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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3418-21
A-3419-21

IN THE MATTER OF THE
APPLICATION OF THE STATE
OF NEW JERSEY FOR THE
FORFEITURE OF WEAPONS
AND/OR FPIC BELONGING TO
ROBERT FOX.

IN THE MATTER OF THE
APPLICATION OF THE STATE
OF NEW JERSEY FOR THE
FORFEITURE OF WEAPONS
AND/OR FPIC BELONGING TO
MICHAEL RICCIARDI.

Argued March 5, 2024 – Decided June 5, 2024

Before Judges Mayer, Enright and Paganelli.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Morris County,
Docket Nos. FO-14-0141-21, FO-14-0123-20, FO-14-
0054-21, and FO-14-0149-22.

Evan Nappen argued the cause for appellants Robert
Fox and Michael Ricciardi (Evan F. Nappen, Attorney
at Law, PC, attorneys; Louis P. Nappen, on the briefs).

Robert J. Lombardo, Assistant Prosecutor, argued the cause for respondent State of New Jersey (Robert J. Carroll, Morris County Prosecutor, attorney; Paula Jordao, Assistant Prosecutor, on the briefs).

Rachel Manning, Deputy Attorney General, argued the cause for amicus curiae State of New Jersey (Matthew J. Platkin, Attorney General, attorney; Angela Cai and Sookie Bae-Park, Assistant Attorneys General, of counsel; Rachel Manning, on the briefs).

PER CURIAM

In these back-to-back appeals, which we consolidated for the purpose of writing one opinion, petitioners Robert Fox and Michael Ricciardi appeal from separate orders entered on June 2, 2022, granting the State's motions for the forfeiture of petitioner's firearms, firearms purchaser identification cards (FPICs) and permits to purchase handguns. We affirm, in part, substantially for the reasons set forth in the trial court's cogent written opinion, and remand in part, to allow the trial court to address the constitutional issues petitioners raise for the first time on appeal.

I.

We begin by summarizing the facts leading to the entry of the challenged orders.

Robert Fox

In January 2020, a municipal court judge granted a temporary restraining order (TRO) against Fox, pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. The TRO contained a valid warrant to search for and seize Fox's firearms, ammunition, and FPICs. Prior to the warrant's execution, Fox informed the police he kept several weapons inside a gun safe at his home. He also revealed he had the upper portion of an AR-15 style rifle in his possession and kept the lower portion of the rifle at his father's residence.

The police seized numerous firearms from Fox's home, including the "upper receiver of a Bushmaster AR-15" (Bushmaster) and a Springfield Armory .30 caliber M1 Rifle (Springfield), as well as ammunition, and Fox's FPIC. That same day, Fox turned over the lower receiver of the Bushmaster to the police.

In February 2020, the alleged victim who obtained the TRO against Fox withdrew the TRO and entered into civil restraints with Fox in a separate action. A week later, the State filed a motion to forfeit the items seized from Fox's home.

Subsequently, the State and Fox entered into a consent order providing for the State's withdrawal of its forfeiture motion, pending the resolution of a simple assault charge against Fox and subject to the State's right to refile the motion. In April 2021, the State refiled its forfeiture motion but withdrew it again after

entering into a second consent order to allow Fox and his attorney time to examine any firearms subject to forfeiture. Pursuant to the second consent order, the State retained the right to refile its forfeiture motion, and it exercised that right in January 2022.

Prior to the forfeiture hearing, the parties executed a stipulation which provided, in part:

The sole issue . . . to be determined by the [c]ourt is whether the Bushmaster . . . (upper and lower receiver), or the Springfield . . . is an "[a]ssault firearm" under N.J.S.[A.] 2C:39-1[(w)].¹ If the [c]ourt determines that either rifle is prohibited under N.J.S.[A.] 2C:39-1[(w)], then the State's [w]eapons [f]orfeiture motion shall be granted. If the [c]ourt determines that neither rifle is prohibited under N.J.S.[A.] 2C:39-1[(w)], then the State's [w]eapons [f]orfeiture motion shall be denied.

