No. 25-

IN THE

Supreme Court of the United States

STEVEN MANCUSO,

Petitioner,

v.

PEOPLE OF THE STATE OF NEW YORK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

PETITION FOR A WRIT OF CERTIORARI

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September 22, 2025

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QUESTION PRESENTED

The petition involves two questions implicating the Second Amendment and the Fourteenth Amendments to the United States Constitution.

The first question is whether New York's Penal Law § 265.03(3), § 265.02(1) and § 265.01-b(1), which prohibit the ownership of a firearm in the home or for purposes of self-defense by a person convicted of *any crime* is facially unconstitutional in derogation of the Second Amendment and contravenes this Court's decision in *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1 (2022).

The second question is whether the application of New York's Penal Law § 265.03(3), § 265.02(1) and § 265.01-b(1) to Steven Mancuso prohibiting him from possessing a firearm in his home violates the Second Amendment and contravenes this Court's decision in *Bruen* due to his conviction for a violation of the federal Clean Air Act, which is a non-violent felony under United States law.

RELATED CASES

- *People v. Mancuso*, Indictment No. 2022-083, State of New York, County of Oneida, Decision and Order dated June 23, 2022 (13a) and September 2, 2022 (8a).

- *People v. Mancuso*, Index No. 70247-22/001, State of New York Supreme Court Appellate Division, Fourth Department. Decision entered on March 15, 2024 (2a).

- *People v. Mancuso*, Docket No. 93KA23-00479, New York Court of Appeals. Order entered on April 21, 2025 (1a).

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JURISDICTION

In denying Steven Mancuso's application for leave to appeal, the New York Court of Appeals entered final judgment on April 21, 2025 (1a). This Court has jurisdiction to review the final judgment of the New York Court of Appeals pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment to the United States Constitution provides in that "[a][well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. AMEND II. The Fourteenth Amendment to the United States Constitution provides in pertinent

part that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. AMEND XIV (1).

New York Penal Law § 265.03 provides in pertinent part that a person is guilty of criminal possession of a weapon in the second degree when "(3) such person possesses any loaded firearm. Such possession shall not, except as provided in subdivision one or seven of section 265.02 of this article, constitute a violation of this subdivision if such possession takes place in such person's home or place of business. Criminal possession of a weapon in the second degree is a class C felony."

New York Penal Law § 265.02 provides that "[a] person is guilty of criminal possession of a weapon in the third degree when: (1) Such person commits the crime of criminal possession of a weapon in the fourth degree as defined in subdivision one, two, three or five of section 265.01, and has been previously convicted of any crime . . . Criminal possession of a weapon in the third degree is a class D felony."

STATEMENT OF THE CASE

Mr. Mancuso challenges the constitutionality of New York Penal Law § 265.03(3) (criminal possession of a weapon in the second degree) and New York Penal Law § 265.02(1) (criminal possession of a weapon in the third degree) as a violation of his rights under the Second and Fourteenth Amendments to the United

States Constitution. Criminal Possession of a Weapon in the Second Degree, as enumerated in the first count of the indictment, occurs when a person possesses a loaded firearm outside of the person's home or business or within a person's home or business if the person falls within the ambit of the first subdivision of the statute constituting Criminal Possession of a Weapon in the Third Degree. The first subdivision of Criminal Possession of Weapon in the Third Degree, as enumerated in the second count of the indictment, occurs when a person possesses any unlicensed firearm (even within that person's home or place of business) and the person has a prior conviction for *any crime*. New York Penal Law § 265.02(1).

In the Oneida County Court, Mr. Mancuso advanced both a challenge to the statutes as transgressing the Second and Fourteenth Amendments with their overly broad language prohibiting a person who has committed any crime (felony or misdemeanor) from possessing a firearm. He also challenged the application of the statute to him as a person with a prior conviction for a non-violent felony violation of the federal Clean Air Act. On June 1, 2022, Mr. Mancuso notified the New York Office of the Attorney General of the constitutional challenge to the New York Penal Laws infringing upon his Second Amendment rights. On June 2, 2022, the New York Attorney General's Office notified the trial court that it would not intervene in Mr. Mancuso's constitutional challenge.

On June 23, 2022, after hearing oral argument two days earlier, the Honorable Michael L. Dwyer, sitting as a Justice of the Oneida County Court in Utica, denied Mr. Mancuso's constitutional Second Amendment challenge

based on his interpretation of language contained within *District of Columbia v. Heller*, 554 U.S. 270 (2008). On the same day the Oneida County Court denied Mr. Mancuso's motion to dismiss the indictment based on his Second Amendment challenge, this Court decided *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1 (2022). Mr. Mancuso moved for reconsideration, and the trial court issued a further order denying the motion for reconsideration on September 2, 2022.

In its post-*Bruen* order, the trial court did not undertake the historical tradition analysis outlined in *Bruen*. Rather, it concluded that *Bruen* did nothing to alter the framework as to who may possess a firearm.

Following Mr. Mancuso's trial, conviction, and sentencing, he appealed to the New York Supreme Court's Appellate Division for the Fourth Department. In his appeal, he reiterated his Second Amendment challenges. The Fourth Department rejected Mr. Mancuso's challenges. *People v. Mancuso*, 225 A.D.3d 1151 (4th Dept. 2024)("We further reject defendant's contention that Penal Law § 265.03 is unconstitutional in light of [*New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1 (2022)]. The decision in Buren (sic) had no impact on the constitutionality of New York State's criminal possession of a weapon statutes")(6a-7a). The Fourth Department did not conduct a historical tradition analysis as outlined in *Bruen*. Mr. Mancuso sought leave to appeal to the New York Court of Appeals, which rejected his application on April 21, 2025. *People v. Mancuso*, 43 N.Y.3d 964 (April 21, 2025)(1a).

STATEMENT OF PRIOR PROCEEDINGS

On March 17, 2022, a grand jury sitting in Oneida County, New York returned Indictment No. 2022-83 charging Mr. Mancuso with the offense of criminal possession of a weapon in the second degree in violation of New York Penal Law § 265.03(3), criminal possession of a weapon in the third degree in violation of New York Penal Law § 265.02 (1) and possession of a firearm in violation of New York Penal Law § 265.01-b(1). The indictment alleged that on October 12, 2021, in the City of Utica, Oneida County, New York, Mr. Mancuso illegally possessed a Sig Sauer P320 semiautomatic handgun.

On May 24, 2022, Mr. Mancuso moved to dismiss the indictment. He raised multiple grounds for dismissal in his motion including, *inter alia*, that the applicable provisions of the New York Penal Law barring a person previously convicted of *any crime* from possessing a firearm even in the home is unconstitutional in violation of the Second and Fourteenth Amendments to the United States Constitution. Mr. Mancuso further argued that the statute as applied to him is unconstitutional in violation of the Second and Fourteenth Amendments to the United States Constitution because his prior crime of conviction was a violation of the federal Clean Air Act and thus constitutes a non-violent felony.

Judge Dwyer, a Justice of the Oneida County Court ("trial court") sitting in Utica, heard oral argument on the motion to dismiss on June 21, 2022. On June 23, 2022, the trial court issued a written but unpublished order denying Mr. Mancuso's motion to dismiss the indictment(13a). On

that same day, this Court issued its decision in *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1 (2022).

Following *Bruen*, Mr. Mancuso moved for reconsideration of the trial court's decision. On September 22, 2022, the trial court issued a memorandum opinion and order denying the reconsideration motion (8a).

