not like I can call up to phone and say,
3 here, come here in ten minutes. You know, I'd like to --
4 I want to stay away from her, I don't want her to know
5 where I am.

6 MR. AH KAO: Your Honor, I have nothing further
7 for Mr. Russell.

8 THE COURT: Do you have a restraining order
9 against her?

10 MR. RUSSELL: No, I don't, ma'am. I'm just
11 staying away. I just want to -- I mean I just don't want
12 anything to do with her. She has the children now call
13 and because I won't respond to her, I won't talk to her.

14 THE COURT: Has she been given custody of the
15 children?

16 MR. RUSSELL: We have joint custody, yes, ma'am,
17 around that. And I thought it was the right thing to do
18 because I signed off on it. I thought she was going to be
19 a good mom, but now she's used the children as weapons.

20 THE COURT: Uh-huh. When were you divorced?

21 MR. RUSSELL: March -- I left her in March of
22 2017, about two and a half years ago. The divorce I think
23 officially went through in December now.

24 THE COURT: And since the divorce has she ever
25 specifically attacked you?

1 MR. RUSSELL: Not attacked, but she's threatened
2 me when I was picking up the -- after the kids went inside
3 she threatens me. And she knows in PA because of my --
4 that would be a bad thing -- but she also knows in New
5 Jersey, you know, based on my history that I wouldn't have
6 the same capabilities.

7 THE COURT: What do you mean by based on your
8 history?

9 MR. RUSSELL: Oh, well I mean based on my
10 history that I don't have a -- she knew I had a concealed
11 carry in Pennsylvania, but I'd never had one in New
12 Jersey.

13 THE COURT: But if she threatens you you can ask
14 for a temporary restraining order or a final restraining
15 order --

16 MR. RUSSELL: I mean --

17 THE COURT: -- that would protect you.

18 MR. RUSSELL: And that would be if someone was
19 willing to not have these emotional outbursts. I mean
20 there's an emotional dysregulation control where she has
21 no boundaries, and yeah, you can put that in place I'm
22 assuming, but that doesn't stop people.

23 THE COURT: Well --

24 MR. RUSSELL: The counselors have told me that
25 she's at the extreme from what I understand of behaviors.

1 THE COURT: But you still feel comfortable with
2 your children being in her custody?

3 MR. RUSSELL: I don't, ma'am. Well they're
4 older now.

5 THE COURT: Uh-huh.

6 MR. RUSSELL: I mean I -- I've never seen her
7 with the children, but then to be honest what happened, I
8 never thought the children saw stuff, and then about March
9 of last year, maybe it was before then, the kids had
10 gotten progressively aggressive towards me, and then my
11 14-year-old daughter started being physical with me like
12 her mother was, and I had to talk to their counselors
13 about it, then after that they stopped. They're old
14 enough now that they can choose.

15 I don't feel comfortable, but I've been advised
16 by counsel there's very little to do in these cases, I
17 don't have the evidence, ma'am.

18 THE COURT: Uh-huh. So you've never reported it
19 to police in the past?

20 MR. RUSSELL: No, ma'am, and I'm embarrassed --

21 THE COURT: There's no documentation?

22 MR. RUSSELL: No, I'm embarrassed about it,
23 ma'am. I mean being a man, especially an ex-marine, a
24 football player, I mean there's a shame there and you're
25 like well this doesn't hurt as much as football or the

1 marines do, and then it took me a while -- took me a long
2 time to go, it's just not right whether or not it hurts or
3 not or whether or not she's doing damage right now.

4 THE COURT: And when was the last time she
5 threatened you?

6 MR. RUSSELL: It was probably -- the last time I
7 stopped talking to her when picking up the kids, it's
8 probably about a year ago because I won't call her, I
9 won't do anything, but she still wants to engage.

10 She owed me money and she took me to court and
11 had all the lawyers do it and then she drops the -- she's
12 done this on multiple occasions to keep engaging, she just
13 -- then they dropped the court cases because they come
14 because there's no merit.

15 THE COURT: Uh-huh.

16 MR. RUSSELL: She just -- I just don't feel
17 comfortable with her, ma'am, especially given the
18 condition.

19 THE COURT: Well if she violated the restraining
20 order, if you were able to obtain one, then she would be
21 held in contempt. So that's --

22 MR. RUSSELL: Yeah, I don't know.

23 THE COURT: -- wouldn't that be a different way
24 to deal with it rather than obtaining a carry permit?

25 MR. RUSSELL: That assumes that that wouldn't be

1 a terminal effect at that point and that she would -- I
2 mean you can violate a restraining order if the outcome --
3 and it's fine if the outcome isn't extreme.