Michael Ricciardi

In July 2020, a municipal court judge granted a TRO under the PDVA against Ricciardi. The TRO contained a valid warrant to search for and seize Ricciardi's firearms, ammunition, and FPICs. When the police executed the

¹ Firearms classified as prohibited "assault firearms" are itemized under N.J.S.A. 2C:39-1(w)(1). Additionally, "[a]ny firearm manufactured under any designation which is substantially identical to any of the firearms listed [under N.J.S.A. 2C:39-1(w)(1)]" is considered a prohibited "[a]ssault firearm." N.J.S.A. 2C:39-1(w)(2).

warrant, they seized multiple weapons, including a Del-Ton Inc. DT-15 5.56 caliber semi-automatic rifle (Del-Ton) and two FPICs. Weeks later, the alleged victim who obtained the TRO against Ricciardi withdrew the TRO and entered into civil restraints with Ricciardi in a separate action.

In October 2020, the State filed a motion to forfeit the items seized from Ricciardi's home. The State and Ricciardi subsequently entered into a consent order providing for the State's withdrawal of its forfeiture motion to allow Ricciardi and his attorney time to examine any firearms subject to forfeiture. Pursuant to the consent order, the State reserved the right to refile the motion, and it refiled the forfeiture motion in January 2022.

Prior to the forfeiture hearing, Ricciardi and the State entered into a stipulation similar to that executed in Fox's case. The stipulation provided, in part:

The sole issue . . . to be determined by the [c]ourt is whether the Del-Ton . . . is an "[a]ssault firearm" under N.J.S.[A.] 2C:39-1[(w)]. If the [c]ourt determines that this rifle is prohibited under N.J.S.[A.] 2C:39-1[(w)], then the State's [w]eapons [f]orfeiture motion shall be granted. If the [c]ourt determines that this rifle is not prohibited under N.J.S.[A.] 2C:39-1[(w)], then the State's [w]eapons [f]orfeiture motion shall be denied.

Forfeiture Hearings

On April 21, 2022, the trial court conducted hearings on each forfeiture motion. In both cases, the judge qualified the State's witness, William Stitt, Morris County Sheriff's Forensic Examiner, as an expert in firearms identification and operation. During the hearings, Stitt described the weapons seized from each petitioner and the methodology he used to evaluate the rifles. He opined the Bushmaster and Del-Ton were not only "operable and semi-automatic," but also assault firearms, as defined under N.J.S.A. 2C:39-1(w).² Stitt explained that in finding the Bushmaster and Del-Ton rifles were "operable and . . . semi-automatic," he test-fired both, and that after one round in the cartridge was discharged from each rifle, the next round automatically loaded.

Stitt also testified he found the Bushmaster and Del-Ton qualified as assault firearms based on the criteria set forth in the "[AG G]uidelines," a reference to the Guidelines Regarding the "Substantially Identical" Provision in the State's Assault Firearms Laws issued by then Attorney General Peter Verniero to the Director of the Division of Criminal Justice, All County Prosecutors, and All Law Enforcement Chief Executives on August 19, 1996. (AG Guidelines). The AG Guidelines provide in relevant part:

² Stitt did not discuss the Springfield rifle during his testimony. According to the State, Stitt found this weapon "was not consistent with an assault firearm," and therefore, it is not at issue in this appeal.

A semi-automatic firearm should be considered to be "substantially identical," that is, identical in all material respects, to a named assault weapon if it meets the below listed criteria:

[a] semi-automatic rifle that has the ability to accept a detachable magazine and has at least [two] of the following:

1. a folding or telescoping stock;
2. a pistol grip that protrudes conspicuously beneath the action of the weapon;
3. a bayonet mount;
4. a flash suppressor or threaded barrel designed to accommodate a flash suppressor; and
5. a grenade launcher.

[AG Guidelines.]

See also State v. Petrucci, 343 N.J. Super. 536, 546 n.2 (App. Div. 2001).

Stitt concluded the Bushmaster had three of the features set forth in the AG Guidelines, rendering the Bushmaster "substantially identical" to the assault firearms listed in N.J.S.A. 2C:39-1(w)(1). Those three features were: a pistol grip, a threaded barrel designed to accommodate a flash suppressor, and a bayonet mount. Stitt admitted that when he examined the Bushmaster's bayonet mount, he did not attach a bayonet to the firearm. He also conceded he did not attach a flash suppressor to the Bushmaster or measure the threads, but he stated

the Bushmaster had a threaded barrel with a compensator that could accommodate a flash suppressor.