A jury trial in this matter commenced on November 28, 2022. Prior to the trial, the People of the State of New York filed a nolle prosequi on the charge of possession of a firearm. The trial proceeded on the remaining two counts charged in the indictment. On December 1, 2022, the jury returned a verdict finding Mr. Mancuso guilty of the remaining two charges. Following the verdict, the trial court ordered Mr. Mancuso remanded into custody.

On February 1, 2023, the trial court sentenced Mr. Mancuso to serve 11 years in state prison. That same day, he filed a notice of appeal. On March 15, 2024, the Fourth Department of the New York Supreme Court Appellate Division, sitting in Rochester, affirmed the judgment of the Oneida County Court. *People v. Mancuso*, 225 A.D.3d 1151 (4th Dept. 2024)(2a). On April 21, 2025, the New York Court of Appeals denied Mr. Mancuso's application for leave to appeal. *People v. Mancuso*, 43 N.Y.3d 964 (April 21, 2025)(1a). Mr. Mancuso remains in custody at a state prison in Auburn, New York.

FACTS AND PROCEDURAL HISTORY

Steven Mancuso is a former attorney who served a 44-month federal sentence in the Bureau of Prisons for a Clean Air Act conspiracy violation. As a result of his

felony conviction, the State of New York and the State of California disbarred him from the practice of law. Mr. Mancuso, however, reintegrated himself into society upon completion of his sentence by running his family's waste treatment business in Utica for many years. For about three years, he also became romantically involved with a co-worker named Lisa Falange.

At around 3:00 a.m. October 12, 2021, Lisa Falange tragically ended her own life, shooting herself in the head with a handgun in the rear bedroom of her Utica apartment (*see e.g.* R.[1] 948-949, 1143). Mancuso was present in their home at the time; he was sleeping in a different bedroom in the front of the apartment, from which he heard Falange's gunshot (*see e.g.* Trial Ex. 21 at 40:30-41:50, 49:05-49:40).

Finding Falange on the ground and in understandable distress, he called 911 (*see* R. 984-985; Trial Ex. 24 [911 recording]). When an officer arrived, Mancuso led him to Falange, who was lying on the floor of a bedroom in the rear of the apartment, a handgun near her body (R. 950-952). Mancuso picked up the gun, and an officer quickly took it from him and turned it over to a second officer, who arrived about a minute later (R. 952-953). Mancuso reported that he and Falange had gotten into an argument, during which Falange had threatened to kill herself (R. 1042).

Numerous additional police officers and emergency medical responders arrived in rapid succession. The two officers initially on scene marshaled Mancuso away from

1. "R" is the record transcript in this matter.

Falange's body and into a small bathroom as an officer blocked the door. The officer who stood in the doorway of the bathroom spoke with Mancuso, who remained highly emotional (R. 1040- 1042; Trial Ex. 9 [bodyworn camera footage ("BWC")] at 1:25 *et seq.*). During this exchange, the officer asked Mancuso whether he had a permit for the handgun with which Falange apparently shot herself; Mancuso answered that he did not, that the gun was illegal, and that he did not care if he went to jail (R. 1045; *accord* R. 586[suppression hearing testimony]). No officer had advised Mancuso of his *Miranda* rights (R. 595). Based on his response, the officer handcuffed Mancuso (R. 596-597, 1046-1047).

Eventually, due to his continuing distress over Falange (including his verbalized suicidal ideations), law enforcement committed Mancuso to the psychiatric unit of a nearby hospital pursuant to New York Mental Hygiene Law § 9.41 (R. 590, 1124-1130). He remained at the hospital for approximately 30 hours (R. 643, 724, 1137). Alcohol and cocaine were detected in his blood (R. 682). He was given a cocktail of medications while hospitalized (R. 1457).

At police insistence, hospital personnel alerted investigators when the facility decided to release Mancuso. The investigators picked Mancuso up at the hospital's back door (R. 605-607, 1130). The police transported Mancuso to the station, where he was read *Miranda* warnings and interviewed over the ensuing five hours (R. 624). As the recording of that interview reflects, Mancuso stated that, on a prior occasion, he had given the firearm in question to Falange for her own protection (Hearing Ex. 1, 56:25-56:40). On the evening preceding her suicide, during which the two argued, Falange possessed the gun and refused

Mancuso's requests that she give it to him (Hearing Ex. 1, 56:30-57:15, 2:11:20-2:13:00).

Although never charged with responsibility for Falange's death, Mancuso was indicted for criminally possessing the gun on the date at issue (R. 7 [indictment]). The prosecution did not instruct the grand jury on the defense of temporary and lawful possession of the firearm (R. 809-812). The trial court thought it appropriate to instruct the petit jury on that defense (R. 1685, 1753-1754). Following its deliberations, the jury convicted Mancuso of possessing the gun. The trial court sentenced him to an aggregate term of 11 years' imprisonment (R. 1827). Mr. Mancuso filed a timely notice of appeal.

Mancuso's contentions on appeal to the Fourth Department and the New York Court of Appeals concerned discrete phases of the proceedings, including the grand jury presentment, suppression hearing, trial, and sentencing. He also included in his appeal the denial of his motion to dismiss the indictment based on his constitutional challenge to the overly broad statute itself that prevents a person who committed any crime and the application of the statute preventing a person convicted of a non-violent felony from possessing a firearm outside or within the home (6a-7a; 28a-30a).

REASONS FOR GRANTING THE PETITION

The Court should grant a writ of certiorari in this instance to hold invalid statutes that run afoul of the Second Amendment to the United States Constitution. Specifically, New York Penal Law § 265.03(3) (criminal possession of a weapon in the second degree) in conjunction

with New York Penal Law § 265.02 (1) (criminal possession of a weapon in the third degree) prohibits a person from possessing a firearm even in the home if that person has a prior conviction for any crime. The term "any crime" encompasses both felonies and misdemeanors. *People v. Hughes*, 921 N.Y.S.2d 300, 301 (2d Dept. 2011). Moreover, although the statutes themselves are facially unconstitutional, their application to Mr. Mancuso also defies the Second Amendment. Staven Mancuso had a prior conviction for "conspiracy to defraud the United States, *see* 18 U.S.C. § 371; to commit mail fraud, *see id.* § 1341; to violate the Clean Air Act ("CAA"), *see* 42 U.S.C. §§ 7412, 7413(c); and to violate the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")." *United States v. Mancuso*, 428 Fed. Appx. 23 (2d Cir. 2011)(unpublished). Mr. Mancuso's prior crime of conviction is indisputably a non-violent felony offense.

Prohibiting a non-violent felon from possessing a firearm even within his home contravenes this Court's holding in *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1 (2022). Similarly, statutes that prohibit possession of a firearm even in the home for a person previously convicted of a felony or misdemeanor likewise contravenes *Bruen*.

In *Bruen*, this Court held that "the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." *Bruen*, 597 U.S. at 8. In reaching its decision, the Court invalidated decisions of New York courts holding that a person seeking to carry a firearm for protection outside the home must "demonstrate a special need for self-protection

distinguishable from that of the general community." *Id.* at 12 (quoting *In re Klenosky*, 428 N.Y.S.2d 256, 257 (2d Dept. 1980)).

When it overruled the holdings of the New York courts requiring a special need for obtaining a firearm outside the home, the Court rejected the rational basis test that the New York courts had employed as a justification for the special need requirement. *Bruen*, 587 U.S. at 13. Instead, this Court held "that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *Id.* at 17 (internal quotations omitted).