4 THE COURT: Does she have a weapon of sorts?
5 Does she have a carry permit?

6 MR. RUSSELL: I don't know anymore. I do not
7 know.

8 THE COURT: All right.

9 MR. RUSSELL: I do not know, and she certainly
10 has a car.

11 THE COURT: All right. But she's never
12 approached you with a weapon?

13 MR. RUSSELL: Other than hitting me and being
14 violent and throwing stuff, no.

15 THE COURT: All right. But that was over a year
16 ago since the last threat?

17 MR. RUSSELL: It has been, ma'am, but she's
18 still engaged in -- you know, she's I think sought to
19 erase me from my children's lives too.

20 THE COURT: Uh-huh.

21 MR. RUSSELL: I mean she creates a great deal of
22 trauma. The happiest I was when she was fighting with
23 other people because she wasn't taking it out on me.

24 THE COURT: Well if she -- if you have issues
25 regarding custody that should go back to Family Court, not

1 -- the solution is not to obtain a weapon.

2 MR. RUSSELL: Well that's not what the -- I'm
3 talking about me, ma'am, not my children at that point.

4 THE COURT: Well you're indicating that she's
5 using the children against you.

6 MR. RUSSELL: Well she uses the children from a
7 perspective of -- like she had my older son call the other
8 day and they're all four on the phone and she's like
9 demanding more money and she's -- I mean she just goes to
10 extremes.

11 THE COURT: Uh-huh.

12 MR. RUSSELL: I understand, and I've also been
13 advised by lawyers that this is -- the kids are all -- my
14 oldest son is 21, my next one is a senior in high school,
15 and the girl is, you know, a sophomore, they're going to
16 default to the children who are, you know, being under her
17 -- you know, I don't know, a spell, control.

18 THE COURT: All right.

19 MR. RUSSELL: Mine is the protection for myself
20 because I don't trust how extreme she could get and how it
21 could just snap.

22 THE COURT: Uh-huh.

23 MR. RUSSELL: From what I understand. I wish I
24 weren't here, ma'am.

25 THE COURT: All right.

1 MR. RUSSELL: I wish I weren't having to say
2 this.

3 THE COURT: And so that is the only justifiable
4 need that you're setting forth is the need because of
5 protection?

6 MR. RUSSELL: Well I mean the secondary one
7 would be it would be easier with my business, but I mean
8 that's not why I wrote it up.

9 THE COURT: Okay.

10 MR. RUSSELL: But you know, with the business
11 and my firearms instructing I do transport legally
12 according to laws, I did get a card, but it would make it
13 easier within the business itself because I'm also a
14 concealed firearms trainer, not for this state but for
15 other states.

16 THE COURT: Okay. But you're not for this
17 state.

18 MR. RUSSELL: I don't know. There's not a
19 program for this state. I mean I technically am because
20 my certification is independent states.

21 THE COURT: Uh-huh.

22 MR. RUSSELL: But certain states in the
23 requirement -- actually I am for New Jersey because the
24 State Police certified and accepted my qualification
25 scores because I am an instructor.

1 THE COURT: Uh-huh.

2 MR. RUSSELL: So I guess I am actually.

3 THE COURT: Well one of the questions I had is
4 you certified yourself.

5 MR. RUSSELL: Yes.

6 THE COURT: Do you think that's really best
7 practice when you're trying to prove something?

8 MR. RUSSELL: Well actually some of the --

9 THE COURT: To certify yourself? How does the
10 prosecutor confirm that if you're certifying yourself?

11 MR. RUSSELL: Well I guess a couple things
12 around that. So I understand that in that case. I sent
13 in the actual targets, pictures of the targets --

14 THE COURT: Uh-huh.

15 MR. RUSSELL: -- around there. It was the
16 fastest path that I could think of. But I've been
17 independently certified. I've been to multiple training
18 courses that are independent. I am an instructor by
19 definition, which is the requirement.

20 THE COURT: Uh-huh.

21 MR. RUSSELL: And I certainly have been -- like
22 I said, there's multiple courses, both as student and
23 instructor, I've been at, so I think there's a
24 professional certification around qualification itself by
25 that history.