Similarly, during Ricciardi's forfeiture hearing, Stitt identified two features on the Del-Ton which rendered the rifle "substantially identical" to an assault firearm: a pistol grip and a bayonet mount. Stitt admitted that when he tested the Del-Ton, he did not attach a bayonet to the bayonet mount. Additionally, Stitt conceded he was "not sure whether [the Del-Ton] c[ould] actually mount a bayonet." However, on re-direct examination, he stated he typically would not "mount a bayonet . . . to the firearm when making a determination as to whether the firearm ha[d] that feature" because "[a]ccording to the [AG G]uidelines," he only needed to determine if the firearm had "the bayonet mount itself, not whether [he] c[ould] mount the bayonet on" the firearm.

On June 2, 2022, the judge granted each of the State's forfeiture motions and entered separate conforming orders that day. In the written opinion accompanying her order in Fox's matter, the judge found, "[b]ased on the uncontroverted and credible testimony of . . . Stitt, . . . the Bushmaster . . . seized from . . . Fox [under the PDVA] is a per se illegal assault firearm as defined in N.J.S.A. 2C:39-1(w)(2)." After noting Fox did not dispute that the Bushmaster

was "semi-automatic with a detached magazine and pistol grip," the judge credited Stitt's testimony to find the Bushmaster had both "a threaded barrel designed to accommodate a flash suppressor" and a bayonet mount. She explained:

Stitt . . . received the rifle in one piece. During the hearing, . . . Stitt took the two pins out and separated the rifle into two parts and reassembled it. He identified the threaded barrel . . . in evidence. The fact that a tool is required to remove the muzzle device to attach a flash suppressor does not change the fact that this rifle has a threaded barrel capable of accommodating a flash suppressor. N.J.S.A. 2C:39-1(w)(5) provides that "[a] part or combination of parts designed or intended to convert a firearm into an assault firearm, or any combination of parts from which an assault firearm may be readily assembled if those parts . . . are in the possession or under the control of the same person," qualifies as an assault firearm.¹ The State is only required to prove that the person had the parts to assemble a rifle with a threaded barrel capable of accommodating the flash suppressor. The State is not required to prove . . . the [person] had the required tool to attach the flash suppressor and other pertinent parts. . . . Fox admitted to police prior to the search that he had access to and control over both portions of the firearm. . . . Under these circumstances, the court finds . . . Fox had the parts to assemble the assault firearm.

On cross-examination, . . . Stitt acknowledged that the threaded barrel . . . ha[d] a compensator, not a flash suppressor[,] and that he did not measure the threads. . . . The court finds . . . Stitt's testimony that the threaded barrel on this rifle could accommodate a

compensator and a flash suppressor to be credible even though he did not place a flash suppressor on the rifle. [Stitt] explained that the threads on this rifle . . . are common and . . . can accommodate the flash suppressor. The fact that the rifle is capable of accommodating a flash suppressor is sufficient for it to be "substantially identical" to the assault firearms as defined in N.J.S.A. 2C:39-1(w)(2).

. . . [T]he court also finds . . . the firearm has a bayonet mount. The court observed the bayonet mount The fact that . . . Stitt did not slide a bayonet into the lug does not undermine the credibility of his testimony that the firearm contains a bayonet mount. The fact that the rifle is capable of mounting a bayonet is sufficient for it to be "substantially identical" to the assault firearms as defined in N.J.S.A. 2C:39-1(w)(2).

The court also finds . . . Fox knowingly possessed the assault firearm in violation of N.J.S.A. 2C:39-5(f).³ To prove that [Fox] "knowingly possessed" an assault firearm[,] the State d[id] not need to show . . . Fox knew the firearm was an assault firearm or that he had the requisite tools to attach the parts to make it an assault firearm. . . . Fox had control of the Bushmaster Prior to the police executing the search warrant[,] . . . Fox contacted the police and admitted he possessed the Bushmaster . . . and that the upper portion was stored in his gun safe [while] the lower portion was at his father's house. [Fox] knew that

³ N.J.S.A. 2C:39-5(f) states, in part: "[a]ny person who knowingly has in [their] possession an assault firearm is guilty of a crime of the second degree except if the assault firearm is licensed pursuant to N.J.S.[A.] 2C:58-5; registered pursuant to . . . [N.J.S.A.] 2C:58-12; or rendered inoperable pursuant to . . . [N.J.S.A.] 2C:58-13."

putting the two parts together formed a firearm. . . . When the police served the [TRO] and executed the search warrant[,] . . . [they] found the upper portion of the firearm under [Fox's] control. The same day, . . . Fox surrendered the lower portion of the weapon Accordingly, the court finds . . . Fox knowingly possessed the assault firearm.