The Court concluded that the party seeking to justify the regulation in accordance with the historical tradition of the United States must adhere to the principle that "[c]onstitutional rights are enshrined with the scope they were understood to have *when the people adopted them*. The Second Amendment was adopted in 1791; the Fourteenth in 1868." *Id.* at 34 (emphasis in original) (internal quotations and citations omitted). A party seeking to defend a firearm regulation, therefore, must demonstrate an historical justification for the restriction in existence in 1791 or 1868. *Id.* at 37.

No historical justification whatsoever exists for the allowance of statutes that broadly prevent a person convicted of any crime (including a non-violent misdemeanor) from possessing a firearm within the home. *Cf. United States v. Rahami*, 602 U.S. 680 (2024) (holding that in instances where "an individual has been found by a court to pose a credible threat to the physical safety of another, that individual may be temporarily disarmed consistent with the Second Amendment"). Consistent with *Bruen* and *Rhami*, "the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition. A court must ascertain whether the new law is relevantly similar to laws that our tradition is understood to permit, applying faithfully the balance struck by the founding generation to modern circumstances." *Rhami*, 602 U.S. at 692 (internal citations, quotations and brackets omitted).

With regard to the question of whether historical justification exists to prohibit firearm possession for a person previously convicted of a non-violent felony, a circuit split exists. The most pronounced split exists between the United States Court of Appeals for the Third Circuit and the United States Court of Appeals for the Ninth Circuit. The latter court in the case of *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) (*en banc*) held that the government demonstrated the statute prohibiting all felons from possessing firearms was constitutional based on the historical evidence. Specifically, the Ninth Circuit reasoned that the "standard penalty" for all serious crimes in 1791 was death. *Id.* at 756. The Ninth Circuit concluded that ""it is difficult to conclude that the public, in 1791, would have understood

someone facing death and estate forfeiture to be within the scope of those entitled to possess arms. Certainly, if the greater punishment of death and estate forfeiture was permissible to punish felons, then the lesser restriction of permanent disarmament is also permissible." *Id.* (internal quotations and citations omitted). The Third Circuit, however, reached the opposite conclusion.

In *Range v. Attorney General of the United State*, 124 F.4th 418 (3rd Cir. 2024), the Third Circuit held that the federal statute, 28 U.S.C. § 922(g)(1), prohibiting persons convicted of all felonies and some misdemeanors was unconstitutional as applied to that Appellant's specific offense. The Appellant in *Range* had a prior felony conviction for making false statements on an application for food stamps in violation of Pennsylvania law. *Id.* at 232. Employing its historical analysis, the Third Circuit found that, even though the crime is a felony, it was more analogous historically to a subset of felonies punishable by a fine or a shorter term of imprisonment. *Id.* at 231 and n. 10 citing Crimes Act of 1790, § 15, 1 Stat. 122, 115–16 ("any person who shall feloniously . . . alter or falsify . . . any record . . . in any of the courts of the United States, by means whereof any judgment shall be reversed is punishable by fine, whipping, or imprisonment not exceeding seven years")(internal quotations and brackets omitted). The Third Circuit further noted that even if the authorities had confiscated a felon's guns in the interest of public safety, "in the Founding era, a felon could acquire arms after completing his sentence and reintegrating into society." *Id.* at 231.

If food stamp fraud is a minor felony as analogized to offenses in the Founding era, then nothing approaching

a Clean Air Act violation existed in 1791 or 1886. A Clean Air Act violation is certainly not something the Framers of the Constitution would have punished by death. If deemed criminal at all, it would have, at most, likely carried a punishment of a fine or a public whipping. It certainly is not the type of offense that would have warranted a confiscation of a firearm as a public danger, and it is the type of offense warranting a return of the firearm once the felon reintegrated back into society as allowed in the Founding era. Mr. Mancuso, a disbarred attorney, who after having served his sentence for the Clean Air Act violation, certainly reintegrated himself back into society by running his family's waste removal business in Utica for many years.

The Third Circuit offers a more reasoned analogy to the treatment of the felony at issue here without simply stopping with a cursory analysis of all felonies as punishable by death to justify a law prohibiting non-violent felons from possessing firearms. The Third Circuit's analysis in *Range* justifies the exception that occurs in instances like here where a person finds himself convicted of a non-violent felony not found in historical tradition where the Framers of the Constitution would not have recognized the Clean Air Act as a crime. The Third Circuit also recognized that the Framers did not confiscate guns unless the person or the crime of conviction represented a potential danger to the community, and its historical analysis elucidates the fact that society in the Framers' time restored the right to possess a firearm upon a person's reintegration into society.

This Court should grant Mr. Mancuso's petition, adopt the reasoning of the Third Circuit in *Range* and

resolve the circuit split. This case offers this Court an opportunity to address the constitutionality of statutes that prohibit a person previously convicted of any crime and a person previously convicted of a non-violent felony from possessing a firearm outside or within their home. The Court should correct the existence and application of these unconstitutional statutes.

CONCLUSION

For the foregoing reasons, this Court should grant Mr. Mancuso's petition for a writ of certiorari to the New York Court of Appeals.

Respectfully submitted,

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September 22, 2025

APPENDIX

TABLE OF APPENDICES

APPENDIX A — ORDER OF THE COURT OF APPEALS OF NEW YORK, FILED APRIL 21, 2025

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People v Mancuso

Court of Appeals of New York
4/21/25

4th Dept: 225 AD3d 1151 (Oneida)
APPLICATIONS IN CRIMINAL CASES FOR LEAVE TO APPEAL
denied 4/21/25 (Halligan, J.)

APPENDIX B — MEMORANDUM AND ORDER OF THE SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FOURTH DEPARTMENT, DATED MARCH 15, 2024

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FOURTH DEPARTMENT

225 A.D.3d 1151

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

v

STEVEN P. MANCUSO,

Appellant.

93 KA 23-00479

March 15, 2024, Decided;
March 15, 2024, Entered

PRESENT: WHALEN, P.J., LINDLEY, BANNISTER, OGDEN, AND GREENWOOD, JJ.

Appeal from a judgment of the Oneida County Court (Michael L. Dwyer, J.), rendered February 1, 2023. The judgment convicted defendant upon a jury verdict of criminal possession of a weapon in the second degree and criminal possession of a weapon in the third degree.

Appendix B

MEMORANDUM AND ORDER

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]) and criminal possession of a weapon in the third degree (§ 265.02 [1]). Viewing the evidence in light of the elements of the crimes as charged to the jury (*see People v Danielson*, 9 N.Y.3d 342, 349, 880 N.E.2d 1, 849 N.Y.S.2d 480 [2007]), we reject defendant's contention that the verdict is against the weight of the evidence (*see generally People v Bleakley*, 69 N.Y.2d 490, 495, 508 N.E.2d 672, 515 N.Y.S.2d 761 [1987]).