1 And as I would understand it like other states
2 and New Jersey they want someone of that caliber to say
3 someone is certified, but if you're of that caliber in
4 other states you're automatically certified because you
5 have that training.

6 THE COURT: Well the requirement is that you
7 must -- someone must certify you that you are thoroughly
8 familiar with the safe handling and use of handguns, but
9 you certified yourself to that --

10 MR. RUSSELL: Well the NRA --

11 THE COURT: -- rather than an independent
12 certifier.

13 MR. RUSSELL: But the NRA as a firearms
14 instructor has certified me.

15 THE COURT: But I don't have that documentation.

16 MR. RUSSELL: But it's -- my instructor number
17 is on there by the NRA, I can show you it on my phone the
18 certification. I've got a picture of it. I also have the
19 Maryland certification. I've got my certification as a
20 range officer. May I bring up the photo and show you?

21 THE COURT: Sure.

22 MR. RUSSELL: Because I keep those on here. Let
23 me just find it. Favorites. So if you go up that's the
24 certification certificate. And if you scroll, scroll left
25 there's my one as a range officer too. And my

1 certification is -- and I can also show you the Maryland
2 one if Your Honor would like.

3 THE COURT: All right. Oops.

4 MR. RUSSELL: That's okay. There's nothing in
5 there that will embarrass me, ma'am. I mean I'm
6 embarrassed enough having to say this.

7 THE COURT: So the record indicates the National
8 Rifle Association of America certifies that Reb Russell
9 has successfully met the requirements established by the
10 National Rifle Association of America and is hereby
11 designated an NRA instructor and is authorized to teach
12 the following basic courses, certified pistol, and it's
13 valid through January 31st, 2021.

14 And you said swipe left?

15 MR. RUSSELL: Yeah, if you go to the next photo
16 it will show my certification as a range officer. So I
17 can literally -- you would know that -- you can run the
18 firing range.

19 THE COURT: Okay. So there's also a range
20 safety officer for January 31st, 2021.

21 MR. RUSSELL: And if you'd like my Maryland one
22 I can bring that up too, ma'am.

23 THE COURT: That's fine.

24 MR. RUSSELL: Thank you.

25 THE COURT: Now, I heard you at the beginning

1 say you have two offices, one in Ewing and one in
2 Pennsylvania.

3 MR. RUSSELL: Philadelphia, ma'am, downtown in
4 the city.

5 THE COURT: Okay.

6 MR. RUSSELL: So I've got groups -- my people
7 that report immediate to me are in California,
8 Philadelphia, I go to the Ewing office, Dublin, Ireland,
9 and Italy.

10 THE COURT: Okay. But you don't need the carry
11 permit for your Ewing office functions do you?

12 MR. RUSSELL: No, other than driving there and
13 back and --

14 THE COURT: Which you already have the
15 qualification to do that because you know how to safely --

16 MR. RUSSELL: Well I can't, ma'am. No, I don't
17 have the -- so --

18 THE COURT: You know how to safely package your
19 weapons.

20 MR. RUSSELL: Yeah. So I can, but as I
21 understand it I'm only legally able to bring it to and
22 from like the range or my house with no deviations, and if
23 I look it to work with a deviation, as I understood, I
24 could be in trouble with that.

25 THE COURT: What do you mean by that, with a

1 deviation?

2 MR. RUSSELL: Like if I stayed at -- like if I
3 went there -- say I came from Pennsylvania, went in work
4 Ewing, had the firearm in my truck and worked during the
5 day and then went to my final destination, my
6 understanding is that wouldn't be legal because I'm not on
7 a direct path to where I'm -- you know, my two points.

8 MR. AH KAO: He's correct, Your Honor. New
9 Jersey, how it works is it's either to the home or to the
10 range, but abscia (phonetic) resident does travel to New
11 Jersey even if he is legally -- has obtained it can carry
12 and possess that item. He's correct, if there's a
13 deviation he will be charged with a second-degree offense
14 in New Jersey.