Based on the foregoing findings of fact and conclusions of law, . . . Fox possessed an illegal assault firearm, namely the Bushmaster[,] . . . in violation of N.J.S.A. 2C:39-1(w) and N.J.S.A. 2C:39-5(f)[,] and . . . it cannot be returned to him because it is contraband. . . . Since the firearm cannot be returned to him pursuant to forfeiture provisions of the [PDVA], N.J.S.A. 2C:2-21(d)(3),^[4] . . . Fox is also prohibited

⁴ N.J.S.A. 2C:25-21(d)(3) provides, in part:

Weapons seized in accordance with the [PDVA] shall be returned to the owner except upon order of the Superior Court. The prosecutor who has possession of the seized weapons may . . . petition a judge of the Family Part of the Superior Court . . . to obtain title to the seized weapons, or to revoke any and all permits, licenses[,] and other authorizations for the use, possession, or ownership of such weapons[,] . . . or may object to the return of the weapons

A hearing shall be held [on the petition] . . . within [forty-five] days

. . . .

After the hearing[,] the court shall order the return of the firearms, weapons[,] and any authorization papers relating to the seized weapons to the owner if

the court determines the owner is not subject to [certain statutory] . . . disabilities . . . and finds that the complaint has been dismissed at the request of the complainant and the prosecutor determines that there is insufficient probable cause to indict; or if the defendant is found not guilty of the charges; or if the court determines that the domestic violence situation no longer exists. . . .

Nothing in this act shall . . . be construed to limit the authority of the State or a law enforcement officer to seize, retain[,] or forfeit property pursuant to chapter 64 of Title 2C of the New Jersey Statutes.

If, after the hearing, the court determines that the weapons are not to be returned to the owner, the court may:

- (a) With respect to weapons other than firearms, order the prosecutor to dispose of the weapons if the owner does not arrange for the transfer or sale of the weapons to an appropriate person within [sixty] days; or
- (b) Order the revocation of the owner's [FPIC] or any permit, license[,] or authorization, in which case the court shall order the owner to surrender any firearm seized and all other firearms possessed to the prosecutor and shall order the prosecutor to dispose of the firearms if the owner does not arrange for the sale of the firearms to a registered dealer of the firearms within [sixty] days; or
- (c) Order such other relief as it may deem appropriate. When the court orders the

from obtaining a[n FPIC] and permit to purchase a handgun pursuant to N.J.S.A. 2C:58-3(c)(8).^{5]} Accordingly, . . . Fox's [FPIC] and any permits, licenses[,] or authorizations pertaining to the use or ownership of firearms by him are hereby revoked and shall be returned to the New Jersey State Police pursuant to N.J.S.A. 2C:25-21(d)(3).

[(Emphasis added).]

In the written opinion accompanying the June 2, 2022 order in Ricciardi's case, the judge found, "[b]ased on the uncontroverted and credible testimony

weapons forfeited to the State or the prosecutor is required to dispose of the weapons, the prosecutor shall dispose of the property as provided in N.J.S.[A.] 2C:64-6.

[N.J.S.A. 2C:25-21(d)(3).]

⁵ Per N.J.S.A. 2C:58-3(c)(8):

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

. . . .

(8) To any person whose firearm is seized pursuant to the [PDVA] . . . and whose firearm has not been returned.

of . . . Stitt, . . . the Del-Ton . . . seized from . . . Ricciardi pursuant to the [PDVA] is a per se illegal assault firearm [under] N.J.S.A. 2C:39-1(w)(2)." After noting Ricciardi did not dispute the Del-Ton was "semi-automatic with a detached magazine and pistol grip," the judge concluded that "[c]ontrary to . . . Ricciardi's assertion," the State proved the Del-Ton "ha[d] a bayonet mount." The judge stated she "observed the bayonet mount identified by . . . Stitt . . . in evidence," adding:

The fact that . . . Stitt did not slide a bayonet into the lug does not undermine the credibility of his testimony that the firearm contains a bayonet mount. . . . The fact that the rifle is capable of mounting some sizes of bayonets is sufficient for it to be "substantially identical" to the assault firearms as defined in N.J.S.A. 2C:39-1(w)(2).[□]

The court also finds . . . Ricciardi knowingly possessed the assault firearm in violation of N.J.S.A. 2C:39-5(f). To prove that [Ricciardi] "knowingly possessed" an assault firearm[,] . . . the State d[id] not need to show . . . Ricciardi knew the firearm was an assault firearm. . . . Ricciardi had control of the Del-Ton When the police served the [TRO] and executed the search warrant[,] . . . [they] found the firearm in . . . Ricciardi's control. Accordingly, the court finds . . . Ricciardi knowingly possessed the assault firearm.

Based on the foregoing findings of fact and conclusions of law, the court finds . . . Ricciardi possessed an illegal assault firearm, namely the Del-Ton[,] . . . in violation of N.J.S.A. 2C:39-1(w) and

N.J.S.A. 2C:39-5(f) and that it cannot be returned to him because it is contraband. . . . Since the firearm cannot be returned to him pursuant to forfeiture provisions of the [PDVA], N.J.S.A. 2C:2-21(d)(3), . . . Ricciardi is also prohibited from obtaining a[n FPIC] and permit to purchase a handgun pursuant to N.J.S.A. 2C:58-3(c)(8). Accordingly, . . . Ricciardi's [FPIC] and any permits, licenses[,] or authorizations pertaining to the use or ownership of firearms by him are hereby revoked and shall be returned to the New Jersey State Police pursuant to N.J.S.A. 2C:25-21(d)(3).

[(Emphasis added).]

Based on these findings, the judge ordered that none of the weapons seized from petitioners could be returned to them, and that the Bushmaster and Del-Ton were to "be destroyed."

II.

On appeal, petitioners raise the following identical arguments: (1) "the [trial] court . . . erred by finding that the firearm in question was 'substantially identical' to any firearm listed under N.J.S.A. 2C:39-1[(w)](1), particularly due to the lack of evidence presented"; (2) "the [trial] court . . . erred by failing to apply the required mens rea mandated under the [AG] Guidelines and Coalition^[6]"; (3) "New Jersey's assault firearm law is unconstitutional per the

⁶ Coal. of N.J. Sportsmen, Inc. v. Whitman, 44 F. Supp.2d 666 (D.N.J. 1999).

U[nited] S[tates] Supreme Court's Bruen^[7] decision"; and (4) "per the U[nited] S[tates] Supreme Court's Bruen decision, government must meet its burden that N.J.S.A. 2C:58-3[(c)](8) is 'consistent with this nation's historical tradition of firearm regulation' or else be struck as unconstitutional."

We begin by reviewing the standards governing our analysis. In an action involving the PDVA, our review of a forfeiture of firearms and an FPIC is deferential. In re F.M., 225 N.J. 487, 506 (2016). "Therefore, 'we do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Ibid. (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)). "However, questions of law are reviewed de novo." Ibid.

The PDVA allows a judge to issue a TRO "to protect a victim of domestic violence and to enter an order authorizing . . . police to search for and seize from the defendant's home, or any other place, weapons that may pose a threat to the victim." State v. Hemenway, 239 N.J. 111, 116 (2019). It also is well established:

⁷ N.Y. State Rifle & Pistol Ass'n. v. Bruen, 597 U.S. 1, 8 (2022).

the voluntary dismissal of a domestic violence complaint does not mandate the automatic return of any firearms seized by law enforcement officers in connection therewith. The State retains the statutory right to seek the forfeiture of any seized firearms[,] provided it can show that [a firearms owner] is afflicted with one of the legal "disabilities" enumerated in N.J.S.A. 2C:58-3[(c)].

[State v. Cordoma, 372 N.J. Super. 524, 533 (App. Div. 2004).]

As already noted, one such disability is being a "person whose firearm is seized pursuant to the [PDVA] and whose firearm has not been returned." N.J.S.A. 2C:58-3(c)(8).