Contrary to defendant's further contention, the integrity of the grand jury proceeding was not impaired by the prosecutor's failure to instruct the grand jurors on the defense of temporary innocent possession of a weapon. "[T]here is no requirement that the [g]rand [j]ury must be charged with every potential defense suggested [in] evidence," but, rather, the People are required to charge "only those defenses that the evidence will reasonably support" (*People v Moses*, 197 A.D.3d 951, 952, 153 N.Y.S.3d 373 [4th Dept 2021], *lv denied* 37 N.Y.3d 1097 [2021], *denied reconsideration* 37 N.Y.3d 1163 [2022]]; *see People v Angona*, 119 A.D.3d 1406, 1407, 989 N.Y.S.2d 746 [4th Dept 2014], *lv denied* 25 N.Y.3d 987 [2015]). Here, we conclude that an instruction regarding the defense of temporary and innocent possession of a weapon was not

warranted inasmuch as there was insufficient evidence before the grand jury to support such a defense (*see Moses*, 197 A.D.3d at 952; *cf. People v Graham*, 148 A.D.3d 1517, 1518-1519, 50 N.Y.S.3d 196 [4th Dept 2017]). Defendant's further contention that the prosecutor failed to provide the grand jury with certain exculpatory evidence is not preserved for our review inasmuch as defendant failed to move to dismiss the indictment on that ground (*see generally People v Griggs*, 117 A.D.3d 1523, 1523, 985 N.Y.S.2d 369 [4th Dept 2014], *affd* 27 N.Y.3d 602, 36 N.Y.S.3d 421, 56 N.E.3d 203 [2016], *rearg denied* 28 N.Y.3d 957 [2016]), and we decline to exercise our power to review that contention as a matter of discretion in the interest of justice (*see* CPL 470.15 [6] [a]).

We reject defendant's contention that he was subjected to custodial interrogation by police investigators who did not provide *Miranda* warnings when defendant was questioned in the bathroom of his residence and that County Court therefore erred in refusing to suppress the statements made by defendant at that time. It is well settled that "both the elements of police 'custody' and police 'interrogation' must be present before law enforcement officials constitutionally are obligated to provide the procedural safeguards imposed upon them by *Miranda*" (*People v Huffman*, 41 N.Y.2d 29, 33, 359 N.E.2d 353, 390 N.Y.S.2d 843 [1976]; *see People v Anthony*, 85 A.D.3d 1634, 1635, 925 N.Y.S.2d 313 [4th Dept 2011], *lv denied* 17 N.Y.3d 813 [2011]). "In determining whether a defendant was in custody for *Miranda* purposes, '[t]he test is not what the defendant thought, but rather what a reasonable [person], innocent of any crime, would have

thought had [that person] been in the defendant's position'" (*People v Kelley*, 91 A.D.3d 1318, 1318, 937 N.Y.S.2d 514 [4th Dept 2012], *lv denied* 19 N.Y.3d 963 [2012]; *see People v Thomas*, 166 A.D.3d 1499, 1500, 87 N.Y.S.3d 431 [4th Dept 2018], *lv denied* 32 N.Y.3d 1178 [2019]). Under the circumstances presented here, we conclude that "a reasonable person, innocent of any crime, would not have believed that [they were] in police custody but, rather, would have believed that [they were] being interviewed as a witness [to a fatal event]" (*People v Debo*, 45 A.D.3d 1349, 1350, 844 N.Y.S.2d 800 [4th Dept 2007], *lv denied* 10 N.Y.3d 809 [2008]). Specifically, the evidence establishes, inter alia, that defendant insisted on remaining in the bathroom when officers spoke with defendant. The recording from the police officer's body camera belies defendant's contention that he was "corralled" in the room by the officer. While the police officers testified that defendant was not free to leave, a police officer's subjective belief "has no bearing on the question whether a suspect was in custody at a particular time . . . [and] the subjective intent of the officer . . . is irrelevant where, as here, there is no evidence that such subjective intent was communicated to the defendant" (*Thomas*, 166 A.D.3d at 1500 [internal quotation marks omitted]). Thus, we conclude that "the evidence at the [suppression] hearing establishes that defendant was not in custody when he made the statements, and thus *Miranda* warnings were not required" (*People v Bell-Scott*, 162 A.D.3d 1558, 1559, 78 N.Y.S.3d 846 [4th Dept 2018], *lv denied* 32 N.Y.3d 1169 [2019]).

Appendix B

Contrary to the further contention of defendant, we conclude that the court did not err in refusing to suppress the statements that he made to the police at the police station. The record of the suppression hearing supports the court's determination that there was a sufficiently pronounced break between the custodial questioning of defendant by police in the living room of defendant's residence in violation of his *Miranda* rights and his subsequent questioning by police at the police station (*see People v Paulman*, 5 N.Y.3d 122, 130-132, 833 N.E.2d 239, 800 N.Y.S.2d 96 [2005]; *People v Blair*, 121 A.D.3d 1570, 1571, 994 N.Y.S.2d 215 [4th Dept 2014]).

We further reject defendant's contention that all of his statements to the police should have been suppressed because, given his intoxication from drugs coupled with his impaired mental state, he was incapable of making voluntary statements. The record of the suppression hearing, including the recording from the police officer's body camera, establishes that defendant was not so impaired by drugs and his cognitive ability was not so impaired to such a degree that he was incapable of making voluntary statements (*see People v Carbonaro*, 134 A.D.3d 1543, 1548, 23 N.Y.S.3d 525 [4th Dept 2015], *lv denied* 27 N.Y.3d 994 [2016], *denied reconsideration* 27 N.Y.3d 1149 [2016]).

We further reject defendant's contention that Penal Law § 265.03 is unconstitutional in light of *New York State Rifle & Pistol Assn., Inc. v Bruen* (597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 [2022]). The decision in *Bruen* "had no impact on the constitutionality of New York State's

criminal possession of a weapon statutes" (*People v Joyce*, 219 A.D.3d 627, 628, 194 N.Y.S.3d 303 [2d Dept 2023], *lv denied* 40 N.Y.3d 1013 [2023]; *see People v Cabrera*, 41 N.Y.3d 35, 49-50 [2023]; *People v Williams*, 78 Misc 3d 1205[A], 2023 NY Slip Op. 50158[U], *2-4 [Sup Ct, Erie County 2023]).

The sentence is not unduly harsh or severe. We have considered defendant's remaining contentions and we conclude that none warrants reversal or modification of the judgment. Present—Whalen, P.J., Lindley, Bannister, Ogden and Greenwood, JJ.

APPENDIX C — ORDER OF THE NEW YORK STATE TRIAL COURT FOR THE COUNTY OF ONEIDA, DATED SEPTEMBER 2, 2022

Indictment No. 2022-083

THE PEOPLE OF THE STATE OF NEW YORK,

v.

STEVEN MANCUSO,

Defendant.

Hon. Michael L. Dwyer, Presiding:

DECISION AND ORDER

Indictment 2022-083 was filed March 17, 2022, and charged defendant with Criminal Possession of a Weapon in the Second Degree [Penal Law "PL" 265.03(3)]; Criminal Possession of a Weapon in the Third Degree [PL §265.02(1)]; and, Criminal Possession of A Firearm [PL §265.01-b(l)].

Defendant moved previously to dismiss the Indictment on several different grounds including that the charges of Criminal Possession of a Weapon in the Second Degree, Criminal Possession of a Weapon in the Third Degree and Criminal Possession of a Firearm violate the defendant's right to bear arms pursuant to the Second Amendment to the United States Constitution.

In a written Decision and Order dated June 23, 2022, this Court denied that motion. On that same date,

the United States Supreme Court issued its decision in *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 142 S. Ct. 2111 [2022], wherein it struck down a portion of New York State's firearm licensing statute. On June 24, 2022, defendant renewed his motion to dismiss all three counts of this indictment based upon the Supreme Court's holding in the *Bruen* case. Assistant District Attorney Nicholas Fletcher has filed an affirmation in opposition to the motion on behalf of the People.