15 MR. RUSSELL: And I can't do that without a
16 conceal --

17 THE COURT: But would he be able to obtain a
18 permit to purchase --

19 MR. AH KAO: Well --

20 THE COURT: -- for that -- but that would have
21 to his residence. Is that what you're saying?

22 MR. AH KAO: Right. So Mr. Russell can't obtain
23 the -- he can -- I'd have to look into it, the firearms

24 Do you have a firearms purchaser identification
25 card from New Jersey?

1 MR. RUSSELL: Yes, I do.

2 MR. AH KAO: You do.

3 MR. RUSSELL: Because so I can have it at my
4 girlfriend's house. So I do have that.

5 THE COURT: So he definitely can have it at his
6 girlfriend's house.

7 MR. RUSSELL: Yes.

8 MR. AH KAO: Correct. Right. That's fine.

9 MR. RUSSELL: Yes, but I can't travel with it
10 unless I'm going directly from two points, and I can't
11 deviate to stay at work and have it with me without a
12 concealed carry either, ma'am.

13 MR. AH KAO: Do you have a handgun purchase
14 permit?

15 MR. RUSSELL: I don't think I can get it as a PA
16 resident in New Jersey. I can only get the firearms
17 identification permit.

18 MR. AH KAO: Which you say you do have, correct?

19 MR. RUSSELL: I do have that one. I can show
20 you. And I think it's on the State Police form, lists the
21 number, because they did that. Let me show you that one.

22 MR. AH KAO: I mean I take your word for it, but
23 then my question is why do you feel you need the
24 unrestricted carry permit if you already have the firearms
25 purchase identification card and can have --

1 MR. RUSSELL: Because it's -- because I spend a
2 lot of time outside the house. Like I do work in New
3 Jersey, I do travel in between stuff, and I'm outside the
4 house.

5 So it's -- that's when I first got the card,
6 because that was the fastest way for where I am, and then
7 outside of the house that would be illegal unless I'm
8 traveling to the range or back to Pennsylvania to my
9 residence where it's stated -- where it's legal to have.

10 THE COURT: So is the State Police making it a
11 restricted carry permit and only allowing it for work? Is
12 that what they indicated -- is that whey they indicated
13 even though they didn't explain it that way?

14 MR. AH KAO: Your Honor --

15 THE COURT: That's what they indicated.

16 MR. AH KAO: That is what they indicated, but I
17 almost feel that point is really moot, because Mr. Russell
18 doesn't work in New Jersey, you know, at least by the
19 application itself. For the first time I'm hearing he has
20 an office in New Jersey.

21 Based on the application, unless he indicated to
22 the State Police otherwise, my understanding was that she
23 only traveled to New Jersey to visit his current partner
24 and his parents.

25 THE COURT: That's what's indicated in your

1 application.

2 MR. RUSSELL: It is, and I also do -- I do train
3 some people in New Jersey and have done it up in Randolph
4 at RTSP.

5 THE COURT: But that's not indicated in any
6 certification or considered by the State Police.

7 MR. AH KAO: Right.

8 MR. RUSSELL: Yeah.

9 MR. AH KAO: So I'm thinking that they just put
10 that in every application, Your Honor. If the Court is to
11 grant it they would request that restriction.

12 THE COURT: All right. So getting back to this
13 issue with if he goes to his significant others after work
14 and he only has the firearm identification card, if he
15 secures it in his trunk it is still not appropriate is
16 what you're saying.

17 MR. AH KAO: That's correct, judge. It's for
18 really residence only. If he's going to work with the
19 firearm that's not acceptable under New Jersey law.

20 The firearms purchase identification card only
21 is for the purchase of long guns and rifles. He would
22 need obviously a handgun purchase permit for a handgun,
23 but he cannot travel with that unless it's to a range or
24 some of the other --

25 THE COURT: Exceptions.

1 MR. AH KAO: Yes, which are in the statute, I
2 can pull.

3 THE COURT: Right. But so I guess my question
4 is, is he still able to drive from Pennsylvania, his
5 official residence, to his work?

6 MR. RUSSELL: Not in Ewing.

7 MR. AH KAO: No.

8 THE COURT: So -- but he has been doing that
9 he's telling us.

10 MR. RUSSELL: No. No, no, no. I have not done
11 that in Ewing. That's not what I've said.

12 THE COURT: So you haven't done that. Because
13 I --

14 MR. RUSSELL: I have not done that, because I
15 would not --

16 THE COURT: -- thought you had done that,
17 because you said that you taught people in New Jersey.
18 How are you teaching?

19 MR. RUSSELL: Oh, I have. Because I will go to
20 the -- I will meet them either at the house or go to the
21 range with them and meet them there where I can legally
22 transport it in that way.