Pursuant to N.J.S.A. 2C:64-1(a)(1), "firearms which are unlawfully possessed" are "subject to forfeiture and no property right shall exist in them." Therefore, if the State pursues forfeiture of a firearm and establishes the firearm is an assault weapon, as defined under N.J.S.A. 2C:39-1(w), the firearm is "contraband and can never lawfully be returned to" the gun owner. State ex rel C.L.H.'s Weapons, 443 N.J. Super. 48, 57 (App. Div. 2015) (citing N.J.S.A. 2C:39-1(w), N.J.S.A. 2C:39-5(f) and N.J.S.A. 2C:64-1(a)(1)). Further, where an illegal firearm is "seized pursuant to the [PDVA] and cannot be returned to [the gun owner] under . . . N.J.S.A. 2C:25-21(d)(3), [the gun owner] is expressly disqualified from obtaining a handgun purchase permit or [FPIC] under . . .

N.J.S.A. 2C:58-3(c)(8), and thus from regaining possession of . . . other firearms and [an FPIC]." Ibid.

Governed by these principles, we discern no basis to disturb either challenged order. In fact, the judge's factual findings and legal conclusions in both matters are well supported by the uncontroverted expert testimony that Stitt provided during the forfeiture hearings. Moreover, the judge's determination that petitioners' weapons were "substantially identical" to assault weapons is consistent with the plain language of N.J.S.A. 2C:39-1(w)(1) and (2) and the AG Guidelines.⁸

Likewise, we reject petitioners' mens rea arguments. Initially, we note their reliance on Section IV of the AG Guidelines is flawed. That section of the AG Guidelines states that when enforcing the State's assault firearms laws, "prosecutors and police should remember that an assault firearms offense requires proof that the defendant knows [they] possess[] an assault firearm, e.g., that the defendant knows that the firearm is substantially identical to one of the named assault weapons." AG Guidelines, § IV (emphasis added). But here,

⁸ We have previously held "the definition of 'assault firearm' is sufficiently clear" when read in conjunction with the AG's Guidelines. Petrucci, 343 N.J. Super. at 547.

neither petitioner was criminally charged with "an assault firearms offense." Ibid. Instead, their firearms were subject to forfeiture in a Family Part matter.

We also reject petitioners' mens rea arguments in light of our holding in State v. Pelleteri, 294 N.J. Super. 330, 334 (App. Div. 1996). In Pelleteri, we interpreted N.J.S.A. 2C:39-5(f) and addressed "whether the State was required to prove that the defendant knew the gun in his possession was an assault firearm" to be found guilty under this statute. Ibid. We concluded "that knowledge of the character of the weapon [wa]s not an element of the offense." Ibid. In reaching this conclusion, we determined "the Legislature intended to proscribe knowing possession, as distinguished from knowledge of the illegal character of the article possessed." Ibid.; see also C.L.H., 443 N.J. Super. at 60 ("the knowing possession of an assault firearm contrary to this State's gun control laws is sufficient basis for forfeiture under N.J.S.A. 2C:25-21(d)"); and State v. Scott, 429 N.J. Super. 1, 8-12 (App. Div. 2012) (wherein we analyzed the mens rea required to convict a defendant of a community gun charge, N.J.S.A. 2C:39-4(a)(2), and determined the State need not prove the defendant knew the firearm was a community gun).

Thus, we are satisfied the judge correctly found Fox and Ricciardi knowingly possessed the Bushmaster and Del-Ton, respectively, and that the

State did not need to show petitioners knew their firearms were illegal assault firearms for the State to prevail on its forfeiture motions.

Finally, we address petitioners' constitutional arguments, mindful these contentions were not raised during the forfeiture hearings. In fact, as already discussed, petitioners stipulated through counsel that the sole issue the judge needed to decide was whether petitioners' respective rifles were assault firearms under N.J.S.A. 2C:39-1(w).

"[I]ssues not raised [before the trial court], even constitutional issues, will not ordinarily be considered on appeal unless they are jurisdictional in nature or substantially implicate public interest." State v. Walker, 385 N.J. Super. 388, 410 (App. Div. 2006). Here, we are satisfied petitioners' constitutional contentions substantially implicate the public's interest. Additionally, we are persuaded the parties should have the opportunity to develop the necessary record to address petitioners' Second Amendment claims as to N.J.S.A. 2C:39-1(w) and N.J.S.A. 2C:58-3(c)(8), and the trial court should be permitted, in the first instance, to consider those claims under the paradigm recently enunciated by the United States Supreme Court in Bruen. Accordingly, we remand for these purposes, and add the following brief comments.