PL §400.00 governs licenses to carry and possess firearms in the State of New York and, prior to the *Bruen* case, provided:

> 2. Types of licenses. .... A license for a pistol or revolver, ... shall be issued to .... (f) have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof.

A license issued pursuant to the above language amounted to an "unrestricted" permit and permitted the licensee to carry a handgun, so long as it was concealed on his or her person, in most public areas. In cases where the applicant could not show the requisite "proper cause," his or her application was either denied or issued subject to certain restrictions such as when hunting, fishing, hiking, camping, target shooting or other outdoor activities.

In *Bruen,* the Supreme Court held that New York's requirement that an applicant for a pistol permit show "proper cause" in order to obtain an unrestricted pistol

permit violated the Fourteenth Amendment because it prevented law abiding citizens from exercising their Second Amendment right to keep and bear arms in public for self-defense (*Id.*, at 2156). Consequently, an applicant for a pistol license in New York State now is not required to show proper cause prior to the issuance of a pistol license and any license issued going forward is now "unrestricted." It should also be noted that in New York State, any pistol or revolver carried by a licensee, whether with or without restrictions, is required to be concealed from public view.

Defendant now argues that the charges contained in this indictment must be dismissed because, pursuant to the holding in *Bruen,* they are an unconstitutional infringement on his right to bear arms. For the reasons that follow, this Court determines that the *Bruen* decision does not require dismissal of the charges in this case.

In *Bruen,* the Supreme Court concluded that New York's "proper cause" requirement in the application for a pistol license was unconstitutional. However, the Supreme Court *did not* hold that the Second and Fourteenth Amendment to the Constitution entirely prohibit a state from requiring that its citizens obtain a license in order to carry a concealed weapon. Indeed, Justice Alito, in a concurring opinion in *Bruen* specifically noted:

> Our holding decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun. Nor does it decide anything about the kinds of weapons

> that people may possess. Nor have we disturbed anything that we said. .... about restrictions that may be imposed on the possession or carrying of guns (*Id.*, at 2157).

Furthermore, Justice Kavanaugh, in a separate concurring opinion in *Bruen,* in which Chief Justice Roberts joined, made it clear that New York State "may continue to require licenses for carrying handguns for self-defense" so long as it employs objective licensing requirements (*Id.*, at 2162).

"Like most rights, the right secured by the Second Amendment is not unlimited" (*District of Columbia v. Heller*, 554 US 570, 626 [2008]). Consequently, States may continue to prohibit the possession of firearms by felons and the mentally ill; the carrying of firearms in schools and government buildings; and the carrying of "dangerous and unusual weapons" (*People v. Rodriguez*, NY Slip Op 22217 [Sup. Ct. NY County, July 15, 2022]; see *District of Columbia v. Heller*, 554 US at 626-627).

Here, the defendant has been convicted of a felony under federal law and it is alleged that he did not have a valid pistol license when he was charged with violating PL §§265.03(3), 265.02(1) and 265.01-b(1) based on his alleged possession of a loaded firearm in his home. Those statutes are consistent with the United States Supreme Court's determination in *Heller* that, "although individuals may have the constitutional right to bear arms in the home for self-defense, this right is not unlimited and may properly be subject to certain prohibitions " (*People v. Hughes*, 83

AD3d 960, 962 [2nd Dept. 2011)), and, in this Court's view, nothing in the *Bruen* decision changes that well-settled legal principle.

Defendant's motion to dismiss the indictment based upon the Supreme Court's decision in *District of Columbia v. Bruen* is denied.

The foregoing constitutes the opinion, decision and order of this Court.

ENTER .

/s/ Michael L. Dwyer
MICHAEL L. DWYER
Oneida County Court Judge

Decided: September 2, 2022.

APPENDIX D — DECISION AND ORDER OF THE STATE OF NEW YORK FOR THE COUNTY OF ONEIDA, COUNTY COURT, DECIDED JUNE 23, 2022

STATE OF NEW YORK
COUNTY OF ONEIDA COUNTY COURT

Indictment No. 2022-083

THE PEOPLE OF THE STATE OF NEW YORK

against

STEVEN MANCUSO,

Defendant.

MOTION TO DISMISS

APPEARANCES: HONORABLE SCOTT D. McNAMARA, DISTRICT ATTORNEY (Rebecca Kelleher, Esq., of Counsel) for the People.

Gary Pelletier, Esq., for the Defendant.

Hon. Michael L. Dwyer, Presiding:

DECISION AND ORDER

Indictment 2022-083 was filed March 17, 2022, and charged defendant with Criminal Possession of a Weapon in the Second Degree [Penal Law "PL" 265.03(3)];

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Criminal Possession of a Weapon in the Third Degree [PL §265.02(1)]; and, Criminal Possession of A Firearm [PL §265.01-b(1)].

Defendant has moved for the following relief:

1. An order dismissing the charges of Criminal Possess of a Weapon in the Second Degree and Criminal Possession of a Weapon in the Third Degree on the grounds that his prior conviction for conspiracy to violate the federal Clean Air Act - classified as a felony under federal law - does not qualify as a crime under New York State law and, therefore, cannot serve as a predicate offense under New York Penal Law §265.03 and §265.02;

2. An order dismissing the charges of Criminal Possession of a Weapon in the Second Degree and Criminal Possession of a Weapon in the Third Degree on the grounds that the "First Subdivision of New York Penal Law §265.02 is unconstitutionally vague;"

3. An order dismissing the charges of Criminal Possess of a Weapon in the Second Degree, Criminal Possession of a Weapon in the Third Degree and Criminal Possession of a Firearm on the grounds that each of those charges violates the defendant's right to bear arms pursuant to the Second Amendment to the United States Constitution; and

> 4. An order "declaring the defendant's prior conviction for a violation of the federal Clean Air Act unconstitutional."

(See Defendant's Notice of Motion at pp. 2-3).

Assistant District Attorney Rebecca Kelleher filed an affirmation in opposition to the motion on behalf of the People. This Court heard oral argument on the issues raised by the motion on June 21, 2022.

1. Does Defendant's Prior Conviction Under Federal Law Serve as a Predicate Offense Under New York Law?

Count 1 of the indictment charges defendant with Criminal Possession of a Weapon in the Second Degree in violation of PL 265.03(3). That statute, in pertinent part, provides:

> A person is guilty of criminal possession of a weapon in the second degree when:
>
> (3) such person possesses any loaded firearm. Such possession shall not, **except** as provided in subdivision one . . . . of section 265.02 of this article, constitute a violation of this subdivision if such possession takes place in such person's home or place of business.

Count 2 of the indictment charges defendant with Criminal Possession of a Weapon in the Third Degree

in violation of PL §265.02(1). That statute, in pertinent part, provides:

> A person is guilty of criminal possession of a weapon in the third degree when:
>
> (1) Such person commits the crime of criminal possession of a weapon in the fourth degree . . . . and has been previously convicted of any crime.

Defendant argues that the charge of Criminal Possession of a Weapon in the Second Degree must be dismissed because he possessed the loaded firearm in his home and the exception set forth in the statute does not apply because he has not been previously convicted of a crime in New York State. Similarly, he contends that the charge of Criminal Possession of a Weapon in the Third Degree must be dismissed because that offense also requires that he have been previously convicted of a crime. Specifically, he argues with respect to both charges that "his prior conviction for a conspiracy to violate the federal Clean Air Act – classified as a felony under federal law – does not qualify as a crime under New York State law and, therefore, cannot serve as a predicate offense under New York Penal Law §265.03 and §265.02. *People v. Stinson*, 151 AD2d 842 (3rd Dept. 1989)."

Defendant's reliance on *Stinson* is misplaced. That case dealt with the issue of whether a defendant's prior conviction in Connecticut could serve "as a predicate felony for purposes of sentencing [him] in New York as a second

felony offender" (Id., at 842-843). Ultimately, the Appellate Court found that the underlying conviction in Connecticut was "more properly likened to the misdemeanor charge of criminal possession of a weapon in the fourth degree" (*Id.*, at 843), and ruled that "the Connecticut conviction does not qualify as a predicate felony conviction as a matter of law" (*Id.*, at 843), and remitted the matter to the trial court for re-sentencing inasmuch as the defendant should not have been sentenced as a second felony offender. Here, whether or not the defendant's federal conviction for conspiracy constitutes a felony for purposes of sentencing him as a second felony offender under New York law is not relevant at this stage of this proceeding.

Defendant concedes that he was convicted of a felony in federal court for conspiracy to violate the Clean Air Act but argues that such conviction does not constitute a crime under New York State law. Defendant focuses on the "Clean Air Act" portion of his conviction and contends that there is no such comparable crime in New York. The Court finds this argument to be unpersuasive for two reasons. First, defendant was convicted of the crime of *conspiracy* in federal court and there is a comparable crime in New York State, Second, the plain language of PL §265.02(1) requires only that a defendant be "previously convicted of *any* crime" and the statute does not specify that such conviction must have occurred in the State of New York, or, if it occurred elsewhere, that it be the equivalent of a crime in New York.

In this case, in conjunction with the filing of the indictment, the People also filed a District Attorney's

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Information alleging that "the said defendant was on October 28, 2019, convicted of a violation of 18 USC Section 371 (Conspiracy to Defraud the United States) before the United States District Court [for] the Northern District of New York." That federal statute provides:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more that five years, or both.
>
> If however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment for such misdemeanor.

Thus, a conspiracy under federal law requires that there be two or more persons who conspire to commit any substantive offense against the United States, or to defraud the United States or any agency thereof, in any manner or for any purpose.

The crime of conspiracy in the State of New York is contained in Article 105 of the Penal Law and includes six separate offenses from the class B misdemeanor of Conspiracy in the Sixth Degree up to and including the class A-I felony of Conspiracy in the First Degree. The

seriousness of each conspiracy offense varies depending on the seriousness of the underlying substantive crime and the ages of the conspirators. However, all conspiracy offenses in the State of New York require that the person charged must have agreed with "one or more persons" to intentionally engage in conduct constituting a crime (see PL §105.00 through PL §105.17). Consequently, a conspiracy under both federal law and New York State law may be established by proof that at least two persons agreed to engage in substantive criminal conduct. Thus, the crime of conspiracy for which the defendant was convicted in federal court does have an equivalent offense under New York State law.

Furthermore, the "home or place of business" exception of PL §265.03(3) "is inapplicable where, as here, a defendant 'has been previously convicted of **any crime**' (§265.02[1])" (see *People v. Brumfield*, 109 AD3d 1105, 1106 [4th Dept. 2013], reversed on other grounds, [emphasis supplied]; see also *People v. Hughes*, 22 NY3d 44, 49-50 [2013]; *People v. Montilla*, 10 NY3d 663 [2008]; *People v. Roberson*, 41 NY2d 106, 107 [note 1], [1976]). "The phrase 'any crime' means any crime no matter where, when or how committed, and needs no judicial interpretation" (*People v. Cornish*, 104 Misc. 2d 72, 75 [Sup. Ct. Kings County 1980];

Defendant's motion to dismiss the charges of Criminal Possession of a Weapon in the Second Degree and Criminal Possession of a Weapon in the Third Degree on the grounds that his prior felony conviction for Conspiracy to violate the federal Clean Air Act cannot serve as a predicate offense under New York Penal Law §265.03 and §265.02, is denied.

2. Is PL §265.02(1) Unconstitutionally Vague?

Defendant has also moved for an order dismissing the charges of Criminal Possession of a Weapon in the Second Degree and Criminal Possession of a weapon in the Third Degree on the grounds that PL §265.02(1), which criminalizes the possession of firearms in the home if a person has been previously convicted of "any crime," is unconstitutionally vague.

"Legislative enactments are entitled to 'a strong presumption of constitutionality'" (*White v. Cuomo*, 2022 NY Slip Op 01954 [March 22, 2022], quoting *Dalton v. Pataki*, 5 NY3d 243, 255 [2005]), and that presumption may be overcome only with proof beyond a reasonable doubt (*People v. Couser*, 258 AD2d 74, 80 [4th Dept. 1999]; *People v. Scalza*, 76 NY2d 604, 607 [1990]). "The substantial burden of proving unconstitutionality beyond a reasonable doubt" rests with the party challenging the statute (*Id.*, at 607), and "courts strike [a statute] down only as a last unavoidable result" (*White v. Cuomo*, 2022 NY Slip Op 01954 [March 22, 2022], quoting *Matter of Van Berkel v. Power*, 16 NY2d 37, 40 [1965]). This Court is required, if possible, "to construe the statute to preserve its constitutionality" (*People v. Couser*, 258 AD2d at 80).

"A court may only consider a vagueness challenge on the facts of the case before it" (*People v. Cornish*, 104 Misc. 2d at 74, quoting *United States v. Oceguendo*, 564 F2d 1363, 1365 [9th Cir. 1977]. "Thus, if the actions of the defendant are plainly within the ambit of the statute, the court will not strain to imagine a marginal situation in

which the application of the statute is not so clear" (*People v. Couser*, 258 AD2d at 81, quoting *People v. Nelson*, 69 NY2d 302, 308 [1987]). "When a penal law is challenged on the ground of vagueness, there are two due process requirements that must be met: 'first, the statute must provide sufficient notice of what conduct is prohibited; second, the statute must not be written in such a manner as to permit or encourage arbitrary and discriminatory enforcement'" (*People v. Couser*, 258 AD2d at 81, quoting *People v. Bright*, 71 NY2d 376, 382 [1988]). "If the statute is not impermissibly vague as applied to the defendant, and provides the defendant with adequate notice and the police with clear criteria, the court's inquiry is at an end" (*People v. Voltaire*, 18 Misc. 3d 408, 410 [Kings County Ct. 2007); see also *People v. Stuart*, 100 NY2d 412, 422 [2003]).

"Words and phrases used in a statute should be given their ordinary meaning when, as here, the Legislature has given no indication that a different meaning was intended This is particularly apt when it is claimed that the statute might otherwise lack sufficiently definite standards or guidelines to satisfy the requirements of due process" (*People v. Couser*, 258 AD2d at 80, quoting *People v. Cruz*, 48 NY2d 419, 428 [1979]).

Applying those due process requirements to the defendant in this case, the Court finds that defendant knew that he had been previously convicted in federal court of the felony crime of conspiracy. As set forth above, "the phrase 'any crime' means any crime no matter where, when or how committed, and needs no judicial interpretation" (*People v. Cornish*, 104 Misc. 2d at 75).

The language of the statute is clear and unambiguous as it affects this defendant. The Court finds that defendant has failed to prove beyond a reasonable doubt that PL §265.02(1) is unconstitutionally vague and his motion to dismiss the indictment on such ground is denied.

3. Do PL §§265.03(3), 265.02(1) and 265.01-b(1) Violate Defendant's Right to Bear Arms Pursuant to the Second Amendment to the United States Constitution?

Defendant also seeks an order dismissing the indictment on the ground that the three statutes under which the charges were brought are unconstitutional inasmuch as they violate his Second Amendment right to bear arms.

It is true that, in *District of Columbia v. Heller,* (554 US 570 [2008]), the United States Supreme Court held that the Second Amendment to the United States Constitution confers a constitutionally protected individual right to keep and bear arms for self-defense in the home. Furthermore, the Supreme Court has also held that this Second Amendment right is "fully applicable to the States" (*McDonald v. City of Chicago*, 561 US 742, 750 [2010]).

However, it is also true that "the rights conferred under the Second Amendment are not unlimited (see *District of Columbia v. Heller,* 55 US at 626)" (*People v. Hughes*, 83 AD3d 960, 961 [2nd Dept. 2011]). The Supreme Court stated in *Heller* that "nothing in that opinion 'should be taken to cast doubt on longstanding prohibitions on

the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms' (*id.,* at 626-627)" (see *People v. Hughes*, 83 AD3d at 961).

Courts of original jurisdiction should not set aside a statute as unconstitutional unless that conclusion is inescapable. This Court is required, if possible, to construe these statutes in such a way as to preserve their constitutionality (*People v. Couser*, 258 AD2d at 80; see *United States v. Hariss*, 347 US 612, 618 [1954]; *Skilling v. United States*, 561 US 358, 406 [2010])

The statutes, as relevant here, criminalize the possession of a firearm, or loaded firearm, even in the home, where the defendant has previously been convicted of "any crime" and is not an absolute ban on the possession of firearms (see *People v. Hughes*, 83 AD3d at 961). "Penal Law article 265 does not effect a complete ban on handguns and is, therefore, not a 'severe restriction' improperly infringing upon defendant's Second Amendment rights" (*Id.*, at 961, quoting *People v. Perkins*, 62 AD3d 1160, 1161 [3rd Dept. 2009]). Rather, "the statutes represent policy determination by the Legislature that 'an illegal weapon is more dangerous in the hands of a convicted criminal than in the possession of a novice in the criminal justice system'" (*People v. Hughes*, 83 AD3d at 961; see also *People v. Montilla*, 10 NY3d 663, 666 [2008]).

PL §§265.03(3), 265.02(1) and 265.01-b(1) are consistent with the United States Supreme Court's

determination in *Heller* that, "although individuals may have the constitutional right to bear arms in the home for self-defense, this right is not unlimited and may properly be subject to certain prohibitions" (*People v. Hughes*, 83 AD3d at 962).

Accordingly, the Court finds that the challenged statutes do not violate the Second Amendment to the United States Constitution and defendant's motion to dismiss the indictment on such grounds is denied.

4. Is Defendant Entitled to an Order Declaring his Prior Conviction for a Violation of the Federal Clean Air Act Unconstitutional?

Defendant has also requested that this Court issue an order vacating his prior conviction for conspiracy to violate the Clean Air Act in federal court on the ground that such conviction was obtained in violation of his constitutional rights.

A defendant may challenge the validity of a prior criminal conviction. However, he or she must do so in the court where that conviction was obtained. This Court lacks jurisdiction to review the propriety of a criminal conviction obtained in the United States District Court for the Northern District of New York. Nor may this Court consider the merits of a motion to vacate the prior judgment of conviction pursuant to the Criminal Procedure La of the State of New York. Any such motion must be brought in "the court in which [the judgment] was entered" [CPL §440.10(1)].

Appendix D

Defendant's motion for an order vacating his prior felony conviction in the United States District Court for the Northern District of New York on the ground that such conviction was obtained in violation of his constitutional rights is denied.

The foregoing constitutes the opinion, decision and order of this Court.

ENTER.

/s/ Michael L. Dwyer
MICHAEL L. DWYER
Oneida County Court Judge

Decided: June 23, 2022

APPENDIX E — LETTER APPLICATION TO THE NEW YORK COURT OF APPEALS, DATED APRIL 29, 2024

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Hon. John V. Centra
App. Div., 4th Dept. (Ret.)
Special Counsel

April 29, 2024

Honorable Caitlin J. Halligan
Judge of the New York Court of Appeals
Court of Appeals Hall
20 Eagle Street
Albany, New York 12207

Re: ***People v Stephen P. Mancuso*** **(CLA-2024-00363)**

Dear Judge Halligan:

I submit this follow-up letter in support of appellant Stephen Mancuso's application for leave to appeal to the Court of Appeals. This leave application presents three potential questions for review: (1) whether the trial court

and the Appellate Division erred in concluding that Penal Law § 265.03 is not unconstitutional in light of the Supreme Court's decision in *New York State Rifle & Pistol Assn., Inc. v Bruen* (597 US 1 [2022]); (2) whether the courts below erred in holding that the integrity of Mr. Mancuso's grand jury proceeding was not impaired by certain omissions, including the failure to charge on a complete defense; and (3) whether the Appellate Division erred in concluding that he received the effective assistance of counsel. This Court has jurisdiction to review these questions of law, the first and third of which are grounded in constitutional principles.

A. Background

At around 3:00 a.m. on October 12, 2021, Mr. Mancuso's girlfriend, Lisa Falange, shot herself in the head with a handgun in the rear bedroom of her Utica apartment. She was declared deceased a short time later. Mr. Mancuso, who was at the apartment, called 911 after hearing the gunshot and finding Falange laying on the ground. When a police officer arrived moments later, Mr. Mancuso led him to the rear bedroom and picked up the firearm laying near Falange's body; the officer quickly took it from Mr. Mancuso and handed it to a second officer. Mr. Mancuso reported that, in the preceding hours, he and Falange had gotten into an argument, during which Falange had threatened to kill herself (*see* Appellant's Brief, 3-4).

Trial testimony and the officers' body worn camera footage reflected that Mr. Mancuso was in considerable distress. As numerous officers and medical personnel

arrived, one officer asked Mr. Mancuso, prior to any *Miranda* warnings, whether he had a permit for the firearm (Appellate Brief, 4-5). Mr. Mancuso stated that he did not, and that the gun was illegal. An officer handcuffed Mr. Mancuso, and, thereafter, he was committed to the psychiatric unit of a nearby hospital based upon his apparent distress and verbalized suicidal ideations. He was held at the hospital for around 30 hours and, upon his release, detectives picked him up and transported him to the police station for a multi-hour interview. Mr. Mancuso stated that he had given the gun, which he built, to Falange for protection (*see* Appellate Brief, 5). Although not prosecuted for Falange's death, Mr. Mancuso was later charged with criminal possession of a weapon in the second degree (Penal Law§ 265.03 [3]) and third degree (§ 265.02 [1]). Ultimately, after a jury trial, Mr. Mancuso was convicted, in the Oneida County Court, of both charges, and sentenced to a term of imprisonment.

B. Questions for the Court's Review

(1) Validity of the statutes under which Mr. Mancuso was convicted

Before trial, Mr. Mancuso sought dismissal of the charges due to the infirmity of the statutes under which he was being prosecuted. First, he contended that Penal Law § 265.02 (1), which proscribes the commission of fourth degree weapon possession by any person "previously convicted of any crime," was void for vagueness, and was not satisfied by his years-old felony conviction for conspiracy to violate the Clean Air Act (18 USC § 371),

which has no New York equivalent. He also argued that criminalizing his firearm possession on the basis of a prior conviction for "any crime" violated his Second Amendment rights.[1] Second, Mr. Mancuso contended that, in light of *Bruen,* the possession statutes under which he was being prosecuted were infirm.

County Court denied Mr. Mancuso's motion to dismiss, and, on appeal, the Appellate Division, Fourth Department rejected his *Bruen* claim on the merits (*People v Mancuso,* _AD3d _, 2024 NY Slip Op 01408, *2 [4th Dept Mar. 15, 2024]). The intermediate court also ostensibly rejected Mr. Mancuso's other constitutional challenges to the statutes without express discussion (*see Mancuso,* 2024 NY Slip Op 01408, *2 ["We have considered defendant's remaining contentions and we conclude that none warrants reversal or modification of the judgment"]). Copies of the parties' papers, and County Court's relevant decisions, are enclosed with this letter.

This case presents a preserved claim concerning the impact of *Bruen* upon the validity of Penal Law § 265.03- a contention procedurally barred in other recent cases that have made their way to this Court (*see e.g. People v David,* 41 NY3d 90 [2023]; *People v Garcia,* 41 NY3d 62 [2023]; *People v Cabrera,* 41 NY3d 35 [2023]). *Bruen* "effected a dramatic change in how States may regulate" gun

1. Although the Appellate Division, Fourth Department, has held that a federal conspiracy charge (18 USC § 871) "correspond[s]" to the New York crime of conspiracy in the fifth degree (Penal Law § 105.05 [1]), that state crime is a misdemeanor, and not a "serious offense" under Penal Law § 265.00 (17).

possession, and leaves "an array of significant questions in its wake" (*Cabrera,* 41 NY3d at 46), and this record affords the Court an opportunity to review at least some of these questions.

(2) The integrity of the grand jury proceeding

On the eve of trial, the defense first learned that the People did not instruct the grand jury on the complete defense of temporary and innocent possession.[2] The defense moved to dismiss the indictment on the ground that the integrity of the grand jury proceedings was therefore compromised (*see* CPL 210.35 [5]; *People v Darby,* 75 NY2d 449, 454 [1990]). County Court denied the motion, holding that the grand jury proceeding was a fair one. On appeal, the Fourth Department held that the integrity of the proceeding was not impaired because "there was insufficient evidence before the grand jury to support" that defense, and an instruction on it was thus not required (*Mancuso,* 2024 NY Slip Op 01408, * 1).

The courts below erred, and this Court is well positioned to correct that error. On the date in question, Falange shot herself, and Mr. Mancuso summoned first responders and turned the gun over to responding officers. The People apparently relied upon the theory

2. *See* CJI2d [NY] Possession, Temporary and Lawful [last rev May 2021] ["A person has innocent possession of a weapon when that person comes into possession of the weapon in an excusable manner, and maintains possession, or intends to maintain possession, of the weapon only long enough to dispose of it safely."]).

that Mr. Mancuso constructively possessed the weapon on that date, requiring the People to demonstrate that he exercised dominion and control over the firearm by virtue of control over the area where it was found or the person who actually possessed it (*see People v Manini,* 79 NY2d 561, 573 [1992]). An investigator testified conclusorily that Mr. Mancuso stayed at Falange's apartment, but did not specify the regularity of his presence. The prosecution also presented evidence that unspecified mail and business records bearing Mr. Mancuso's name were found at the apartment, but Falange worked as office manager for the same employer (*see* Appellate Brief, 12-15). Additionally, Falange's sister testified that she saw the gun in the apartment on occasions when Mr. Mancuso was not present, and that Falange asserted that she kept it for protection. While the People relied in part on admissions that Mr. Mancuso possessed the firearm in the past, this did not preclude the possibility that his possession on the date charged was temporary and innocent.[3] Temporary and innocent possession is a complete defense to a weapon possession charge, and the instruction should have been given.

---

3. In his Appellate Division brief, Mr. Mancuso also contended that, although the People presented evidence of Mr. Mancuso's inculpatory statements of prior ownership of the gun, the People erred in failing to present Mr. Mancuso's statements from the same interview that, earlier the previous evening, Falange affirmatively hid the gun, preventing him from removing it for her own protection (*see* Appellate Brief, 16-19). The Appellate Division concluded that this contention was unpreserved (*Mancuso,* 2024 NY Slip Op 01408, *2).

(3) Ineffective assistance of counsel

An attorney renders constitutionally ineffective representation when he or she introduces prejudicial matter into evidence without any rational strategy that might justify the risk of doing so to achieve a favorable outcome (*see People v Zaborski,* 59 NY2d 863, 864-865 [1984]; *People v Droz,* 39 NY2d 457, 460-462 [1976]). This is often a symptom of simply failing to adequately prepare; unintentionally presenting harmful evidence necessarily reflects an absence of soundly executed strategy (*see Droz,* 39 NY2d at 462 ["[I]t is elementary that the right to effective representation includes the right to assistance by an attorney who has taken the time to review and prepare both the law and the facts relevant to the defense and who is familiar with, and able to employ at trial basic principles of criminal law and procedure"]).

In this case, while cross-examining the People's final trial witness—lead detective Carl Paladino—defense counsel elicited for the first time that a briefcase was found in the apartment which reportedly did not belong to Falange, the decedent. On further questioning by counsel, Paladino enumerated that the briefcase contained forged currency, glass vials, a Sig Sauer magazine clip, gun-related tools, and anabolic steroids. The door having been opened, the prosecutor on redirect examination went through these prejudicial items in even greater detail, which also included illicit brass knuckles and a collapsible baton.

The record reveals no basis for believing that counsel's line of questioning was the product of a rational trial

strategy. Pursuing it invited the jury to infer a propensity for lawbreaking and violence that was not charged, based on evidence that the People did not intend to introduce. Counsel's course of action calls out for further review.

Thank you for your consideration in this matter.

Respectfully Submitted,
CAMBARERI & BRENNECK, PLLC
/s/ Melissa K. Swartz
Melissa K. Swartz, Esq.

APPENDIX F — LETTER APPLICATION TO THE NEW YORK COURT OF APPEALS, DATED APRIL 4, 2024

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App. Div., 4th Dept. (Ret.)
Special Counsel

April 4, 2024

Honorable Rowan Wilson
Chief Judge of the New York Court of Appeals
Court of Appeals Hall
20 Eagle Street
Albany, New York 12207

Attn: Hon. Lisa LeCours
Chief Clerk of the Court of Appeals

Re: ***People v Steven P. Mancuso***
Oneida County Indictment No. 70247-22/001
Appellate Division Docket No. KA 23-00479

Appendix F

Dear Ms. LeCours:

Please accept this letter as defendant's application for permission to appeal the above-referenced case to the Court of Appeals (*see* CPL 460.20 [3] [b]). No application for this relief has been made to a Justice of the Appellate Division.

On March 15, 2024, the Appellate Division, Fourth Department affirmed a judgment, rendered upon a jury verdict, convicting steven Mancuso of criminal possession of a weapon in the second degree and criminal possession of a weapon in the third degree. The charges stemmed from an incident during which defendant's girlfriend took her own life at her apartment with a firearm.

I am enclosing copies of the Appellate Division briefs and the Fourth Department's Memorandum and Order.

Please notify me when this case has been assigned so that I may send a more detailed letter in support of this application.

Thank you for your consideration in this matter.

Respectfully Submitted,
CAMBARERI & BRENNECK, PLLC
/s/ Kenneth H. Tyler
By: Kenneth H. Tyler, Jr., Esq.

Encs.

cc: Dawn Lupi, Esq. – Assistant District Attorney
Oneida County District Attorney's Office