23 So if I leave Pennsylvania and go directly to a
24 range either in PA or in New Jersey that's okay. I can't
25 go first to Ewing from Pennsylvania, work during the day

1 and then meet someone at night with a firearm in the
2 trunk.

3 THE COURT: Prosecutor, where is that exception
4 that allows him to go to the range?

5 (Pause)

6 MR. AH KAO: Your Honor, I would need to check
7 if it's in the 2(c) or the NJAC. I believe it's in 2(c),
8 but I'm not seeing it.

9 (Pause)

10 THE COURT: Do you want to grab your book,
11 please.

12 (Pause)

13 MR. AH KAO: It's 239. Also, Your Honor, it's
14 239-6(f)(1)(f)(3).

15 THE COURT: 39-6(f) --

16 MR. AH KAO: (1) and (f)(3).

17 (Pause)

18 THE COURT: So he could, based on this, he could
19 just make arrangements and drive directly to the range, he
20 doesn't have to go to Ewing first, according to this.

21 MR. AH KAO: Right. It needs to be a direct
22 route.

23 THE COURT: All right.

24 MR. AH KAO: No deviations.

25 THE COURT: All right. So there's really no

1 reason to go to Ewing then.

2 MR. RUSSELL: Well I work for my pharmaceutical
3 job in Ewing.

4 THE COURT: Oh, so you're not even doing this
5 job in Ewing.

6 MR. RUSSELL: No, part of -- it's -- you know, I
7 have my job working on oncology products, and you know, I
8 just don't want to be in violation of the law, ma'am, in
9 any case.

10 Like when I come from Philadelphia take my
11 firearm off my body when I get to the -- to my car, I
12 unload it, I put it in the trunk and then I drive, but in
13 Ewing if I go there and I want to take any firearm from
14 Pennsylvania to that night when I go to stay with my
15 girlfriend and I work in Ewing, I can't do that. I
16 can't --

17 MR. AH KAO: It's not justifiable need, Your
18 Honor.

19 THE COURT: Right. Sir, I'm finding a hard time
20 finding justifiable need for your request. I don't find
21 -- I'll prepare a written decision, but at this point I
22 don't find any justifiable need. I'll send out my written
23 decision regarding it.

24 Basically it's for just I guess ease of instead
25 of going back to your residence, and your residence isn't

1 in New Jersey at this point in time is what you're telling
2 me.

3 MR. RUSSELL: Well that's only for the business.
4 It still doesn't alleviate an ex-wife and that situation
5 there, ma'am.

6 THE COURT: Right.

7 MR. RUSSELL: Which is my primary reason that I
8 asked.

9 THE COURT: All right. Well the Court will
10 consider your arguments and will send out a written
11 decision.

12 MR. RUSSELL: All right. Thank you.

13 THE COURT: Do we have the address you want it
14 sent to.

15 MR. RUSSELL: Yeah. Could you send that to 26
16 Cross Road.

17 THE COURT: Cross?

18 MR. RUSSELL: Cross, C-R-O-S-S Road.

19 THE COURT: Cross Road.

20 MR. RUSSELL: Basking Risk, New Jersey 07920.

21 THE COURT: All right. All right, I'll send out
22 my written decision. Thank you.

23 MR. RUSSELL: Thank you, ma'am.

24 MR. AH KAO: Thank you, Your Honor.

25 MR. RUSSELL: Can I ask one question? When

1 would it -- would it be a month, would it be weeks or --

2 THE COURT: No, it should be a couple days.

3 MR. RUSSELL: All right. Thank you.

4 THE COURT: All right.

5 MR. AH KAO: Thank you, Your Honor.

6 THE COURT: It should be by the end of the week
7 that I should send something out.

8 MR. RUSSELL: Thank you, ma'am.

9 THE COURT: Thank you.

10 (End of matter.)

11 ****

12 CERTIFICATION

13 I, Mary E. Dring, the assigned transcriber, do
14 hereby certify that the foregoing transcript of
15 proceedings on July 24, 2019, index number from 10:20
16 a.m. to 10:53 a.m., is prepared in full compliance
17 with the current Transcript Format for Judicial
18 Proceedings and is a true and accurate non-compressed
19 transcript of the proceedings as recorded.

20

21

22 */s/ Mary E. Dring* *8/21/2019*

23 MARY E. DRING, AD/T 582 Date

24 Burke Court Reporting, LLC