"[S]tatutes are presumed to be constitutional." In re M.U.'s Application

for a Handgun Purchase Permit, 475 N.J. Super. 148, 190 (App. Div. 2023) (citing State v. Comer, 249 N.J. 359, 384 (2022)). "A statute may be declared unconstitutional in one of two manners. First, it may be declared invalid 'on its face.'¹ Second, a statute may be found unconstitutional 'as applied' to a particular set of circumstances." Abbott by Abbott v. Burke, 199 N.J. 140, 234 (2009). "Facial challenges generally come in two forms: (1) arguments that the statute is overbroad, or (2) that the statute is impermissibly vague." M.U., 475 N.J. Super. at 190.

In Bruen, the Supreme Court addressed whether New York's firearms permitting scheme, which required applicants to show a "special need" for concealed carry, violated the Second Amendment. 597 U.S. at 11. The Court struck down New York's special need requirement, finding it was unconstitutional because it "prevent[ed] law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms." Id. at 71. The Bruen Court also explicitly noted that New Jersey's "justifiable need" requirement, then codified at N.J.S.A. 2C:58-4(c), was analogous to New York's unconstitutional standard. Bruen, 597 U.S. at 15 n.2.

The day after Bruen was decided, the New Jersey Attorney General issued guidance about the decision. Off. of the Att'y Gen., Law Enf't Directive No.

2022-07, Directive Clarifying Requirements For Carrying Of Firearms In Public (June 24, 2022). That directive stated that Bruen "prevent[ed New Jersey] from continuing to require a demonstration of justifiable need in order to carry a firearm, but it d[id] not prevent [New Jersey] from enforcing the other requirements in [its] law." Id. at 1.

We recently acknowledged that "Bruen fashioned an entirely new analytical framework for resolving Second Amendment challenges." In re Appeal of the Denial of R.W.T., 477 N.J. Super. 443, 463 (App. Div. 2023). We further noted:

the government [now] must justify its regulation by demonstrating that it is "consistent with the Nation's historical tradition of firearm regulation." The [United States Supreme] Court explained this "analogical reasoning requires only that the government identify a well-established and representative historical analogue, not a historical twin. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster." . . . "To be clear," the Court explained, "analogical reasoning under the Second Amendment is neither a regulatory strai[]tjacket nor a regulatory blank check."

[Ibid. (quoting Bruen, 597 U.S. at 24, 30).]

"Applying this new 'analogical' paradigm, we recently rejected a facial challenge to the constitutionality of the 'public health, safety[,] or welfare'

disqualification criterion" under N.J.S.A. 2C:58-3(c)(5).⁹ Id. at 454 (citing M.U., 475 N.J. Super. at 190-94). Further, in M.U., we conducted an extensive historical analysis regarding the nation's and New Jersey's firearm regulations, dating back to the founding era, and found:

[t]he historical record reveal[ed] three principles. First, legislatures traditionally imposed status-based restrictions that disqualified categories of persons from possessing firearms. Second, the status-based restrictions were not limited to individuals who demonstrated a propensity for violence—they also applied to entire categories of people due to the perceived threat they posed to an orderly society and compliance with legal norms. Third, legislatures had broad discretion to determine when people's status or conduct indicated a sufficient threat to warrant disarmament.

[475 N.J. Super. at 180-190, 189.]

Against this backdrop, and considering petitioners' newly raised constitutional issues, it is evident the parties need to develop a more detailed record on remand to include a legal and historical analysis of New Jersey's

⁹ This disqualifying criterion bars the issuance of a handgun purchase permit or a FPIC "[t]o any person where the issuance would not be in the interest of the public health, safety[,] or welfare because the person is found to be lacking the essential character of temperament necessary to be entrusted with a firearm." N.J.S.A. 2C:58-3(c)(5). This criterion has been applied to those who have disregarded New Jersey's gun laws. In re Osworth, 365 N.J. Super. 72, 81 (App. Div. 2003).

assault firearm laws and N.J.S.A. 2C:58-3(c)(8). Thus, we are constrained to remand this matter for further proceedings consistent with this opinion.

To the extent we have not addressed petitioners' remaining arguments, they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in part and remanded in part. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION