

No. 10-

**In the Supreme Court of
the United States**

CHARLES F. WILLIAMS, JR.,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether peaceably carrying or transporting a registered handgun outside the home, without a carry permit that is unobtainable by ordinary, law-abiding citizens, is outside of the scope of “the right of the people to . . . bear arms” protected by the Second Amendment to the United States Constitution.

PARTIES TO PROCEEDING

Petitioner Charles F. Williams, Jr., is an individual who, at the time of his conviction for possessing a lawfully owned handgun outside of his home, was a resident of Temple Hills, Maryland. Respondent is the State of Maryland. No corporate entities are involved in this case, and no Rule 29.6 disclosure statement is required.

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OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is reported as *Williams v. State*, 417 Md. 479, 10 A.3d 1167 (2011). App. 1a. The opinion of the Court of Special Appeals of Maryland is reported as *Williams v. State*, 188 Md. App. 691, 982 A.2d 1168 (Md. App. 2009). App. 33a. Excerpts from the transcript of the bench trial, containing the decision of the Circuit Court for Prince George's County on the Second Amendment issues, are set forth at App. 50a. The opinion and order by the Circuit Court denying Petitioner's motion to dismiss the indictment on Second Amendment grounds is set forth at App. 73a.

JURISDICTION

On January 5, 2011, the Court of Appeals of Maryland rendered judgment affirming the decision of the Maryland Court of Special Appeals. The Court of Appeals held that the Maryland statutes challenged by petitioner are not repugnant to the Second Amendment, and that petitioner has no right under the Second and Fourteenth Amendments to be free from conviction under those statutes. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTION, STATUTES AND REGULATIONS

The texts of the following are in the Appendix: U.S. Const., Amends. II and XIV, § 1; Md. Code Ann., Crim. Law, § 4-203 (2002); Md. Code Ann., Pub. Safety, §§ 5-301-5-314 (2003); Md. Code Regs. 29.03.01.03; Md. Code Regs. 29.03.02.01 *et seq.*

STATEMENT OF THE CASE

(i) Proceedings in the Courts Below

In the spring of 2008, Petitioner Charles F. Williams, Jr., was indicted in a one-count indictment in the Circuit Court of Prince George's County, Maryland. App. 54a-55a. Petitioner, who was transporting his lawfully owned handgun from his girlfriend's residence to his own residence, was charged with carrying a handgun on or about his person in violation of § 4-203(a)(1)(i) of the Criminal Law Article of the Maryland Code. App. 69a.

Before trial, Petitioner moved to dismiss the indictment on grounds that the Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), held that individuals have the right to keep and bear arms for personal defense under the Second Amendment, and that the Maryland statutes prohibiting the carrying of handguns unconstitutionally restrict that right. App. 79a.

Section 4-203(a) makes it a crime to “wear, carry or transport a handgun, whether concealed or open, on or about the person,” unless an exception applies. App. 83a. Section 4-203(b) contains several exceptions, including an exception for an individual’s residence or owned or leased property. The only exception related to defense outside one’s residence or property is for persons to whom a permit to wear, carry or transport a handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article. App. 85a.

The motion to dismiss was denied by the Circuit Court by opinion and order dated September 23, 2008. App. 73a. The Circuit Court held that the Maryland statutes comply with *Heller* because they permit possession within an individual’s residence. App. 81a-82a.

A bench trial on the merits was held on October 6, 2008, based on stipulated facts. App. 58a-61a. Petitioner argued that under *Heller* he had “the right to carry that handgun in a lawful manner,” that he had not applied for a permit to carry under the Maryland statute [§§ 5-301-5-314], that applying for a permit to carry “was not a necessary step,” and that accordingly he should be found not guilty. App. 57a. Petitioner “also challenge[d] the Constitutionality of the statute named in the indictment [§ 4-203(a)(1)(i)] on the same grounds,” *i.e.*, under the Second Amendment. *Id.*

The trial court found that the Maryland statute

provides for wearing, carrying or transporting a handgun by a person to whom a permit has been issued, and that “the restrictions on obtaining one of those permits seem to be precisely the ones that are approved by the Supreme Court in *Heller*.” App. 68a-69a.

The court therefore did not “find that the statute on its face, nor as applied to Mr. Williams, violates the Supreme Court decision in *Heller* or the Second Amendment in general.” App. 69a. Accordingly, Petitioner was convicted, was sentenced to three years’ imprisonment with all but one year suspended, and was placed on three years of supervised probation. App. 71a. The court directed that Petitioner would remain free on bond pending appeal. *Id.*

The Court of Special Appeals of Maryland affirmed the conviction on October 30, 2009. *Williams v. State*, 982 A.2d 1168 (Md. Ct. Spec. App. 2009). App. 33a. Petitioner argued “that both CL § 4-203 and the regulations which control applications for handgun permits are unconstitutional based on *Heller*.” *Id.* at 1169-70. The Court held that *Heller* did not apply because the Second Amendment had not been incorporated against the states, and because Maryland law allows possession within one’s residence. *Id.* at 1171-72. It also upheld Maryland’s handgun carry permit scheme as “clearly within the state’s police power” *Id.* at 1172-73.

The Court of Appeals of Maryland granted certiorari to answer the following question: “Are Md. Code Ann. Criminal Law § 4-203, Public Safety §§ 5-301 *et seq.*, and COMAR 29.03.02.04 unconstitutional in light of *Heller v. District of Columbia?*” *Williams v. State*, 10 A.3d 1167, 1169 (Md. 2011). App. 1a, 3a. The Court held that carrying or transporting a handgun outside one’s home without a permit is “outside of the scope of the Second Amendment.” *Id.* at 1169, 1178. It also concluded that Williams lacked standing to challenge §§ 5-301 *et seq.* because he had not applied for a carry permit. *Id.* at 1169, 1173. It was ordered on January 5, 2011, that the judgment of the Court of Special Appeals was affirmed. *Id.* at 1179.

(ii) Statement of Facts

The facts in the Circuit Court were stipulated. Petitioner purchased a handgun from a retail establishment in Maryland on August 15, 2007. App. 60a. At that time, he completed the Maryland State Police application and affidavit required under Md. Code Regs. 29.03.01.03 to acquire a “regulated firearm,” which under Maryland law includes handguns. App. 60a, 100a. He completed the required Maryland firearms safety training course, and received the certificate of completion on August 15, 2007. App. 60a.

Petitioner paid the balance due on September 14, 2007, and picked up the handgun from the dealer.

App. 60a. Pursuant to 18 U.S.C. § 922(t), acquisition of the firearm required that he pass a check by the National Instant Criminal Background System to ensure that he had no legal disabilities under federal or state law, such as a criminal record or mental commitment.

On October 1, 2007, Petitioner stopped by his girlfriend's house after work to retrieve his handgun, which he had temporarily left at her residence, in order to return it to his own residence. App. 60a. At approximately 5:00 p.m., in broad daylight, a police officer observed Petitioner going through a backpack near a bus stop. After turning his cruiser around, he saw Petitioner turn and place something in some bushes. App. 59a. The police officer approached Petitioner, and asked what he had placed in the bushes, and Petitioner responded "my gun." *Id.* The officer retrieved the handgun from the bush area, and Petitioner gave a written statement acknowledging possession of the gun. App. 59a. Petitioner was arrested, charged, and convicted as stated above.

No evidence was submitted that Petitioner was engaged in any illegal activity apart from having a lawfully-owned, registered handgun in his possession outside his place of residence. Petitioner had purchased the handgun for self-defense. App. 60a.

It is undisputed that Petitioner did not file an application for a handgun carry permit. He contended

instead “that as a result of the regulatory scheme, ‘any such application would have been denied.’” *Williams*, 10 A. 3d 1173, n. 7. The record does not disclose any documented threats, assaults or robberies against Petitioner that are a prerequisite to even potentially being able to obtain a carry permit for personal defense under the Maryland statutory scheme. *See* Part II.A., below.

ARGUMENT

THE WRIT SHOULD BE GRANTED TO RESOLVE WHETHER THE SECOND AMENDMENT RIGHT TO “BEAR ARMS” INCLUDES CARRYING A FIREARM OUTSIDE THE HOME, WHICH IS DENIED BY FEDERAL AND STATE COURTS IN CONFLICT WITH THIS COURT’S *HELLER* AND *MCDONALD* DECISIONS

Introduction

Maryland prohibits exercise of the right to bear arms unless one has a permit which is not generally available to law-abiding persons. For a first offense, it is a crime punishable by up to three years’ imprisonment to “wear, carry, or transport a handgun, whether concealed or open, on or about the person” Md. Code Ann., Crim. Law, § 4-203(a)(1)(i) (2002). Section 4-203(b) makes an exception if the person has a permit issued under Md. Code Ann., Pub. Safety, §§

5-301 - 5-314 (2003).

To obtain a permit, the Secretary of the Department of Public Safety must find that the applicant “has good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger.” *Id.* § 5-306(a)(5)(ii). Md. Code Regs. 29.03.02.04 specifies consideration of the following criteria:

- G. Reasons given by the applicant as to whether those reasons are good and substantial; . . .
- O. Whether the permit is necessary as a reasonable precaution for the applicant against apprehended danger.

As discussed in Part II.A. below, the Maryland State Police, the Maryland Handgun Permit Review Board, and the Maryland courts have consistently interpreted these provisions to require the applicant to document, typically with police reports, that he or she has been the victim of assaults, threats, or robberies, except for applications involving certain occupations. Thus Maryland law deprives Petitioner and nearly all law-abiding citizens of the right to possess a handgun for self-defense outside the home.

The Maryland Court of Appeals upheld Williams’ conviction, holding that “Section

4-203(a)(1)(i) of the Criminal Law Article, which prohibits wearing, carrying, or transporting a handgun, without a permit and outside of one's home, is outside of the scope of the Second Amendment.” *Williams*, 10 A.3d at 1169.

As the Maryland court acknowledged, this Court stated that the phrase “bear Arms” refers to the “carrying of weapons,” including for self-defense. *Id.* at 1175, quoting *District of Columbia v. Heller*, 554 U.S. 570, 584-87 (2008). It further quoted this Court’s statement that the *Heller* decision did not “cast doubt on,” *inter alia*, “laws forbidding the carrying of firearms in sensitive places such as schools and government buildings” *Id.*, quoting *Heller*, 554 U.S. at 626-27. That statement was repeated in *McDonald v. City of Chicago*, 130 S.Ct. 3020, 3047 (2010). *Williams*, 10 A.3d at 1176.

Instead of analyzing *Heller* in more detail, the Maryland court opined that *Heller* (and *McDonald*) only “address[ed] prohibitions against handgun possession in the home” *Id.* at 1176 & n.10 (string citing to cases). The court referred to “*dicta* in *McDonald* that ‘the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home’” *Id.* at 1177, quoting *McDonald*, 130 S.Ct. at 3044. The Maryland court continued:

Although *Williams* attempts to find

succor in this dicta, it is clear that prohibition of firearms in the home was the gravamen of the certiorari questions in both *Heller* and *McDonald* and their answers. If the Supreme Court, in this dicta, meant its holding to extend beyond home possession, it will need to say so more plainly.

Id. at 1177.

The Maryland court concluded that the right to bear arms exists only in one's home: "It is the exception permitting home possession in Section 4-203(b)(6) that takes the statutory scheme embodied in Section 4-203 outside of the scope of the Second Amendment, as articulated in *Heller* and *McDonald*." *Id.* at 1178.

No fewer than ten state and federal courts have refused, relying on *Heller*, to recognize a constitutional right to bear arms outside the home. *See* Part II.B., below. Several have expressly acknowledged that they will not recognize such a right unless this Court does. The Fourth Circuit, relying on the Maryland Court of Appeals' decision in the instant case, recently stated:

On the question of *Heller's* applicability outside the home environment, we think it prudent to await direction from the Court itself. *See Williams v. State*, 10

A.3d 1167, 1177 (Md.2011) ("If the Supreme Court, in [*McDonald's*] dicta, meant its holding to extend beyond home possession, it will need to say so more plainly."); *see also Sims v. United States*, 963 A.2d 147, 150 (D.C.2008).

United States v. Masciandaro, No. 09-4839, 2011 WL 1053618, at *16 (4th Cir. Mar. 24, 2011).

Although this Court has specifically ruled only on the right to keep a handgun in the home, it is evident from the Court's analyses and plain statements in *Heller* and *McDonald* that the right to bear arms exists outside the home. *See* Part I.B., below. Thus, the Maryland court's decision and the other decisions limiting the scope of that right to the home (discussed in Part II.B.) have decided an important federal question in a way that conflicts with relevant decisions of this Court. If it should be contended that *Heller* and *McDonald* did not clearly establish that the Second Amendment applies outside the home, then this is an important question of federal law that has not been, but should be, settled by this Court.

I. THE RIGHT TO BEAR OR CARRY ARMS OUTSIDE THE HOME IS NOT “OUTSIDE THE SCOPE” OF THE SECOND AMENDMENT

A. The Second Amendment’s Text Prohibits Infringement of the Right to “Bear Arms,” and Does Not Limit That Right to One’s House

The Second Amendment provides in part that “the right of the people to keep and bear arms, shall not be infringed.” This guarantees not only the right to “keep” arms, such as in one’s house, but also to “bear arms,” which simply means to carry arms without reference to a specific place. When the Framers intended that a provision of the Bill of Rights related to a house, they said so.¹ They did not recognize a limited right to keep and bear arms only in one’s house.

Despite this plain textual reference prohibiting infringement on the right to “bear arms,” the Maryland court argued that the right need not be recognized *at all* because this Court has not decided cases directly on

¹U.S. Const., Amend. III (“No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.”); Amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated”).

point. “But general statements of the law are not inherently incapable of giving fair and clear warning . . .” *United States v. Lanier*, 520 U.S. 259, 271 (1997).² This Court explained:

When broad constitutional requirements have been “made specific” *by the text or settled interpretations*, willful violators “certainly are in no position to say that they had no adequate advance notice that they would be visited with punishment. . . . [T]hey are not punished for violating an unknowable something.”

Id. at 267 (emphasis added), quoting *Screws v. United States*, 325 U.S. 91, 104-05 (1945).

Officials may not ignore the plain text of the Constitution under the theory that no case on point has been decided by this Court to verify that the constitutional command must actually be obeyed. As stated in the Fourth Amendment context: “Given that the particularity requirement is set forth in the text of the Constitution, no reasonable officer could believe that a warrant that plainly did not comply with that

²“The easiest cases don't even arise. There has never been . . . a section 1983 case accusing welfare officials of selling foster children into slavery; it does not follow that if such a case arose, the officials would be immune from damages [or criminal] liability.” *Id.* (citation omitted).

requirement was valid.” *Groh v. Ramirez*, 540 U.S. 551, 563 (2004).

To disregard explicit constitutional text based on supposedly insufficient judicial precedent ignores the primacy of the Constitution and the fundamental rights it protects.³ A right is "fundamental" if it is "explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny." *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 17, 33 (1973). Indeed, the Second Amendment is incorporated through the Due Process Clause of the Fourteenth Amendment because "the right to keep and bear arms is fundamental to our scheme of ordered liberty," and is deeply rooted in this Nation's history and tradition" *McDonald*, 130 S.Ct. at 3036.⁴

B. This Court Recognized in *Heller* the General Right to Carry Arms

Recognition of the right to bear arms was integral to the decision in *Heller*, which found: "At the

³"This constitutional protection must not be interpreted in a hostile or niggardly spirit." *Ullmann v. United States*, 350 U.S. 422, 426 (1956). "To view a particular provision of the Bill of Rights with disfavor inevitably results in a constricted application of it. This is to disrespect the Constitution." *Id.* at 428-29.

⁴"[C]lassifications affecting fundamental rights . . . are given the most exacting scrutiny." *Clark v. Jeter*, 486 U.S. 456, 461 (1988).

time of the founding, as now, to ‘bear’ meant to ‘carry.’ . . . When used with ‘arms,’ however, the term has a meaning that refers to carrying for a particular purpose – confrontation.” *Heller*, 554 U.S. at 584. The term includes to “wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed” *Id.* (citation omitted).⁵

Both now and in the 18th century, “‘bear arms’ was unambiguously used to refer to the carrying of weapons outside of an organized militia.” *Id.* A number of states in the early Republic guaranteed a right of citizens to “bear arms in defense of themselves and the state” or “bear arms in defense of himself and the state.” *Id.* at 584-85. These provisions “guarantee the individual right to possess and carry weapons in case of confrontation.” *Id.* at 592. To be sure, “we do not read the Second Amendment to protect the right of citizens to carry arms for any sort of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for any purpose.” *Id.* at 595.

Although protection of bearing arms for militia use was not the sole purpose of the Second

⁵The statute under which Petitioner was convicted tracks this language closely, making it a crime to “wear, carry, or transport a handgun, whether concealed or open, on or about the person....” Md. Code Ann., Crim. Law, § 4-203(a). The statute essentially criminalizes “bearing arms” in the sense that term is used in the Second Amendment.

Amendment, it was certainly one of the purposes. As Judge Niemeyer recently observed in *Masciandaro*, describing *Heller*: “[T]he right to keep and bear arms was found to have been understood to exist not only for self-defense, but also for membership in a militia and for hunting, [citing *Heller*, 128 S.Ct. at 2801], neither of which is a home-bound activity.” *Masciandaro*, 2011 WL 1053618, at *9 (separate opinion by Niemeyer, J.).

Heller favorably cited a decision which “construed the Second Amendment as protecting the ‘natural right of self-defence’ and therefore struck down a ban on carrying pistols openly.” *Id.* at 612, quoting *Nunn v. State*, 1 Ga. 243, 251 (1846). The Court’s quotation from *Nunn* makes clear the broad meaning of “infringe”: “The right of the whole people . . . to keep and bear *arms* of every description, . . . shall not be *infringed*, curtailed, or broken in upon, in the smallest degree” *Id.*

Heller further noted another decision which “held that citizens had a right to carry arms openly” *Id.* at 613, citing *State v. Chandler*, 5 La. Ann. 489, 490 (1850). Nineteenth-century courts “held that prohibitions on carrying concealed weapons were lawful,” for “the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* at 626.

Having made clear that there is indeed a right to bear arms and that it may be regulated – not prohibited – *Heller* added:

nothing in our 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 626-27.⁶

The presumptive validity of “laws forbidding the carrying of firearms in sensitive places” obviously means that the right to bear arms includes the carrying of firearms in non-sensitive places. It is inconsistent to rely on this passage in arguing in support of prohibitions on the right to bear arms, and at the same time to deny that *Heller* made any binding decision that there is a right to bear arms outside the home and that it extends to places that are not sensitive.⁷ *Heller*’s lengthy opinion regarding the

⁶“We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive.” *Id.* at 627 n.26.

⁷Concerning the above passages from *Heller*, *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010) (en banc), states: “This is the sort of message that, whether or not technically dictum, a

meaning of the right to “bear arms” is every bit as binding as its brief reference to “presumptively lawful regulatory measures.”

Similarly, given that “the inherent right of self-defense has been central to the Second Amendment right,” the fact that it is the home where “the need for defense of self, family, and property is most acute” does not imply that such need is non-existent outside the home. *Id.* at 628. Indeed, *Heller* proceeded to note: “Few laws in the history of our Nation have come close to the severe restriction of the District's handgun ban. And some of those few have been struck down.” *Id.* at 629. It cited two cases that invalidated prohibitions on carrying handguns openly or concealed, and quoted from a third case that upheld a ban on concealed carry because the law allowed open carry: “A statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence, would be clearly unconstitutional.” *Id.*, quoting *State v. Reid*, 1 Ala. 612, 616-617 (1840).

court of appeals must respect, given the Supreme Court's entitlement to speak through its opinions as well as through its technical holdings.”

**C. This Court in Recognized in *McDonald* that
the Right to Bear Arms is Infringed by Laws
Restricting the Right to Persons With Licenses
Not Available to Law-Abiding Citizens
Generally**

McDonald, 130 S.Ct. at 3026, began by stating that in *Heller*, “we held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense, and we struck down a District of Columbia law that banned the possession of handguns in the home.” Recognition of the right to bear arms was part of the holding, not just dicta as suggested by the Maryland court.

The Court continued: “Self-defense is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self-defense is ‘the *central component*’ of the Second Amendment right.” *Id.* at 3036 (citation omitted, emphasis added). Obviously, the need to defend one’s life may arise outside the home.

McDonald specifically addressed prohibitions on the carrying of firearms without a license. At the beginning of its discussion of the infringements the Fourteenth Amendment was designed to remedy, *McDonald* pinpointed state laws requiring a license to carry a firearm which was not available to all law-abiding citizens. Typical was the Mississippi law providing that “no freedman, free negro or mulatto, not

in the military service of the United States government, and not licensed so to do by the board of police of his or her county, shall keep or carry fire-arms of any kind” 130 S.Ct. at 3038, quoting Certain Offenses of Freedmen, 1865 Miss. Laws p. 165, § 1, in 1 *Documentary History of Reconstruction* 289 (W. Fleming ed.1950).⁸

McDonald described a petition from black citizens in South Carolina who petitioned Congress complaining of a law “to deprive us [of] arms” as violative of “the right to keep and bear arms.” *McDonald*, 130 S.Ct. at 3038 n.18. Rep. George W. Julian described that law and another in urging adoption of the Fourteenth Amendment:

Florida makes it a misdemeanor for colored men to *carry* weapons without a license to do so from a probate judge, and the punishment of the offense is whipping and the pillory. South Carolina has the same enactments Cunning legislative devices are being invented in

⁸*McDonald* further referred to “Regulations for Freedmen in Louisiana,” *id.*, which included the following: “No negro who is not in the military service shall be allowed to *carry* firearms, or any kind of weapons, within the parish, without the written special permission of his employers, approved and indorsed by the nearest and most convenient chief of patrol.” 1 *Documentary History of Reconstruction* at 279-80. (emphasis added).

most of the States to restore slavery in fact.

Cong. Globe, 39th Cong., 1st Sess., 3210 (June 17, 1866). (emphasis added).

“The most explicit evidence of Congress’ aim” regarding the Fourteenth Amendment, *McDonald* continued, appeared in its recognition in the Freedmen's Bureau Act of 1866 of “the right . . . to have full and equal benefit of all laws and proceedings concerning personal liberty, personal security, and the acquisition, enjoyment, and disposition of estate, real and personal, *including the constitutional right to bear arms . . .*” *McDonald*, 130 S.Ct. at 3040 (emphasis in original). *McDonald* rejected the argument that the above Act and the Fourteenth Amendment sought only to provide a non-discrimination rule. The Act referred to the “full and equal benefit,” not just “equal benefit.” *Id.* at 3043.

In his concurrence, Justice Thomas referred to states that “enacted legislation prohibiting blacks from *carrying* firearms without a license,” *id.* at 3082, and quoted Frederick Douglass as stating that “the black man has never had the right either to keep *or bear* arms,” which would be remedied by adoption of the

Fourteenth Amendment. *Id.* at 3083 (Thomas, J., concurring) (emphasis added).⁹

Having completed its historical analysis, *McDonald* proceeded to state “our central holding in *Heller*: that the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home.” *Id.* at 3044. The Maryland court in this case commented: “If the Supreme Court, in this dicta, meant its holding to extend beyond home possession, it will need to say so more plainly.” *Williams*, 10 A.3d at 1177. Yet this Court could not have been plainer. It referred to “our central holding,” not dicta. The Amendment refers not just to the right to “keep” arms, which obviously includes home possession, but also to

⁹The traditional linguistic meaning of “bearing arms” as carrying arms off of one’s premises may be illustrated by reference to Maryland history itself, in the same epoch *McDonald* described. Antebellum Maryland prohibited slaves and free blacks from carrying a firearm without a license. Maryland Code 454 (1860). At its 1867 constitutional convention, it was moved to add the guarantee that “every citizen has the right to bear arms in defence of himself and the State.” Perlman, *Debates of the Maryland Convention of 1867* at 79, 151 (1867). When a delegate moved to insert “white” after “every,” another insisted: “Every citizen of the State means every white citizen, and none other.” *Id.* at 150-51. When it appeared that no right to “bear arms” would be recognized, it was proposed that “the citizen shall not be deprived of the right to keep arms on his premises,” but that too failed. Perlman at 151. At any rate, the “right to bear arms” was clearly distinguished from “the right to keep arms on his premises.”

“bear arms,” a term hardly limited to home possession. The right is guaranteed “most notably for self-defense within the home,” which implies a right to bear arms outside the home (even if not quite as “notably” as in the home).¹⁰

D. State Court Decisions Have Categorically Voided Laws That Prohibit Bearing Arms Both Openly and Concealed

The courts of some states which have constitutional guarantees of the right to bear arms have decided cases which offer guidance to this Court on how the Second Amendment right to bear arms should be interpreted. Maryland has no such guarantee.

Traditionally, State courts applied a categorical approach similar to *Heller* to restrictions on the carrying of firearms. As noted, *State v. Reid*, 1 Ala. 612, 616-17 (1840), upheld a ban on carrying a weapon concealed, but added: “A statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence,

¹⁰ “[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values and is entitled to special protection.” *Snyder v. Phelps*, 131 S.Ct. 1207, 1211 (2011) (internal quotation marks and citation omitted). That does not imply that other speech enjoys *no* protection.

would be clearly unconstitutional.” A prohibition on carrying a handgun for self-defense both openly and concealed, as in the Maryland statute, amounts to a destruction of the right.

While this case does not involve a restriction on carrying a handgun in which a permit is available to any law-abiding citizen, some courts have invalidated such regulatory schemes. For instance, *State v. Rosenthal*, 55 A. 610, 611 (Vt. 1903), invalidated a prohibition on carrying a pistol, openly or concealed, without a permit as violative of the right to bear arms.

Similarly, *State v. Kerner*, 107 S.E. 222, 225 (N.C. 1921), invalidated a requirement of a license to carry a handgun, even openly. “[P]istol’ ex vi termini is properly included within the word ‘arms,’ and . . . the right to bear such arms unconcealed cannot be infringed.” *Id.* at 225. The court held that “this is void because an unreasonable regulation, and, besides, it would be void because for all practical purposes it is a prohibition of the constitutional right to bear arms. There would be no time or opportunity to get such permit . . . on an emergency.” *Id.* at 225.

Selectively favoring only privileged persons to exercise the right to bear arms persisted well after adoption of the Fourteenth Amendment. In one instance, it was recognized that “the Act [requiring a license to carry a firearm] was passed for the purpose of disarming the negro laborers The statute was

never intended to be applied to the white population” *Watson v. Stone*, 4 So.2d 700, 703 (Fla. 1941) (Buford, J., concurring).

Invalidating an ordinance which prohibited firearms from being transported or possessed in a vehicle or place of business for self-defense, *City of Lakewood v. Pillow*, 501 P.2d 744, 745 (Colo. 1972), reasoned:

A governmental purpose . . . under the police power, may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms. . . . Even though the governmental purpose may be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.¹¹

Employing similar reasoning, *State ex rel. City of Princeton v. Buckner*, 377 S.E.2d 139, 144 (W.Va. 1988), invalidated a statute which prohibited carrying a handgun without a license, in that it “operates to

¹¹See also *City of Las Vegas v. Moberg*, 485 P.2d 737, 738 (N.M. Ct. App. 1971) (“an ordinance may not deny the people the constitutionally guaranteed right to bear arms”; ban on carrying weapon, concealed or otherwise, void).

impermissibly infringe upon this constitutionally protected right to bear arms for defensive purposes.”

Bleiler v. Chief, Dover Police Dep’t., 927 A.2d 1216, 1222 (N.H. 2007), upheld the requirement of a license to carry a concealed weapon because it “does not prohibit carrying weapons; it merely regulates the manner of carrying them. . . . Even without a license, individuals retain the ability to keep weapons in their homes or businesses, and to carry weapons in plain view.” The same cannot be said here.

In sum, state courts have often taken a categorical approach, holding that laws that prohibit both the open and concealed carrying of a handgun for self-defense violate the right to bear arms. Where licensing is required, licenses must be available to law-abiding persons generally.

**II. THE DECISION OF THE MARYLAND
COURT DIRECTLY CONFLICTS WITH
HELLER AND *MCDONALD*, AND PRESENTS
AN IMPORTANT FEDERAL QUESTION THAT
SHOULD BE SETTLED BY THIS COURT**

**A. The Maryland Statutory Scheme Completely
Prohibits Ordinary, Law-Abiding Citizens from
Carrying a Handgun, Openly or Concealed, for
Purposes of Defense**

Section 4-203 criminalizes carrying a handgun outside the home for purposes of self-defense without a permit. Section 5-306 contains a list of “qualifications” for issuance of a permit, including a finding by the Secretary of State Police, based on an investigation, that the applicant “has good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger.” Further, Md. Code Regs. 29.03.02.04 requires the issuing authority to consider in all cases “[w]hether the permit is necessary as a reasonable precaution for the applicant against apprehended danger.”

As that provision is interpreted by Maryland administrative authorities and the courts, it is impossible for an ordinary, law-abiding Marylander, including Petitioner, to obtain a carry permit. Petitioner alleged “that as a result of the regulatory

scheme, ‘any such application would have been denied.’” *Williams*, 10 A. 3d 1173, n. 7. That statement is entirely correct.

On the application for a handgun permit, the Maryland State Police categorize permits according to whether the application is submitted by a correctional officer, former police officer, private detective, security guard, holder of a special police commission (such as university police), holder of a railroad police commission, or certain other businesses or occupations.¹² Permits for most of these categories are apparently issued routinely and without any particularized proof of danger to the applicant.

Unlike these occupations, the ordinary citizen who desires a permit for “personal protection” must include “documented evidence of recent threats, robberies, and/or assaults, supported by official police reports or notarized statements from witnesses,” according to the application form. Those requirements, which will be impossible for most citizens to meet, have been upheld by the state Handgun Permit Review Board and the Maryland courts.

¹²The permit application form is available on the same Maryland State Police website as a report cited by the Court of Appeals. *Williams*, 10 A. 3d 1173, n. 7. See http://www.mdsp.org/Downloads/Licensing_Application.pdf. See also discussion below regarding the report cited by the Court of Appeals.

In *Scherr v. Handgun Permit Review Board*, 880 A.2d 1137, 1141 (Md. Ct. Spec. App. 2005), the applicant “was a law abiding citizen with an excellent reputation.” Because his application contained “no evidence and/or reference” to previously having been subjected to either “assaults, threats, or robberies,” the state police sent Scherr a “shortage letter” asking him to provide such documentation, corroborated by police reports. Ultimately it was recommended that the handgun permit be denied, *inter alia*, because of the lack of prior robberies, threats, or assaults, and because there was no showing that the applicant's “level of threat and/or danger” was “any greater than that of an *ordinary citizen*.” *Id.* at 1142 (emphasis added).

Because of this lack, the Maryland Handgun Permit Review Board concluded that the applicant “has not demonstrated a good and substantial reason to wear, carry or transport a handgun as a reasonable precaution against apprehended danger.” *Id.* at 1143. At a second hearing, the state police officer responsible for reviewing permit applications testified that “except for former police officers, he had *never* approved an application where the applicant had failed to produce evidence of a threat,” and that police reports were generally required. *Id.* (emphasis added). The reviewing court noted that if general fears of criminal attack “justified issuance of a handgun permit, it is hard to see how the Review Board could deny any law-abiding citizen a permit.” *Id.* at 1148.

Snowden v. Handgun Permit Review Board, 413 A.2d 295 (Md. Ct. Spec. App. 1980) similarly affirmed the denial of a permit. Mr. Snowden was active in community work dealing with drug and crime control. He presented statements to the Handgun Permit Review Board that he had received threats after calling on public officials to engage in a crackdown on drug pushers, and had reported the threats to the county narcotics division and the State's Attorney. *Id.* at 296.

The Board found that he had received threats, but had never actually been assaulted. He had thus not demonstrated a "good and substantial reason" to carry and had not met "the statutory requirements for issuance of a handgun permit." *Id.* The Court of Special Appeals affirmed, noting that "it is the Board not the applicant" that decides whether there is "apprehended danger." *Id.* at 298. Otherwise, "each person could decide for himself or herself that he or she was in danger," the State Police would become a "rubber stamp," and the legislation would be "rendered absolutely meaningless." *Id.* See also *Onderdonk v. Handgun Permit Review Board*, 407 A.2d 763 (Md. Ct. Spec. App. 1979) (holding that break-ins at applicant's residence did not justify issuance of permit).

Under these statutes, regulations, administrative practices, and court decisions, it is plain that Petitioner, like other ordinary, law-abiding Marylanders, is flatly ineligible to obtain a handgun

carry permit for purposes of personal protection. The “exception” in § 4-203 for permits issued under §§ 5-301 *et seq.* is illusory.

To refute Petitioner’s contention that a handgun permit application by him would be denied, the Court of Appeals implied that permits are available as a matter of course in Maryland, noting that “The State counters that nearly 93 percent of handgun permit applicants from 2006 to 2009 were issued permits. See Maryland Department of State Police 2009 Annual Report, http://www.mdsp.org/downloads/2009_Annual_Report.pdf.” *Williams*, 10 A.3d at 1173 n.7.

Instead, the figures in the State Police Annual Report quoted by the Court of Appeals confirm that the Maryland statutory scheme is extremely restrictive. According to that Report, 6,771 original and 9,255 renewal permits were issued in the four year period 2006-2009, totaling 16,026 permits. The average number of permits issued each year is therefore 4,007. The population of Maryland in 2009 as estimated by the Census Bureau was 5,699,478.¹³

Thus, in each year, the ratio of permits issued to population is 0.000703, substantially less than one for

¹³<http://quickfacts.census.gov/qfd/states/24000.html>

every thousand Maryland residents.¹⁴ Given the number of security guards, private investigators, retired law enforcement officers, and other favored occupations, it is easy to see that these occupations account for most of the permits in Maryland. That also explains the “high” approval rate: security related occupations will receive permits routinely, but only a miniscule percentage of ordinary citizens will even bother to apply.

Recent official statistics demonstrate that the permits issued for personal defense are an insignificant portion of the small number of permits issued overall. Data released by the Maryland State Police in 2007 pursuant to a Public Information Act request revealed that 28.9% of permits had been issued to police (mostly retired and special police); 37.6% to corrections, security, judicial, and government personnel; and 31.8% for business purposes (*e.g.*, bail bondsmen, merchants who carry large sums of money, and others with occupational need).¹⁵ *Only 1.7% of the permits actually issued were for personal protection or death threats.*

¹⁴The number of existing permit holders will be somewhat higher, because Maryland permits expire every two or three years, depending on where one is in the renewal cycle. Md. Code Ann., Pub. Safety, § 5-309.

¹⁵<http://www.marylandshallissue.org/ccwdata.html>

The Maryland statutes effectively deprive Petitioner and other ordinary Marylanders of the right to carry a handgun for defense outside the home. In doing so, those statutes and the Court of Appeals' decision conflict with the fundamental right to bear arms recognized in *Heller* and confirmed in *McDonald*, and their holding that "individual self-defense is 'the central component' of the Second Amendment right." *McDonald*, 130 S.Ct. at 3036 (emphasis added).

B. Certiorari Should be Granted to Correct the Widespread Misapprehension That Under *Heller* and *McDonald* the Second Amendment's Scope Does Not Extend Beyond the Home

Because the Maryland Court of Appeals held that carrying or transporting a handgun outside one's home without a permit is "outside of the scope of the Second Amendment," *Williams*, 10 A.3d at 1169, 1178, that court did not apply any level of constitutional scrutiny, strict, intermediate, or otherwise, to the challenged statutes.

Due to a perceived lack of guidance, most other post-*Heller* federal and state court decisions involving carrying a firearm outside the home have also held that such conduct is outside the scope of the Second Amendment and have not engaged in a strict scrutiny or even an intermediate scrutiny analysis. The recent case of *United States v. Masciandaro*, No. 09-4839, 2011 WL 1053618 (4th Cir. Mar. 24, 2011) involved the

peaceable possession of a loaded gun in a National Park, contrary to regulation. One judge on the three judge panel would have held that the Second Amendment was clearly implicated. The majority of the Fourth Circuit panel, however, expressly refused to decide if the Second Amendment applied outside the home, but held that that the restriction would survive intermediate scrutiny if the Second Amendment applied. The majority stated, 2011 WL 1053618 at *16-17:

On the question of *Heller's* applicability outside the home environment, we think it prudent to await direction from the Court itself. . . . There may or may not be a Second Amendment right in some places beyond the home, but we have no idea what those places are, what the criteria for selecting them should be, what sliding scales of scrutiny might apply to them, or any one of a number of other questions. . . . [I]n this instance we believe the most respectful course is to await that guidance from the nation's highest court.

In *Gonzalez v. Village of West Milwaukee*, No. 09-CV-0384, 2010 WL 1904977 (E.D. Wis. May 11, 2010), Plaintiff brought a Section 1983 action against governmental defendants for being twice arrested when he was peaceably and openly carrying a

holstered pistol, which was not illegal under Wisconsin law. The court held that there was nevertheless probable cause to arrest him because others were alarmed, and “The Supreme Court has never held that the Second Amendment protects the carrying of guns outside the home [citing *Heller*].” 2010 WL 1904977 at *4. See also *United States v. Hart*, 726 F. Supp.2d 56 (D. Mass. 2010) (*Terry* stop justified on suspicion of concealed weapon, and Second Amendment rights not violated, because under *Heller* and *McDonald* Second Amendment “protects the right to possess a handgun **in the home. . . .**”) (emphasis in original).

In *People v. Dawson*, 934 N.E.2d 598 (Ill. App. Ct. 2010), the Defendant was convicted under a statute barring carrying any firearm, openly or concealed, if uncased, loaded, and immediately accessible. Noting that *McDonald* held that the Second Amendment “protected a fundamental right,” the Court stated it must determine “the scope of that right” under *Heller* and *McDonald*. The Court refused to apply strict scrutiny because of “the holdings in both cases explicitly limiting the stated right to possession in the home. . . .” *Id.* at 604. Because under the statute an individual can possess a firearm in one’s “legal dwelling,” the court held that the statute proscribing both open and concealed carry outside the home “does not implicate the fundamental right to keep and bear arms in one’s home for self-defense.” *Id.* at 607.

California appellate courts have taken a similarly restrictive approach. *People v. Flores*, 86 Cal. Rptr.3d 804 (Cal. Ct. App. 2008) (conviction for carrying loaded weapon in public does not preclude the use “of handguns held and used for self-defense in the home” and does not significantly burden core right announced in *Heller* to use arms “in defense of hearth and home”); *People v. Yarbrough*, 86 Cal. Rptr.3d 674 (Cal. Ct. App. 2008) (conviction under concealed carry statute of individual who possessed a pistol in a private residential driveway does not contravene Second Amendment rights as interpreted in *Heller*; driveway is “publicly sensitive place” and carry statute does not “prohibit conduct protected by the Second Amendment”).

The District of Columbia also has upheld an ordinance that bans carrying of handguns on grounds that the Second Amendment does not apply outside the home. In *Sims v. United States*, 963 A.2d 147 (D.C. 2008), the court emphasized that *Heller* applies only to the home, and that there was no evidence that appellant was “within the boundary lines (or curtilage) of his home...” *Id.* at 150. *See also Little v. United States*, 989 A.2d 1096, 1101 (D.C. 2010) (“Appellant concedes that he was not in his own home. Thus, appellant was outside the bounds identified in *Heller*. . .”).

A post-*Heller* but pre-*McDonald* case held that the Second Amendment did not apply to the states, but

upheld a concealed carry statute under a *Heller* analysis (apparently applying the Kansas constitutional provision). *State v. Knight*, 218 P.3d 1177 (Kan. 2009). The Court concluded that *Heller* related “solely to use of a handgun in the home for self-defense purposes.”

In each of these cases, all of which involved carrying a firearm openly or concealed, the court applied a “categorical” test in which the Second Amendment was found to be inapplicable outside the home, despite the clear language of *Heller* and *McDonald*.

A few courts have held or assumed post-*Heller* that the Second Amendment may apply outside the home, but have utilized intermediate scrutiny to uphold the challenged restrictions.¹⁶ See, e.g., *Brown v. United States*, 979 A.2d 630 (D.C. 2009); *People v. Aguilar*, No. 1-09-0840, 2011 WL 693241 (Ill. App. Ct. Feb. 23, 2011); (applying categorical test limiting Second Amendment protection to the home, and then also applying intermediate scrutiny).

¹⁶ As noted, in *Masciandaro* one judge found that the Second Amendment applied outside the home, but two judges refused to decide that issue. The panel believed that the challenged regulation would survive intermediate scrutiny if the Second Amendment did apply.

In cases that have challenged statutes relating to possession of firearms by persons who are *not* law-abiding, or in which the right of self-defense is not impinged upon, intermediate scrutiny has been the most common standard applied. *See, e.g., United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010)(en banc) (possession by individual convicted of misdemeanor crime of domestic violence); *United States v. Tooley*, 717 F. Supp.2d 580 (S.D. W.Va 2010) (same); *United States v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010) (possession of firearm with obliterated serial number).

But the instant case involves the conviction of a law-abiding citizen for the mere act of exercising his Second Amendment rights outside the home, when Maryland allows him no lawful avenue to do so. Because of the erroneous interpretation of *Heller* in the instant case, and the widespread misapprehension that *Heller* did not recognize any Second Amendment protection outside the home, certiorari should be granted.

C. Petitioner has Standing to Challenge the Restrictions on his Second Amendment Rights That Led to his Conviction.

Without analysis, the Maryland Court of Appeals held that “because Williams failed to file an application for a permit to carry a handgun, he lacks standing to challenge the constitutionality of Sections 5-301 et seq.” and the Maryland handgun permit

regulations. *Williams*, 10 A.3d at 1173. The Court of Appeals articulated no reasoning, but instead simply cited two Maryland cases, neither of which is remotely applicable to this case. *Id.*¹⁷

This is completely unfounded given Petitioner's criminal conviction. Under this Court's precedents, it is not a requirement for standing to challenge an allegedly unconstitutional permit requirement that one must apply for the permit and be denied. A long line of cases have invalidated permit requirements to exercise First Amendment rights in which the defendants who were convicted did not apply for permits. One of the more recent cases is *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 156 (2002) (invalidating permit requirement even though "Petitioners did not apply for a permit.").

The test for Article III standing was summarized by this Court in *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 103 (1998):

¹⁷*Gregg v. State*, 976 A.2d 999, 1002 n.2 (Md. 2009) (court observed in one-sentence footnote that individual *did* have standing to file petition for post-conviction review, because his offense was specifically listed in statute permitting review); *Evans v. State*, 914 A.2d 25 (Md. 2006) (non-profit organizations could not challenge death penalty execution procedures where they had suffered no special damage and their only asserted basis for standing was that they "oppose capital punishment and desire to see that the death penalty is not carried out").

First and foremost, there must be alleged (and ultimately proved) an “injury in fact”—a harm suffered by the plaintiff that is “concrete” and “actual or imminent, not ‘conjectural’ or ‘hypothetical.’ . . . Second, there must be causation—a fairly traceable connection between the plaintiff’s injury and the complained-of conduct of the defendant. . . . And third, there must be redressability—a likelihood that the requested relief will redress the alleged injury. (citations omitted.)

Under the first test, Petitioner unquestionably suffered an injury in fact when he was convicted and sentenced to imprisonment for carrying a firearm without a permit. He was further injured by the deprivation of his constitutional right to bear arms.¹⁸

Under the second test (causation), Petitioner has standing to challenge the handgun permit statutes and regulations, which are incorporated by reference in the specific statute under which he was convicted, and which form an integral part of the statutory scheme relating to carrying a handgun. Petitioner claims that

¹⁸See *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976) (“the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury”).

his Second Amendment rights are violated by this scheme, because Maryland criminalizes carrying a handgun outside the home without a permit, and any request for a permit by him would be denied.¹⁹ Thus, the Maryland permit statutes prevent his exercise of his Second Amendment rights outside the home, and caused him grave injury when he attempted to exercise those rights.

Under the third test, there can be no doubt that if Petitioner were to be successful in having the

¹⁹In most states, a permit to carry a concealed handgun must be issued to any law-abiding citizen who is not statutorily disqualified. Steven W. Kranz, Comment, *A Survey of State Conceal and Carry Statutes: Can Small Changes Help Reduce the Controversy?*, 29 Hamline L. Rev. 637, 647 n. 77 (2006). This source lists 34 states as having "shall issue" concealed carry laws. Since it was published, Iowa, Kansas, and Nebraska have passed "shall issue" laws. Iowa Code § 724.7 (2011); Kan. Stat. Ann. §§ 75-7c03, 75-7c04 (2010); Neb. Rev. Stat. §§ 69-2430, 69-2433 (2010). In addition, Alabama's and Connecticut's discretionary "may issue" laws are generally applied in a non-restrictive fashion. In Vermont, concealed or open carry without a permit has been held to be a constitutional right. *State v. Rosenthal*, 55 A. 610 (Vt. 1903). Thus, 40 states now recognize that concealed carry outside the home is a right that may be freely exercised by law-abiding citizens. More than two dozen states allow open carry without a permit.

Petitioner takes no position on whether the failure to apply for a permit would jeopardize the assertion of a Second Amendment claim in a prosecution for carrying a handgun without a permit in a state where, unlike Maryland, such a permit is required to be issued to law-abiding citizens.

Maryland statutory scheme declared unconstitutional and his conviction overturned, his injury would be redressed. Petitioner thus has Article III standing.

But even if there were some general requirement for Petitioner to submit an application in order to challenge the permit statute, that requirement would be eliminated here under the doctrine of futility. This court has made it clear in various contexts that litigants are not required to perform a futile act. *See, e.g., Palazzolo v. Rhode Island*, 533 U.S. 606, 625-26 (2001) (where limitations imposed by wetland regulations were clear, and there was no indication that kind of use sought by landowner would have been allowed, court did not require submission of "futile applications" with other agencies); *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992) (summarizing prior Supreme Court cases, including cases holding that exhaustion not required where "any such application [would have been] utterly futile" or where requiring that administrative process be invoked "would be to demand a futile act"). *See also Bach v. Pataki*, 408 F.3d 75, 77, 83 (2d Cir. 2005), *cert. denied* 546 U.S. 1174 (2006) (plaintiff could challenge New York's refusal to issue firearms permits to non-residents because he had made "a substantial showing that application for the permit would have been futile").

In sum, Petitioner was ineligible for a handgun carry permit, as are almost all Marylanders. There is

no evidence in the record that Petitioner could have satisfied requirements that he submit police reports of threats, robberies or assaults committed against him. He has standing to challenge the statutory scheme that criminalized his carrying a handgun for personal protection.

CONCLUSION

This Court should grant this petition for a writ of certiorari.

Respectfully submitted,

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IN THE COURT OF APPEALS OF MARYLAND

No. 16

September Term, 2010

CHARLES FRANCIS WILLIAMS, JR.

v.

STATE OF MARYLAND

Bell, C.J.
Harrell
Battaglia
Greene
Murphy
Adkins
Barbera,

JJ.

Opinion by Battaglia, J.
Murphy, J. concurs.

Filed: January 5, 2011

In this case, we enter into the constitutional fray involving the scope of the Second Amendment right to bear arms,¹ recently explored by the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008) and *McDonald v. City of Chicago*, ___ U.S. ___, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010).

Petitioner, Charles F. Williams, Jr., seeks to overturn his conviction in the Circuit Court for Prince George's County for unlawful possession of a handgun, pursuant to Section 4-203(a)(1)(i) of the Criminal Law Article, Maryland Code (2002),² asserting that

¹The Second Amendment of the United States Constitution provides:

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.

²All references to Section 4-203 of the Criminal Law Article throughout are to Maryland Code (2002), unless otherwise noted. Section 4-203(a) generally prohibits wearing, carrying, or transporting a handgun:

- (a) *Prohibited*-(1) Except as provided in subsection (b) of this section, a person may not:
- (i) wear, carry, or transport a handgun, whether concealed or open, on or about the person; or
 - (ii) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State.

Maryland's regulatory scheme for handguns violates his right to “keep and carry arms” under the Second Amendment. The Court of Special Appeals affirmed Williams' conviction, in a reported opinion, *Williams v. State*, 188 Md.App. 691, 982 A.2d 1168 (2009), and we granted certiorari, *Williams v. State*, 412 Md. 495, 988 A.2d 1008 (2010), to answer the following question:

Are Md.Code Ann. Criminal Law § 4-203, Public Safety §§ 5-301, *et seq.*, and COMAR 29.03.02.04 unconstitutional in light of *Heller v. District of Columbia*?³

Section 4-203(b) enumerates several exceptions to the prohibition, significantly when one has secured a permit:

(2) the wearing, carrying, or transporting of a handgun by a person to whom a permit to wear, carry, or transport the handgun has been issued under [§§ 5-301-5-314 of the Public Safety Article, Maryland Code (2003)];

and when one wears, carries, or transports a handgun on “real estate that the person owns or leases”:

(6) the wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or leases or where the person resides or within the confines of a business establishment that the person owns or leases;....

³In his brief in this Court, Williams also argued that evidence of the handgun should have been suppressed as the fruit of an unlawful search and that a statement he made to police should have been suppressed, because he was subjected to custodial interrogation. Williams, however, did not include any questions regarding such in his Petition for Certiorari. Further,

We shall hold that Section 4-203(a)(1)(i) of the Criminal Law Article, which prohibits wearing, carrying, or transporting a handgun, without a permit and outside of one's home, is outside of the scope of the Second Amendment. We also shall hold that, because Williams failed to apply for a permit to wear, carry, or transport a handgun, he lacks standing to challenge Section 5-301 *et seq.* of the Public Safety Article, Maryland Code (2003),⁴ as well as COMAR

when asked to address the same concerns, the Court of Special Appeals had determined that those issues were not properly preserved for appellate review.

⁴All references to Section 5-301 *et seq.* of the Public Safety Article throughout are to Maryland Code (2003), unless otherwise noted. Section 5-301(d) defines a “permit” as follows:

(d) *Permit.*—“Permit” means a permit issued by the Secretary to carry, wear, or transport a handgun.

Section 5-302 establishes a “Handgun Permit Review Board” in the Department of Public Safety and Correctional Services. Section 5-303 requires a “permit” before a person “carries, wears, or transports a handgun.” Section 5-304 provides that an application for a permit “shall be made under oath.” Section 5-305 states that permit applicants must undergo a “criminal history records check,” and Section 5-306 states various “qualifications for permit,” as follows:

(a) *In general.*—Subject to subsection (b) of this section, the Secretary shall issue a permit within a reasonable time to a person who the Secretary finds:

- (1) is an adult;
- (2)(i) has not been convicted of a felony or of a misdemeanor for which a sentence of imprisonment for more than 1 year has been

29.03.02.04.⁵ As a result, Williams's conviction will

imposed; or

(ii) if convicted of a crime described in item (i) of this item, has been pardoned or has been granted relief under 18 U.S.C. § 925(c);

(3) has not been convicted of a crime involving the possession, use, or distribution of a controlled dangerous substance;

(4) is not presently an alcoholic, addict, or habitual user of a controlled dangerous substance unless the habitual use of the controlled dangerous substance is under legitimate medical direction; and

(5) based on an investigation:

(i) has not exhibited a propensity for violence or instability that may reasonably render the person's possession of a handgun a danger to the person or to another; and

(ii) has good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger.

(b) *Applicant under age of 30 years.*-An applicant under the age of 30 years is qualified only if the Secretary finds that the applicant has not been:

(1) committed to a detention, training, or correctional institution for juveniles for longer than 1 year after an adjudication of delinquency by a juvenile court; or

(2) adjudicated delinquent by a juvenile court for:

(i) an act that would be a crime of violence if committed by an adult;

(ii) an act that would be a felony in this State if committed by an adult; or

(iii) an act that would be a misdemeanor in this State that carries a statutory penalty of more than 2 years if committed by an adult.

⁵COMAR 29.03.02.04 describes “criteria for issuance of permit” and relevantly provides:

In making a determination as to whether a permit will be issued to the applicant, the following areas will be a part of every investigation and will be considered in determining whether a permit is issued:

- A. Verification of the information supplied by the applicant in the application;
- B. Occupation or profession of the applicant;
- C. Geographical area of residence and employment of the applicant;
- D. Criminal record of applicant, including any juvenile record for an applicant younger than 30 years old, as specifically outlined in Public Safety Article, § 5-306(b), Annotated Code of Maryland;
- E. Medical history of applicant as it may pertain to the applicant's fitness to wear, carry, or transport a handgun;
- F. Psychiatric or psychological background of applicant as it may pertain to the applicant's fitness to wear, carry, or transport a handgun;
- G. Reasons given by the applicant as to whether those reasons are good and substantial;
- H. Age of applicant;
- I. Applicant's use of intoxicating beverages and drugs;
- J. Information received from personal references and other persons interviewed;
- K. Information received from business or employment references as may be necessary in the discretion of the investigator;
- L. Whether the applicant has any alternative available to him for protection other than a handgun permit;
- M. Whether the applicant falls within those classes of individuals who do not need permits as outlined in the Handgun Permit Law;

stand.

During a bench trial before the Honorable Sean D. Wallace, the State presented the following facts, describing a police officer's encounter with Williams near a bus stop:

The facts, as stipulated, had the matter gone to trial, the facts would show that on October 1, 2007, at approximately 5:00 p.m., Officer Molake with the Prince George's County Police Department, was in the area of the Baltimore-Washington Parkway and Landover Road in Prince George's County, Maryland, and as he was driving in that area, he observed the defendant going through a backpack near a wooded area nearby the cross area, and at one time, as the officer turned his cruiser around, he observed the defendant turn and place something in the brush area as if he was hiding something.

Officer Molake made contact with the defendant, who he would identify as the gentleman seated to the left with the

N. The applicant's propensity for violence or instability which could reasonably render his wearing, carrying, or transporting of a handgun a danger to himself or other persons he may come in contact with;

O. Whether the permit is necessary as a reasonable precaution for the applicant against apprehended danger.

green shirt and asked him what he was doing. The defendant told him he was going through the backpack to see what was in it. He then asked the defendant what he went and hid in the bushes, and the defendant hesitated and then stated “my gun.”

The facts described the police officer's recovery of Williams's handgun and Williams's statement to police:

Officer Molake then recovered an Austria [sic] made, black Glock handgun with 15 rounds in the magazine in the brush area where he saw the defendant go.

The defendant gave a written statement after being given his Miranda rights by Officer Santa Cruz, admitting to possession of the gun and placing the gun in the bush area where the officer subsequently located it.

The handgun test-fired as positive.

The facts provided the following, regarding Williams's purchase of the handgun, apparently for “self-defense”:

The defense would have provided evidence by way of documents that would show that the defendant purchased the handgun in Realco at 6108 Marlboro Pike in Forestville, Maryland, on August 15 of

2007, and that would be shown through Exhibit 1. Paid the balance that was due on that handgun on September 14, 2007, which will be shown in Exhibit 2; that the defense would have provided evidence that the defendant completed the Maryland State Police application and affidavit to purchase a regulated firearm application, which is a total of three pages, on August 15, 2007, which will be shown in Exhibit 3. He received the certificate of completion, which is shown in Exhibits 4 and 5, on August 15, 2007.

The defendant would have testified that he purchased the handgun for self-defense, and that on the date of this arrest, he had just left the handgun at his girlfriend's house, place of residence. When he got off work, he went to her residence and picked up that handgun and was en route to his home when the arrest occurred behind the bus stop.

The defendant was again given Miranda rights and gave a written statement that will be shown in the State's Exhibits Number 3 and 4.

Judge Wallace found Williams guilty of wearing, carrying, or transporting a handgun in violation of Section 4-203(a)(1)(i) and sentenced him to three years' incarceration, with two years suspended. The Court of Special Appeals affirmed, determining that the Second

Amendment is not applicable to the States,⁶ and that, were the Second Amendment to apply to Maryland, “it would not invalidate the statute at issue here,” because Section 4-203(b)(6) expressly permits wearing, carrying, or transporting a handgun in one's residence, thereby preserving the right “to keep and bear arms in the home for the purpose of immediate self-defense.” *Williams*, 188 Md.App. at 699, 982 A.2d at 1172.

Before us, as he did in the Circuit Court in a “Motion to Dismiss Indictment,” and in his brief before the Court of Special Appeals, Williams asserts that the prohibition in Section 4-203(a) against wearing, carrying, or transporting a handgun without a permit and outside of one's home, infringes upon his Second Amendment right “to keep and bear arms.” He contends that the Supreme Court opinions in *Heller* and *McDonald* make clear that the Second Amendment establishes a general “right of persons to keep and bear arms for lawful purposes.”

The State counters that the opinions in *Heller* and *McDonald* together stand for the proposition that, pursuant to the Second Amendment, “states may not generally prohibit the possession of a handgun in the home for the purpose of self-defense, but remain free to enact reasonable restrictions on the possession and

⁶The Circuit Court's decision and the Court of Special Appeals's opinion in the present case were rendered prior to the Supreme Court's decision in *McDonald v. City of Chicago*, ___ U.S. ___, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010), which made the Second Amendment applicable to the States via the due process clause of the Fourteenth Amendment.

use of firearms.” The State contends that the statutory scheme embodied in Section 4-203 is eminently reasonable, because Section 4-203(b)(6) expressly permits wearing, carrying, or transporting a handgun in the home.

We begin by exploring the dictates of Section 4-203(a) of the Criminal Law Article, which contains a prohibition against wearing, carrying, or transporting a handgun in public, “whether concealed or open”:

(a) *Prohibited.*-(1) Except as provided in subsection (b) of this section, a person may not:

(i) wear, carry, or transport a handgun, whether concealed or open, on or about the person; or

(ii) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State.

The exceptions to the prohibition, contained in Section 4-203(b), are many:

(b) *Exceptions.*-This section does not prohibit:

(1) the wearing, carrying, or transporting

of a handgun by a person who is on active assignment engaged in law enforcement, is authorized at the time and under the circumstances to wear, carry, or transport the handgun as part of the person's official equipment, and is:

- (i) a law enforcement official of the United States, the State, or a county or city of the State;
 - (ii) a member of the armed forces of the United States or the National Guard on duty or traveling to or from duty;
 - (iii) a law enforcement official of another state or subdivision of another state temporarily in this State on official business;
 - (iv) a correctional officer or warden of a correctional facility in the State;
 - (v) a sheriff or full-time assistant or deputy sheriff of the State; or
 - (vi) a temporary or part-time sheriff's deputy;
- (2) the wearing, carrying, or transporting of a handgun by a person to whom a permit to wear, carry, or transport the handgun has been issued under [§§ 5-301-5-314 of the Public Safety Article, Maryland Code (2003)];

(3) the carrying of a handgun on the person or in a vehicle while the person is transporting the handgun to or from the place of legal purchase or sale, or to or from a bona fide repair shop, or between bona fide residences of the person, or between the bona fide residence and place of business of the person, if the business is operated and owned substantially by the person;

(4) the wearing, carrying, or transporting by a person of a handgun used in connection with an organized military activity, a target shoot, formal or informal target practice, sport shooting event, hunting, a Department of Natural Resources-sponsored firearms and hunter safety class, trapping, or a dog obedience training class or show, while the person is engaged in, on the way to, or returning from that activity;

(5) the moving by a bona fide gun collector of part or all of the collector's gun collection from place to place for public or private exhibition if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(6) the wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or leases or where the person resides or within the confines of a business establishment that the person owns or leases;

(7) the wearing, carrying, or transporting

of a handgun by a supervisory employee:

(i) in the course of employment;

(ii) within the confines of the business establishment in which the supervisory employee is employed;

(iii) when so authorized by the owner or manager of the business establishment;

or

(8) the carrying or transporting of a signal pistol or other visual distress signal approved by the United States Coast Guard in a vessel on the waterways of the State or, if the signal pistol or other visual distress signal is unloaded and carried in an enclosed case, in a vehicle.

Here, the relevant exceptions are Section 4-203(b)(2), involving a permit to wear, carry, or transport a handgun in public, as well as Section 4-203(b)(6), permitting the wearing, carrying, or transporting of a handgun in one's residence. What is notable in the present case is that Williams did not apply for a permit.⁷ Moreover, at the time of his

⁷Williams argues, in this regard, that Sections 5-301 *et seq.* of the Public Safety Article, Maryland Code (2003), as well as Title 29, subtitle 3 of the Code of Maryland Regulations, together governing handgun permitting, impose an impermissible burden on citizens seeking to exercise the right to “keep and carry a handgun.” Williams acknowledges that he has “not filed an application for a permit to carry a handgun,” but asserts that as

arrest, he was not wearing, carrying, or transporting a handgun in his residence, as permitted by the statute.

Williams, nevertheless, principally relies upon the Supreme Court's opinions in *Heller*, 554 U.S. at 570, 128 S.Ct. at 2783, 171 L.Ed.2d at 637, and *McDonald*, ___ U.S. at ___, 130 S.Ct. at 3020, 177 L.Ed.2d at 894, in asserting that the Second Amendment establishes a general “right of persons to keep and bear arms for lawful purposes.” In *Heller*, Mr. Heller had applied for and was denied a “registration certificate” to possess a handgun in his home, pursuant to the District of Columbia's gun control scheme. 554 U.S. at 573-77, 128 S.Ct. at 2788, 171 L.Ed.2d at 647. Section 7-2502.01(a) of the D.C.Code (2001) prohibited “possess[ion] or control” of any firearm, without a “valid registration certificate”:

a result of the regulatory scheme, “any such application would have been denied.” The State counters that nearly 93 percent of handgun permit applicants from 2006 to 2009 were issued permits. *See Maryland Department of State Police 2009 Annual Report*, available at http://www.mdsp.org/downloads/2009_Annual_Report.pdf. Nevertheless, because Williams failed to file an application for a permit to carry a handgun, he lacks standing to challenge the constitutionality of Sections 5-301 *et seq.* of the Public Safety Article, as well as Title 29, subtitle 3 of the Code of Maryland Regulations. *See, e.g., Gregg v. State*, 409 Md. 698, 704 n. 2, 976 A.2d 999, 1002 n. 2 (2009) (reasoning appellant had standing to file “Petition for DNA Evidence-Post Conviction Review,” because he had been convicted of first-degree murder); *Evans v. State*, 396 Md. 256, 328, 914 A.2d 25, 68 (2006) (reasoning that “an individual or an organization ‘has no standing in court unless he has also suffered some kind of special damage from such wrong differing in character and kind from that suffered by the general public’”) (citation omitted).

(a) Except as otherwise provided in this unit, no person or organization in the District of Columbia (“District”) shall receive, possess, control, transfer, offer for sale, sell, give, or deliver any destructive device, and no person or organization in the District shall possess or control any firearm, unless the person or organization holds a valid registration certificate for the firearm.

Section 7-2502.02(a)(4) of the D.C.Code (2001) prohibited the registration of handguns, without an exception for possession in one's home:

(a) A registration certificate shall not be issued for a:

- (1) Sawed-off shotgun;
- (2) Machine gun;
- (3) Short-barreled rifle; or
- (4) Pistol⁸ not validly registered to the current registrant in the District prior to September 24, 1976, except that the provisions of this section shall not apply to any organization that employs at least 1 commissioned special police officer or other employee licensed to carry a firearm and that arms the employee with a firearm during the employee's duty hours or to a police officer who has

⁸Section 7-2501.01(12) of the D.C.Code defines a “pistol” as “any firearm originally designed to be fired by use of a single hand.” (emphasis added).

retired from the Metropolitan Police Department.

Section 7-2507.02 of the D.C.Code (2001) mandated that any other firearm within one's home be kept “unloaded and disassembled or bound by a trigger lock”:

Except for law enforcement personnel described in § 7-2502.01(b)(1), each registrant shall keep any firearm in his possession unloaded and disassembled or bound by a trigger lock or similar device unless such firearm is kept at his place of business, or while being used for lawful recreational purposes within the District of Columbia.

Sections 22-4504(a) and 22-4515 of the D.C.Code (2001) made carrying an unlicensed pistol in one's home or on one's land a misdemeanor. Section 22-4504(a) stated, in relevant part:

(a) No person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in § 22-4515

Section 22-4515 of the D.C.Code (2001) in turn, stated:

Any violation of any provision of this chapter for which no penalty is specifically provided shall be punished by a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both.

Mr. Heller filed a complaint in the United States District Court for the District of Columbia seeking declaratory and injunctive relief from the denial of his application for a “registration certificate” to possess a handgun in his home, the licensing requirement insofar as it prohibited the carrying of a handgun in the home, and the trigger-lock requirement insofar as it prohibited the possession of “functional firearms” in the home. The District Court dismissed the complaint, and the United States Court of Appeals for the District of Columbia Circuit reversed, reasoning that the Second Amendment precluded the District from “flatly ban[ning] the keeping of a handgun in the home.” *Parker v. District of Columbia*, 478 F.3d 370, 400 (D.C.Cir.2007). The Supreme Court granted the District's petition for a writ of certiorari, presenting the following question:

Whether the following provisions-D.C.Code §§ 7-2502.02(a)(4), 22-4504(a), and 7-2507.02-violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes?

Before the Court, the District argued that the Second Amendment protects “only militia-related firearm rights.” Alternatively, the District contended that prohibiting handgun possession in the home was reasonable, because residents were permitted to possess shotguns and rifles, albeit unloaded or bound by a trigger lock. Mr. Heller countered that the Second Amendment protects an individual right to possess a firearm for “traditionally lawful purposes, such as self-defense within the home.” 554 U.S. at ___, 128 S.Ct. at 2789, 171 L.Ed.2d at 648.

Embracing an original meaning approach, Justice Antonin Scalia, writing for the Court, interpreted the language of the Second Amendment as conferring an individual right “to keep and bear Arms.” 554 U.S. at ___, 128 S.Ct. at 2791, 171 L.Ed.2d at 651. The Court considered the substance of that individual right as “simply a common way of referring to possessing arms, for militiamen and everyone else.” *Id.* at ___, 128 S.Ct. at 2792, 171 L.Ed.2d at 652. Similarly, the phrase “bear Arms,” reasoned the Court, referred to the “carrying of weapons,” both in an organized militia and for other purposes, such as self-defense. *Id.* at ___, 128 S.Ct. at 2793-94, 171 L.Ed.2d at 653-54. The Court concluded that “preserving the militia” was not the only aim of the Second Amendment, as the founders “most undoubtedly thought it even more important for self-defense and hunting.” *Id.* at ___, 128 S.Ct. at 2801, 171 L.Ed.2d at 662. This right “to keep and bear Arms,” however, has limitations:

Like most rights, the right secured by the

Second Amendment is not unlimited. From Blackstone through 19th century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our 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 ___, 128 S.Ct. at 2816-17, 171 L.Ed.2d at 678 (internal citations omitted).

In declaring Sections 7-2502.02(a)(4) (prohibiting the registration of handguns, without a home exception) and 22-4504(a) (prohibiting carrying a handgun within one's home, without a license) unconstitutional, the Court emphasized that handguns were “overwhelmingly chosen by American society” for

self-defense and determined that under any standard of scrutiny, “banning from the home the most preferred firearm in the nation to keep and use for protection of one's home and family, would fail constitutional muster.” *Id.* at ___, 128 S.Ct. at 2817-18, 171 L.Ed.2d at 679 (citation omitted) (internal quotation marks omitted). The District's trigger-lock requirement, contained in Section 7-2507.02, did not fare any better, according to the Court, because the provision “ma[de] it impossible for citizens to use [firearms] for the core lawful purpose of self-defense” within the home. *Id.* at ___, 128 S.Ct. at 2818, 171 L.Ed.2d at 680. Therefore, the prohibition against handguns, even within one's home, as well as the trigger-lock requirement for all firearms kept within the home, were declared unconstitutional.

Shortly thereafter, in *McDonald*, ___ U.S. at ___, 130 S.Ct. at 3020, 177 L.Ed.2d at 894, the Supreme Court was asked to consider whether the Second Amendment applied to the States.⁹ In that case, Otis McDonald, Adam Orlov, Colleen Lawson, and David Lawson filed a complaint in the United States District Court for the Northern District of Illinois, seeking a declaratory judgment that several Chicago ordinances violated the Second and Fourteenth Amendments. The Chicago residents alleged that the City had denied

⁹In so doing, the Supreme Court considered the following question on certiorari:

Whether the Second Amendment right to keep and bear arms is incorporated as against the States by the Fourteenth Amendment's Privileges or Immunities or Due Process Clauses.

their applications to register handguns for possession in the home, in violation of the Constitution. In a related lawsuit, the National Rifle Association and two residents of Oak Park, a Chicago suburb, filed a complaint in the United States District Court for the Northern District of Illinois, seeking a declaration that several Oak Park ordinances were invalid pursuant to the Second and Fourteenth Amendments. That complaint alleged that, but for the gun control laws, the individual plaintiffs would keep handguns in their homes for self-defense.

The statutes at issue were “similar to the District of Columbia’s,” according to the Court. ___ U.S. at ___, 130 S.Ct. at 3026, 177 L.Ed.2d at 903. Section 8-20-040(a) of the Chicago, Illinois Code prohibited possession of a firearm unless registered, while Section 8-20-050(c) provided that “[n]o registration certificate shall be issued for any of the following types of firearms . . . (c) Handguns.” The only non-governmental exception to the prohibition against handguns was for “[t]hose validly registered to a current owner in the City of Chicago prior to [1982].” Section 27-2-1 of the Oak Park, Illinois Code also provided that “[i]t shall be unlawful for any person to possess or carry, or for any person to permit another to possess or carry on his/her land or in his/her place of business any firearm.” Section 27-1-1, in turn, defined “firearms” as “pistols, revolvers, guns and small arms of a size and character that may be concealed on or about the person, commonly known as handguns.”

The district court judge entered judgment on the pleadings for both municipalities. The United States

Court of Appeals for the Seventh Circuit affirmed, reasoning that the Supreme Court had never considered whether the Second Amendment should be applied to the States through the Due Process Clause of the Fourteenth Amendment. *Nat'l Rifle Ass'n v. City of Chicago, Illinois and Village of Oak Park, Illinois*, 567 F.3d 856 (7th Cir. 2009).

In reversing, the Supreme Court determined that the Second Amendment right to keep and bear arms “is fundamental to *our* scheme of ordered liberty,” and as a result, the Due Process Clause rendered it applicable to the States. *Id.* at ____, 130 S.Ct. at 3036, 177 L.Ed.2d at 914, citing *Duncan v. Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968). The Court characterized *Heller* as safeguarding an individual right of “self-defense,” when home possession was in issue, *id.* at ____, 130 S.Ct. at 3036, 177 L.Ed.2d at 914, but, nevertheless, reiterated that regulatory schemes prohibiting handgun ownership by dangerous individuals, or prohibiting wearing, carrying, or transporting handguns in various public places outside of the home, were permissible:

We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as “prohibitions on the possession of firearms by felons and the mentally ill,” “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 ___, 130 S.Ct. at 3047, 177 L.Ed.2d at 926, quoting *Heller*, 554 U.S. at ___, 128 S.Ct. at 2817, 171 L.Ed.2d at 678.¹⁰

¹⁰In determining that *Heller* and *McDonald* addressed prohibitions and limitations on handgun possession in the home, we find informative decisions from other courts interpreting those opinions. See *United States v. Marzzarella*, 614 F.3d 85, 92 (3d Cir.2010) (reasoning that *Heller* and *McDonald* recognized that “the Second Amendment protects the right of law-abiding citizens to possess [handguns] for self-defense in the home”); *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir.2010) (noting that *Heller* recognized that “the Second Amendment creates individual rights, one of which is keeping operable handguns at home for self-defense”); *People v. Dykes*, 209 P.3d 1, 49 (Cal. 2009) (concluding that a statute prohibiting possession of a loaded and concealed firearm without a permit did not violate the Second Amendment, because *Heller* recognized a limited right to keep and bear arms for personal protection in the home); *State v. Knight*, 218 P.3d 1177, 1189 (Kan. Ct. App. 2009) (reasoning that a statute which criminalizes the possession of a concealed firearm was outside the province of the Second Amendment, because the Supreme Court's decision in *Heller* “turned solely on the issue of handgun possession in the home”); *Commonwealth v. Runyan*, 922 N.E.2d 794, 799 (Mass. 2010) (determining that a statute requiring safe storage of a firearm was outside the scope of the Second Amendment, because the statute in issue “does not make it impossible for those persons licensed to possess firearms to rely on them for lawful self-defense” as did the District of Columbia ordinances in *Heller*); *People v. Perkins*, 62 A.D.3d 1160, 1161 (N.Y.App.Div.2009) (reasoning that “New York's licensing requirement remains an acceptable means of regulating the possession of firearms,” because the statute at issue did not “effect a complete ban on handguns” as in *Heller*); *State v. Sieyes*, 225 P.3d 995, 1005 (Wash. 2010) (determining that a statute regulating the circumstances under which children could lawfully possess firearms was outside the scope of the Second Amendment, because no authority supported “an original meaning of the Second Amendment, which would grant children an unfettered right to bear arms”).

In the present case, Section 4-203(a)(1)(i) of which Williams was convicted, prohibits “wear[ing], carry[ing], or transport[ing] a handgun, whether concealed or open, on or about the person,” in public, without a permit. Here, sufficient evidence was adduced to demonstrate that Williams was wearing, carrying, or transporting a handgun in public, and Williams had conceded that he had not obtained, or even applied for, a permit.

Williams, however, attempts to bring his conviction of wearing, carrying, or transporting a handgun in public, without a permit, within the ambit of *Heller* and *McDonald* by claiming that those opinions would prohibit his conviction. This is not the

In addition, after oral argument in the present case, the District of Columbia Court of Appeals filed *Herrington v. United States*, 2010 D.C. App. LEXIS 611 (D.C.2010), upon which Williams relies, in which the defendant was convicted of “unlawful possession of ammunition,” after police found two boxes of ammunition in his bedroom. The statute in issue required the prosecution to demonstrate only “that the defendant possessed ammunition, and that he did so knowingly and intentionally.” *Id.* at *4. *Herrington* argued that his conviction should be reversed, because the Second Amendment as interpreted by the Supreme Court in *Heller* “encompass[ed] the possession of handgun ammunition in the home.” *Id.* at *7. The court reversed *Herrington*'s conviction, reasoning that “the Second Amendment guarantees a right to possess ammunition in the home that is coextensive with the right to possess a usable handgun there.” *Id.* at *12. Thus, *Herrington* is consistent with our interpretation of *Heller* and *McDonald* as addressing prohibitions against handgun possession in the home, as banning possession of ammunition in the home would certainly undermine the interest in “defense of self, family, and property” recognized in *Heller*.

case, because *Heller* and *McDonald* emphasize that the Second Amendment is applicable to statutory prohibitions against home possession, the dicta in *McDonald* that “the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home,” notwithstanding. ___ U.S. at ___, 130 S.Ct. at 3044, 177 L.Ed.2d at 922. Although Williams attempts to find succor in this dicta, it is clear that prohibition of firearms in the home was the gravamen of the certiorari questions in both *Heller* and *McDonald* and their answers. If the Supreme Court, in this dicta, meant its holding to extend beyond home possession, it will need to say so more plainly.

Williams was convicted of wearing, carrying, or transporting a handgun in public, rather than for possession of a handgun in his home, for which he could not be prosecuted under Section 4-203(b)(6). It is the exception permitting home possession in Section 4-203(b)(6) that takes the statutory scheme embodied in Section 4-203 outside of the scope of the Second Amendment, as articulated in *Heller* and *McDonald*. Section 4-203(b)(6) clearly permits wearing, carrying, or transporting a handgun “by a person on real estate that the person owns or leases or where the person resides,” without registering or obtaining a permit, wholly consistent with *Heller*'s proviso that handguns are “the most preferred firearm in the nation to keep and use for protection of one's home and family.” 554 U.S. at ___, 128 S.Ct. at 2817-18, 171 L.Ed.2d at 689.

In affirming Williams' conviction, we find persuasive opinions from other courts, addressing

analogous situations, in which a defendant was convicted pursuant to a statute prohibiting public possession of a firearm, while providing an exception for possession within the home. For example, in *People v. Dawson*, 934 N.E.2d 598 (Ill. App. Ct. 2010), Dawson had been found guilty of three counts of aggravated discharge of a firearm and two counts of aggravated unlawful use of a weapon in connection with the attempted murder of Mario Brantley. *Id.* at 599. Dawson argued that his convictions under the Illinois aggravated unlawful use of a weapon statute should be reversed, because the measure violated the Second Amendment. *Id.* at 599-600. The Illinois aggravated unlawful use of a weapon statute under which Dawson was convicted mirrors Maryland's Section 4-203 and relevantly provides:

“(a) A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly:

(1) Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode or fixed place of business any pistol, revolver, stun gun or taser or other firearm;

* * *

[and]

* * *

(3) One of the following factors is present:

(A) the firearm possessed was uncased, loaded and immediately accessible at the time of the offense[.]”

Id. at 604, quoting 720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2006) (alteration in original) (emphasis added). The Illinois intermediate appellate court affirmed Dawson's conviction, reasoning that in *Heller*, the Supreme Court “ultimately limited its holding to the question presented—that the Second Amendment right to bear arms protected the right to possess a commonly used firearm, a handgun, in the home for self-defense purposes.” *Id.* at 605 The court further emphasized that, in *McDonald*, the Supreme Court addressed “the limited question of whether a ban on the possession of a handgun in the home violated the Second Amendment right to bear arms.” *Id.* The court concluded that the statute under which Dawson was convicted was constitutional, because it specifically permitted possession of a firearm within one's home. *Id.* at 607.

In *Little v. United States*, 989 A.2d 1096 (D.C.2010), Little was convicted by a jury of one count of carrying a pistol without a license, one count of possession of an unregistered firearm, and one count of unlawful possession of ammunition, as a result of his involvement in an attempted robbery. Little argued that his convictions must be reversed in light of the Supreme Court's decision in *Heller*, because the statutes “functioned as a total ban on handguns.” *Id.* at 1100. The District of Columbia Court of Appeals rejected that argument and affirmed Little's conviction, reasoning that in *Heller*, “the issue was the constitutionality of the District of Columbia's ban on ‘the possession of usable handguns *in the home*,’” *id.* at 1101, quoting *Howerton v. United States*, 964 A.2d 1282, 1287 (D.C.2009), and Little had conceded that he

was outside of his home.

In *People v. Yarbrough*, 169 Cal.App.4th 303, (Cal.Ct.App.2008), Yarbrough was arrested and convicted of carrying a concealed weapon in public, in violation of a California statute, which provided:

A person is guilty of carrying a concealed firearm when he or she does any of the following:

(1) Carries concealed within any vehicle which is under his or her control or direction any pistol, revolver, or other firearm capable of being concealed on the person.

(2) Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person.

(3) Causes to be carried concealed within any vehicle in which he or she is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

Id. at 313 n. 5, quoting Section 12025(a) of the California Penal Code. The California intermediate appellate court noted that a separate measure provided an exception for possession of concealed weapons “anywhere within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident.” *Id.* at 314 and n. 6, quoting Section 12026 of the California Penal Code. Although

Yarbrough argued that the concealed weapons statute was unconstitutional in light of *Heller*, the court rejected that argument and affirmed his conviction, reasoning that in *Heller*, the Supreme Court considered a narrow question, namely whether “the District's ban on handgun possession in the home violate[d] the Second Amendment.” *Id.* at 312. The court concluded that, “[u]nlike possession of a gun for protection within a residence, carrying a concealed firearm presents a recognized threat to public order, and is prohibited as a means of preventing physical harm to persons other than the offender.” *Id.* at 314 (internal quotation marks omitted).

As a result, we affirm Williams' conviction of wearing, carrying, or transporting a handgun in violation of Section 4-203(a)(1)(i) of the Criminal Law Article.

JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED. COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY PETITIONER.

31a

IN THE COURT OF APPEALS OF MARYLAND

No. 16

September Term, 2010

CHARLES FRANCIS WILLIAMS, JR.

v.

STATE OF MARYLAND

Bell, C.J.
Harrell
Battaglia
Greene
Murphy
Adkins
Barbera,

JJ.

Concurring Opinion by Murphy, J.

Filed: January 5, 2011

While I agree with the majority that the Petitioner's conviction should be affirmed, I would not hold that the Petitioner's conduct is "outside of the scope of the Second Amendment." I would affirm on the ground that, although the Second Amendment is applicable to an "on the street" possession of a handgun, that Amendment is satisfied by a statute that places reasonable restrictions on the constitutional right to bear arms.

33a

REPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 01999

September Term, 2008

CHARLES F. WILLIAMS, JR.

v.

STATE OF MARYLAND

Wright,
Matricciani,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Matricciani, J.

Filed: October 30, 2009

Appellant Charles F. Williams, Jr. appeals the judgment of the Circuit Court for Prince George's County convicting him of unlawful possession of a handgun. On October 6, 2008, the court sentenced Williams to three years of incarceration, with all but one year suspended, for violating Md.Code (2002), § 4-203(a)(1)(i) of the Criminal Law Article (“CL”). Appellant presented four issues for our consideration, which we have consolidated into three issues and rephrased as such:

I. Whether the circuit court erred in ruling that CL § 4-203 does not infringe appellant's right to keep and bear arms under the Constitution of the United States.

II. Whether the police officer violated appellant's “right to intrastate [sic] travel” by stopping and interrogating appellant without reasonable cause.

III. Whether the circuit court erred when it failed to grant appellant's motion to suppress evidence.

We affirm the circuit court's ruling and treat each issue in turn.

FACTS

On August 15, 2007, appellant purchased a handgun from a licensed dealer in Forestville,

Maryland. Appellant completed the Maryland State Police application and submitted an affidavit to purchase a regulated firearm that same day and received a certificate of completion for both. On September 14, 2007, appellant paid the balance that was due on the handgun.

On October 1, 2007, the appellant went to his girlfriend's house and picked up the gun. While the appellant was en route to his home, an officer with the Prince George's County Police Department observed him rummaging through a backpack near a wooded area. The officer then turned his cruiser around and observed appellant turn and place something in the brush area "as if he was hiding something." The officer approached the appellant and asked what he was doing. Appellant responded that he was going through the backpack to see what was in it. The officer then asked what appellant had hidden in the bushes, to which he replied, "my gun."

The officer recovered a black handgun from the brush area where he had observed appellant. After the officer read the appellant his *Miranda*¹ rights, the appellant gave a written statement in which he acknowledged possession of the gun and that he had placed the gun in the area where the officer located it.

On August 25, 2008 the circuit court held a

¹*Miranda v. Arizona*, 384 U.S. 436 (1966), requires police to administer warnings to individuals who are taken into custody and subject to questioning.

motions hearing in which it denied appellant's motion to suppress his oral statements to the officer. The court issued a written memorandum and order in response to appellant's motion to dismiss the indictment based on *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008), finding that the exceptions to the ban on the wearing, carrying or transporting of a handgun as set forth by the Maryland legislature in CL § 4-203 complied with the holding in *Heller*.

DISCUSSION

I.

Appellant contends that the circuit court infringed his constitutional right to keep, bear, and carry arms² by ruling that he committed a crime. He argues that both CL § 4-203 and the regulations which control applications for handgun permits are unconstitutional based on *Heller*.

He also argues that Maryland's regulatory scheme for handguns violates constitutional standards by imposing criminal penalties for violations of the statute rather than less oppressive civil penalties. In support of this argument he cites to Title 29 of the Code of Maryland Regulations (COMAR), which regulates security guard certification and imposes administrative penalties for an agency that allows employees to be armed in the performance of their

²“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.

duty without a valid permit. Appellant argues that the discrepancy between the criminal code and COMAR amounts to an equal protection violation.

Appellant was punished pursuant to CL § 4-203, which provides, in pertinent part:

(a) *Prohibited.*-(1) Except as provided in subsection (b) of this section, a person may not:

(i) wear, carry, or transport a handgun, whether concealed or open, on or about the person [...]

* * *

(b) *Exceptions.*-This section does not prohibit [...]

* * *

(2) the wearing, carrying, or transporting of a handgun by a person to whom a permit to wear, carry, or transport the handgun has been issued under Article 27, § 36E³ of the Code [...]

* * *

(6) the wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or leases or where the person

³These provisions are now located in Md.Code (2003), § 5-301- § 5-314 of the Public Safety Article.

resides or within the
confines of a business
establishment that the
person owns or leases [...]

* * *

(c) *Penalty*:-

(1) A person who violates
this section is guilty of a
misdemeanor and on
conviction is subject to the
penalties provided in this
subsection.

(2) If the person has not
previously been convicted
under this section, § 4-204
of this subtitle, or § 4-101 or
§ 4-102 of this title:

(i) except as provided in
item (ii) of this paragraph,
the person is subject to
imprisonment for not less
than 30 days and not
exceeding 3 years or a fine
of not less than \$250 and
not exceeding \$2,500 or
both [.]

In determining the constitutionality of a statute,
“the basic rule is that there is a presumption that the
statute is valid.” *Galloway v. State*, 365 Md. 599, 611
(2001). We are reluctant to find a statute
unconstitutional if, “by any construction ... it can be

sustained.” *Beauchamp v. Somerset County*, 256 Md. 541, 547 (1970). If we determine that the statute is vague, and thus offends due process, or over broad, by “sweep[ing] within the ambit of constitutionally protected expressive or associational rights”, then we will find the statute unconstitutional. *Galloway*, 365 Md. at 612. The party challenging the statute's constitutionality bears the burden of establishing its unconstitutionality. *Beauchamp*, 256 Md. at 547. Appellant fails to shoulder this burden here.

To begin, we note that there is no Maryland corollary of the federal constitutional right codified in the Second Amendment.⁴ Furthermore, we have held previously that the Second Amendment is not

⁴Justice Scalia, writing for the Court, found that four states adopted analogues to the federal Second Amendment in the period between independence and the ratification of the Bill of Rights. *District of Columbia v. Heller*, 128 S.Ct. 2783, 2801. Between 1789 and 1820, nine additional states adopted Second Amendment analogues, but not Maryland. *Id.* Although some have argued that Article 28 of the Maryland Declaration of Rights (“That a well regulated Militia is the proper and natural defence of a free Government.”) is Maryland's analogue to the federal Second Amendment, this argument was rejected by the Office of the Attorney General in the context of a challenge to the “Maryland Comprehensive Gun Control Act,” where it found:

In Maryland, the militia is “well regulated” by Article 65 of the Code ... The General Assembly thus has made the manifestly reasonable judgment that the needs of the militia can be met with State-owned firearms held in secure locations. No tenable argument can be made that the needs of the State militia can only be met by affording private citizens access to the kinds of firearms that would be restricted under House Bill 1283.

79 OAG 206 (1994).

applicable to the states. See *Onderdonk v. Handgun Permit Review Board of Dep't of Public Safety & Correctional Services*, 44 Md.App. 132, 135 (1979); see also *Scherr v. Handgun Permit Review Bd.*, 163 Md.App. 417, 443 (2005). This is significant because it means that appellant must hang his musket, so to speak, on *Heller's* interpretation of the federal constitutional right. *Heller* filed a lawsuit in U.S. District Court for the District of Columbia seeking to enjoin the city from enforcing the ban on the registration of handguns, the licensing requirement insofar as it prohibited the carrying of a firearm in the home without a license, and the trigger-lock requirement insofar as it prohibited the use of “functional firearms within the home.” *Heller*, 128 S.Ct. at 2788. The Supreme Court held that the Second Amendment guaranteed the individual right to possess and carry weapons in case of confrontation. *Id.* at 2797. As a consequence of this interpretation, the Court held that the District's ban on handgun possession in the home violated the Second Amendment, as did its prohibition against rendering any firearm operable for the purpose of immediate self-defense, if it is lawfully within the home. *Id.* at 2822.

Of more immediate concern for the issue before us, and ultimately fatal to appellant's argument, is the fact that the *Heller* Court reaffirmed the holding in *United States v. Cruikshank*, 92 U.S. 542 (1875), that “[t]he [S]econd [A]mendment ... means no more than that it shall not be infringed by Congress.” *Id.* at 553. While parenthetically noting the weakness of *Cruikshank's* argument regarding non-incorporation

of the right, the Court found that its later decisions in *Presser v. Illinois*, 116 U.S. 252 (1886), and *Miller v. Texas*, 153 U.S. 535 (1894), reaffirmed that the Second Amendment applies only to the federal government. *Heller*, 128 S.Ct. at 2813. Appellant can cite to only one case subsequent to *Heller* in which a court has held that the right established in *Heller* applies against state and local governments. In that decision, *Nordyke v. King*, 563 F.3d 439 (9th Cir.2009), *reh'g granted*, 575 F.3d 890 (9th Cir.2009), a panel of judges in the Ninth Circuit held that the right to bear arms was a fundamental right warranting substantive due process protection through the Fourteenth Amendment. However, an *en banc* rehearing was granted for this case in July with the express instruction that “[t]he three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.” *Nordyke*, 575 F.3d at 890. After rehearing the case on September 24, 2009, the Court issued an order postponing judgment until the Supreme Court's disposition of three similar cases which had *certiorari* petitions pending.

All other circuits that have addressed the issue have found that the Second Amendment does not apply to state and local governments. *See, e.g., Nat'l Rifle Assoc. v. City of Chicago*, 567 F.3d 856, 859 (7th Cir.2009) (“One function of the second amendment is to prevent the national government from interfering with state militias. It does this by creating individual rights, *Heller* holds, but those rights may take a different shape when asserted against a state rather than against the national government.”); *Maloney v. Cuomo*, 554 F.3d 56 (2nd Cir.2009); *Bletz v. Gribble*,

No. 1:08-CV-533, 2009 U.S. Dist. LEXIS 59629 (W.D.Mich. July 10, 2009). In the Seventh Circuit case Judge Easterbrook noted:

[T]he Constitution establishes a federal republic where local differences are to be cherished as elements of liberty rather than extirpated in order to produce a single, nationally applicable rule (citations omitted). Federalism is an older and more deeply rooted tradition than is a right to carry any particular kind of weapon. How arguments of this kind will affect proposals to “incorporate” the second amendment are for the Justices rather than a court of appeals.

Nat'l Rifle Assoc. v. City of Chicago, 567 F.3d 856, 860 (7th Cir.2009).

The Supreme Court has granted *certiorari* in this case, and will hear oral argument and issue its judgment before the end of the term, which typically lasts until late June or early July. *McDonald v. City of Chicago*, No. 08-1521, 2009 U.S. LEXIS 5150 (September 30, 2009). Meanwhile, we can find no decision from a state court which incorporates this right, with most state courts expressly declining to do so. See, e.g., *State v. Turnbull*, 766 N.W.2d 78 (Minn.Ct.App.2009); *People v. Yarbrough*, 86 Cal.Rptr.3d 674 (Cal. Ct. App. 2008); *People v. Abdullah*, 870 N.Y.S.2d 886 (N.Y.City Crim.Ct.2008). Until the Supreme Court rules definitively on incorporation of the Second Amendment, we must

assume, without deciding, that it has not been incorporated.

Even if the Second Amendment did apply, it would not invalidate the statute at issue here. CL § 4-203 provides that a person may not “wear, carry, or transport a handgun, whether concealed or open, on or about the person” or “in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State.” CL § 4-203(a)(i), *id.* at (a)(ii). This blanket prohibition is modified by subsection b of the statute, which provides eight exceptions to the general rule outlined above. One of these exceptions is for possession of a gun by a person on real estate that the person owns or leases or where the person resides. CL § 4-203(b)(6). Thus, even if the right articulated in *Heller*, namely the right to keep and bear arms in the home for the purpose of immediate self-defense, were to apply to the citizens of Maryland, this statute does not infringe upon that right.

Appellant also challenges Maryland's handgun permit scheme, which is contained at Md.Code (2003), § 5-301- § 5-314 of the Public Safety Article (“PS”). Appellant challenges only two aspects of this scheme, which are:

§ 5-306. Qualifications for permit.

(a) In general.-Subject to subsection (b) of this section, the Secretary shall issue a permit within a reasonable time to a person who the Secretary finds [...]

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* * *

(5) based on an investigation:

(i) has not exhibited a propensity for violence or instability that may reasonably render the person's possession of a handgun a danger to the person or to another; and
(ii) has good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger.

§ 5-307. Scope of Permit

(a) In general [...]

(b) Limitations. -The Secretary may limit the geographic area, circumstances, or times of the day, week, month, or year in which a permit is effective.

Appellant argues that § 5-306(a)(5) permits an investigation that is overly broad and vague. He also argues that § 5-307(b) is “grossly unconstitutional for essentially the same reasons.”

In assessing the reasonableness of the state's

exercise of its police power, the Court of Appeals noted in *State v. Crawford*, 308 Md. 683 (1987), that handgun control legislation was “spurred by a dramatic increase in the number of crimes perpetrated with handguns and a concomitant increase in the number of deaths and injuries caused by persons carrying handguns on the street[.]” *Id.* at 694. The permit scheme which appellant attacks as facially unconstitutional is clearly within the state's police power and eminently serves the legislature's purpose in enacting the statute, namely to ensure public safety by “discourag[ing] and punish[ing] the possession of handguns on the streets and public ways.” *Id.* at 695.

The two provisions noted above reflect the fact that the state's police power compels it to take measures to contain the well-documented danger which stems from the proliferation of handguns. Rather than ban handguns outright, as the District of Columbia did in *Heller*, the General Assembly chose to place limits on who may lawfully own a handgun in order to reduce the possibility that they may be used “on the streets and public ways.” The General Assembly has not seen fit to amend Maryland's handgun permit scheme in response to any evidence that its purpose has been undermined by intervening circumstances or by the decision in *Heller*.

Furthermore, appellant does not cite to a single case to support his contention that civil penalties, rather than criminal penalties, are an appropriate response to a violation of the statute. Likewise, appellant's equal protection argument does not hold up under close scrutiny. The section he cites, COMAR

29.04.01.07, establishes penalties for those licensees, firms and persons that hold a security guard certification. Administrative penalties are administered for what amounts to poor supervision by these licensees of those employees who do not have a valid handgun permit. The criminal code, on the other hand, establishes penalties for the actual possessor of the handgun who lacks a valid permit. Thus, this is not a case of one law treating classes of people differently, but of two separate laws treating two separate types of offenders differently.

Without a constitutional infirmity, it is not our role to decide these questions, but rather that of the State legislature. In the absence of a clear directive from the Supreme Court, we are not at liberty to strike down CL § 4-203 as violative of appellant's right to keep and bear arms under the Second Amendment to the United States Constitution. *Heller* did not provide that clear directive.

II.

Appellant contends that the police officer violated his “right to intrastate travel” by stopping and interrogating him without reasonable cause. According to Md. Rule 8-131(a), “[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.” Appellant did not raise this argument at the trial level, and thus it is unpreserved for our review and we decline to address it.

III.

Appellant contends that the circuit erred when it failed to grant appellant's Motion to Suppress evidence. The Court of Appeals recently restated the proper standard of review when reviewing the denial of a motion to suppress:

[W]e consider only the evidence contained in the record of the suppression hearing. We extend great deference to the hearing judge's findings of fact and those findings will not be disturbed unless clearly erroneous. We review the evidence and the inferences that may be reasonably drawn in the light most favorable to the prevailing party. We make our own independent appraisal as to whether a constitutional right has been violated by reviewing the law and applying it to the facts of the case.

Bost v. State, 406 Md. 341, 349 (2008) (citations omitted).

At trial, appellant filed a Motion to Suppress statements he made to the police. Because appellant challenged his custodial status, the trial court correctly treated that Motion to Suppress as a Fifth Amendment issue and analyzed it accordingly. Here, appellant's brief argues that the handgun should be suppressed because the officer was wrong to conduct a search without probable cause or a reasonable suspicion, standards which do not apply in the context of a Fifth Amendment violation. Appellant did not file

a Motion to Suppress the recovery of the handgun at the trial level. Because appellant did not clearly articulate a Fourth Amendment claim at the trial level, that claim can not be introduced at the appellate level. See *Johnson v. State*, 138 Md.App. 539, 560 (2001) (failure to argue particular theory constitutes waiver of that theory on appeal). We agree with the State that appellant's Fourth Amendment claim was unpreserved and thus do not address the merits of this argument.

Appellant's reply brief now changes course, arguing that the police officer's questioning constituted custodial interrogation⁵ and that under the “fruit of the poisonous tree” doctrine the handgun should also be suppressed. However, we are not at liberty to address appellant's renewed Fifth Amendment claim. Concerning reply briefs we have held:

The function of a reply brief is limited. The appellant has the opportunity and duty to use the opening salvo of his original brief to state and argue clearly each point of his appeal. The reply brief must be limited to responding to the points and issues raised in the appellee's brief . . . To allow new issues or claims to be injected into the appeal by a reply

⁵Custodial interrogation is a prerequisite to any claim of a *Miranda* violation under the 5th Amendment. See *Miranda v. Arizona*, 384 U.S. 436 (1966); *Rhode Island v. Innis*, 446 U.S. 291(1980). This appears to be the tactic employed at trial to suppress appellant's statements.

brief would work a fundamental injustice upon the appellee, who would then have no opportunity to respond in writing to the new questions raised by the appellant.

Hollingsworth & Vose Co. v. Connor, 136 Md.App. 91, 125 (2000). Had appellant raised the issue in his original brief, we would have had to address the trial court's treatment of the issue. However, since appellant did not use his original brief to articulate his Fifth Amendment claim, he can not introduce it through his reply brief.

**JUDGMENT OF THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY AFFIRMED.**

COSTS TO BE PAID BY APPELLANT.

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

STATE OF MARYLAND

vs. Criminal Trials No. 08-0537X

CHARLES FRANCIS WILLIAMS, JR.,

Defendant.

_____ /

REPORTER'S OFFICIAL TRANSCRIPT
OF PROCEEDINGS
(Trial on the Merits)

Upper Marlboro, Maryland
Monday, October 6, 2008

BEFORE:

HONORABLE SEAN D. WALLACE,
Associate Judge

APPEARANCES:

For the State:

JONATHAN CHURCH, ESQUIRE

For the Defendant:

JAMES BREWSTER HOPEWELL, ESQUIRE

**[Note by Petitioner's Counsel: Omissions from
transcript are indicated by series of asterisks]**

PATRICIA A. GARSHAK
Official Court Reporter
P.O. Box 401
Upper Marlboro, Maryland 20773

EXHIBITS

	MARKED	RECEIVED
State's 1	17	17

Defendant's 1-5	17	17

THE DEPUTY CLERK: Criminal Trial
08-0537X, State of Maryland versus Charles Francis
Williams, Jr.

MR. HOPEWELL: James Hopewell on behalf of
the defendant, who is present.

MR. CHURCH: Jonathan Church on behalf of
the State.

THE COURT: This is a bench trial.

MR. HOPEWELL: Your Honor, it is a bench
trial. When I entered my appearance, my client
prayed a jury. We advised the State we were going to
waive that right and elect to be tried by this Court.

THE COURT: Mr. Williams, will you state your full legal name.

THE DEFENDANT: Charles Francis Williams, Jr.

THE COURT: How old are you, sir?

THE DEFENDANT: Twenty-eight years old.

THE COURT: How far did you get in school?

THE DEFENDANT: Twelfth grade.

THE COURT: So you read and write English?

THE DEFENDANT: Yes, sir.

THE COURT: Are you under the influence of any drugs, alcohol or medication today?

THE DEFENDANT: No, sir.

THE COURT: So do you know what's going on here today?

THE DEFENDANT: Exactly.

THE COURT: What do you think's going on?

THE DEFENDANT: Being tried for a gun, being tried for carrying a weapon.

THE COURT: That's right. And do you

understand that that charge carries a maximum penalty of three years in jail, and therefore, that you're entitled to a right to a jury? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And your lawyer tells me you want to give up your right to have this case tried by a jury, and instead, have me decide the case; is that right?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that if you have a jury trial, that would be a panel of 12 people chosen at random from the community, do you understand that?

THE DEFENDANT: Yes, sir.

* * * * *

THE COURT: Nobody promised you anything to get you to waive your right to a jury and have your trial in front of me, did they?

THE DEFENDANT: No.

THE COURT: Did anybody threaten you in any way to get you to do that?

THE DEFENDANT: No, they didn't. Not that I know of, no.

THE COURT: You're doing it because you think it's the best thing for you to do under the circumstances, after talking to your lawyer; is that right?

THE DEFENDANT: Just the best thing for me to do, and hopefully, Constitutionally, I have --Constitutionally, hope everything goes right, this whole situation.

THE COURT: But as you're standing here now, you're giving up your right to have a jury, and instead, have me decide this case, because you think it's the best thing for you to do in light of whatever the evidence is and whatever you discussed with your lawyer. Is that fair?

THE DEFENDANT: Yes, sir.

THE COURT: I am going to accept this waiver and find that the defendant has knowingly, intelligently and voluntarily waived his right to a trial by jury and elected to proceed before me sitting by myself in a bench trial.

You can have a seat, Sir.

THE DEFENDANT: Thank you.

THE COURT: And the sole count in this case is that the defendant carried a handgun; is that right?

MR. CHURCH: That is correct, Your Honor.

MR. HOPEWELL: It's just the one count, Your Honor, one-count indictment.

THE COURT: Anybody need an opening statement? Can we just get to the evidence?

MR. HOPEWELL: I think it would help. It's a slightly unusual case, Your Honor.

THE COURT: He wants it. Do you want it?

MR. CHURCH: Your Honor, the defendant is charged with carrying a handgun, and the State has to prove the date and time he was, in fact, carrying a handgun.

THE COURT: Mr. Hopewell.

MR. HOPEWELL: Your Honor, what we have here is a case where the facts are pretty straightforward and, for the most part, not in dispute. We had gone through a suppression hearing in front of Judge McKee. He ruled that the evidence is admissible.

Your Honor, in addition, what we believe the evidence will show, the factual evidence will show, is my client had purchased this handgun lawfully in a store, paid for it in cash and had a paid receipt. He then went through the Maryland program, the program conducted by the Maryland Academy, and received a receipt for that for having completed the instructions [sic]; had the membership card that we will put in evidence, and he was on the date in

question, he had come from work. He had left the handgun that he knew he purchased – this happened less than a month after he purchased it – he left it at his girlfriend's house.

He stopped at her house and picked it up and was on his way home, and he was at a bus stop, and we have a photograph – it got a little confused at the suppression hearing. I have a photograph of the intersection, the intersection of the Baltimore-Washington Parkway and Landover Road. He was at a bus stop. He was on a bus to go there, and there was a bag that had been discarded at the bus stop.

When he got off, he was searching, looking through it, and there was no identification in it. The police officer stopped him, and in a series of a couple of honest statements, the officers learned that my client had had a handgun. When he saw the police coming near him, he hid it in the bushes, and he acknowledged to him it was in there, and they retrieved a handgun.

This is not a set of facts where there was any other criminal conduct. Just the fact the gentleman had purchased the handgun less than a month earlier.

What had been done earlier in this case was we filed a Motion to Dismiss the indictment based on the Heller case that was handed down by the Supreme Court back in June that said that the right to possess and carry a handgun has risen to a Constitutional right under Heller, and that was the Motion to Dismiss --

THE COURT: I guess Heller always said it was a Constitutional right.

Go ahead.

MR. HOPEWELL: There's no question after Heller – although I will say this: Having been a significant amount of time researching Heller to prepare the memoranda that Judge McKee considered, there's a lot of language in that ruling that's going to have to be addressed by appellate courts along the way.

Your Honor, we sincerely believe in this instance that Mr. Williams, under Heller, which is now the operative law, that he had the right to carry that handgun in a lawful manner, which he was doing.

Now, he did not at the time that this happened, he had not applied for a license to carry the handgun, which is a separate statute in Maryland. Our contention is that that was not a necessary step, and given the fact at the time the police officer stopped him, he was doing nothing wrong; that he should be found to be innocent of the charge.

We also challenge the Constitutionality of the statute named in the indictment on the same grounds. And so we expect this to be a brief trial, and we expect the facts will be pretty straightforward, not to differ all that much from what I just gave the Court, but essentially, my client believes, and I believe, having researched the law, and so advised him, that Heller applies, and that I believe he will be found not guilty of committing a crime by having a handgun in his possession on this date in question.

THE COURT: So let me make sure I understand. Basically, he admits he had it. Do you admit the evidence is going to show he had it in his possession; that he had hidden it in the bushes at that

bus stop, but admitted that to the police officers he had it?

MR. HOPEWELL: That's correct, Your Honor.

THE COURT: And your defense is Heller?

MR. HOPEWELL: Correct.

THE COURT: Can we stipulate to that then? Can you stipulate to those sets of facts which – then I can determine one way or the other whether under Heller, the statute is Constitutional or not?

MR. HOPEWELL: Your Honor, we probably could.

(A short recess was taken.)

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(In open court:)

MR. HOPEWELL: I believe we worked out a stipulation.

THE COURT: Let me just finish reading this and then I'll deal with that.

(Pause in the proceedings.)

THE COURT: Okay. I've read the Heller Opinion. I've read your Motion to Dismiss and your supplement to that, but you all have reached a

stipulation as to the facts; is that right?

MR. CHURCH: Yes, Your Honor.

THE COURT: What is that?

MR. CHURCH: The facts, as stipulated, had the matter gone to trial, the facts would show that on October 1, 2007, at approximately 5:00 p.m., Officer Molake with the Prince George's County Police Department, was in the area of the Baltimore-Washington Parkway and Landover Road in Prince George's County, Maryland, and as he was driving in that area, he observed the defendant going through a backpack near a wooded area nearby the cross area, and at one time, as the officer turned his cruiser around, he observed the defendant turn and place something in the brush area as if he was hiding something.

Officer Molake made contact with the defendant, who he would identify as the gentleman seated to the left with the green shirt and asked him what he was doing. The defendant told him he was going through the backpack to see what was in it. He then asked the defendant what he went and hid in the bushes, and the defendant hesitated and then stated "my gun".

Officer Molake then recovered an Austria [sic] made, black Glock handgun with 15 rounds in the magazine in the brush area where he saw the defendant go.

The defendant gave a written statement after being given his Miranda rights by Officer Santa Cruz, admitting to possession of the gun and placing the gun

in the bush area where the officer subsequently located it.

That handgun test-fired as positive.

The defense would have provided evidence by way of documents that would show that the defendant purchased the handgun in Realco at 6108 Marlboro Pike in Forestville, Maryland, on August 15 of 2007, and that would be shown through Exhibit 1. Paid the balance that was due on that handgun on September 14, 2007, which will be shown in Exhibit 2; that the defense would have provided evidence that the defendant completed the Maryland State Police application and affidavit to purchase a regulated firearm application, which is a total of three pages, on August 15, 2007, which will be shown in Exhibit 3. He received the certificate of completion, which is shown in Exhibits 4 and 5, on August 15, 2007.

The defendant would have testified that he purchased the handgun for self-defense, and that on the date of this arrest, he had just left the handgun at his girlfriend's house, place of residence. When he got off work, he went to her residence and picked up that handgun and was enroute to his home when the arrest occurred behind the bus stop.

The defendant was again given Miranda rights and gave a written statement that will be shown in State's Exhibits Number 3 and 4.

MR. HOPEWELL: Your Honor, we had the Clerk kindly mark Exhibits 1 through 5 that indicate the receipts of purchase and the paperwork associated with the Maryland training program.

THE COURT: So State's Exhibits 3 and 4 are admitted, and Defendant's Exhibits 1 through 5.

MR. CHURCH: No objection.

THE COURT: Those are admitted. Okay. And those are all the facts; is that correct?

MR. CHURCH: That's correct, Your Honor.

MR. HOPEWELL: That's correct, Your Honor.

THE COURT: Then I find, based on the stipulation of facts, that the defendant did violate the provisions of Criminal Law Article 4-203(a)11 [sic] by carrying a handgun on the first day of October, 2007.

Does anybody want to argue anything else? I've read the defendant's Motion to Dismiss, the supplement. I read Judge –

MR. HOPEWELL: Your Honor, there is one other argument, and this is not in the papers, and I thought of it last night and I haven't told Mr. Church about it.

THE COURT: Hold on just a second. I read your motion and your supplement. I read Judge McKee's Opinion and Order, and I've read the Heller case. So is there any other argument the State wants to make?

MR. CHURCH: Your Honor, if I could reserve, and I'll respond to Mr. –

THE COURT: Go ahead.

MR. HOPEWELL: Another issue that just struck me over the weekend when I was thinking about this, we both believe that, as an alternative argument, that the regulatory scheme in Maryland, there are maybe some administrative purposes to it that are enforceable, but they should not be enforced by virtue of a criminal charge. In other words, in this case, my client went through – the only thing he didn't do was file the application to possess a handgun wherever – to carry it lawfully.

THE COURT: And obtain one. More importantly, filing it wouldn't protect him either. He needs to have received the permit or obtain the permit from the State.

MR. HOPEWELL: Correct, Your Honor. We believe that, applying the appropriate standard of scrutiny from the Constitutional prospective [sic] that the notion that the failure to do that constitutes a crime, we believe would violate the due process clause in the Constitution in the sense that the State has civil remedies available to them if someone were to have a handgun in their possession that wasn't registered. But that need not be a criminal offense, and obviously, if someone commits a crime with a handgun, which did not happen here, those laws would be fully enforceable, as they are now.

We would just add the notion – the argument that the statutory scheme within Maryland we believe was also unconstitutional to the extent that it imposes a criminal sanction on Mr. Williams for merely

carrying a handgun that he is lawfully entitled, we contend he's lawfully allowed to carry under the Heller case.

THE COURT: Well, answer my question then: How is it any different if the state chooses to do it by a criminal statute as opposed to a civil statute, or as opposed to doing both? If it's Constitutional, it's Constitutional, and if it's not, it's not, regardless of the way in which the state seeks to restrict the right to carry a handgun.

MR. HOPEWELL: Well, the State, for example, might have a compelling State interest in having handguns registered, but that doesn't warrant the State having --that's sufficiently compelling argument to justify imposing criminal sanctions, as in this case.

For example, in this case, if Mr. Williams did not have to go register the handgun, then he would have been innocent of any crime in this set of circumstances, and if he were able to register to have the handgun and there were no criminal sanctions imposed on that process, then we would argue that that would vitiate any criminal sanctions for merely possessing a handgun that's otherwise not involved in criminal behavior.

THE COURT: Sure. If there was no statute that made it a crime, it wouldn't be a crime. But my question is: How is it any more or less Constitutional because it's a criminal sanction as opposed to a civil sanction?

MR. HOPEWELL: This is something that I have

not researched that thoroughly, but I did find some data from the brief I submitted on the Heller case. One of the issues that was argued to the Supreme Court that, apparently, the Supreme Court chose not to decide in Heller was exactly what standards should be the standard for reviewing Heller; should it be strict scrutiny, should it be compelling interest, or what standard should be applied to determine whether or not statutes that are enacted by the states that in some way impair the right to, the now Constitutional right to keep and bear and carry firearms; that there's that issue that's somehow to be decided in the appellate courts. We're just contending at this point that, for the record, that the state could accomplish its goals regarding handguns that are lawfully entitled to be possessed by not imposing criminal sanctions, and in this case, the net effect of that would be that Mr. Williams, who was not committing any crimes at all when he had the handgun, except for accepting the fact that he did have it, that would mean a criminal sanction could not be imposed on his behavior.

THE COURT: Okay. Then, of course, you adopt all your written arguments?

MR. HOPEWELL: We do, Your Honor.

THE COURT: Mr. Church.

MR. CHURCH: Briefly, to address the Constitutionality one way or the other, civil, criminal, regardless, and the fact of the matter is, defendant does have an opportunity to exercise due process by applying for the permit, which he did not do, and then

of course, obtaining that permit. There is a purpose behind the criminal sanctions.

Judge McKee adopted a lot – cited a lot of the arguments I made originally initially, so as far as the Heller case and the Constitutionality of Maryland's handgun law carrying in the open, in light of Heller, Heller limited itself only in the issue of the possession outright of a handgun in the home. In fact, their great concern was the requirement that the handgun in the home be rendered inoperable under the D.C. law that was issued, and their concern was that gun is not usable for self-defense in the home at the time of [sic] Maryland law has no such restriction. In fact, Maryland law takes about a page and a half of the criminal law article in discussing different exceptions to the handgun law, one of which is the lawful possession of a handgun, a firearm within the home.

They take that even a step further, however. They take it to possession of a firearm on property owned or leased by them or property, businesses owned by them, and in fact, even if a supervisor or an owner of property allows a person by letter to carry a handgun on their property, they allow that.

So Maryland's law is far from the restrictions that the D.C. law has, but Heller dealt solely with – and the Court even said it dealt solely with the issue of whether possession of a firearm in a home is a limitation or prohibition completely of possession of a firearm in a home and then rendered inoperable, violating the Second Amendment, and it did. The Court also went on, however, to say that nothing in their Opinion should be taken – and this is the quote from pages 54 and 55 – to cast doubt on long-standing prohibitions on the possession of firearms by felons or

the mentally ill or laws forbidding the carrying of firearms in places such as schools and Government buildings or laws imposing conditions and qualifications on the commercial sale of arms. And seeing the danger of listing things, the Court went on to footnote and continued by saying: We identify these presumptively lawful regulatory measures only as examples. Our list does not purport to be exhaustive.

Maryland's handgun law does not run afoul of Heller. It lists several exceptions, one of which is ownership in the home, and that is all Heller dealt with.

Therefore, under Heller, Maryland's handgun law is Constitutional.

MR. HOPEWELL: We would reiterate the arguments we submitted before.

THE COURT: With regard to the last argument that Mr. Hopewell made about the statutory scheme being unconstitutional because it imposed criminal versus a civil sanction, and that talks about the interest-balancing and the like and establishment of some particular level of scrutiny for evaluating Second Amendment restrictions, the majority in Heller specifically rejected such an approach, and such an approach, despite the arguments of Justice Pryor [sic] in his dissent, the majority said that we know of no other enumerated Constitutional rights whose core protection has been subjected to a free-standing interest-balancing approach.

And then it says: Like the First Amendment, there's no interest-balancing approach, and the Second Amendment is no different. These two provisions are,

according to the majority, the very product of an interest-balancing by the people, and I don't think, in light of that, that there's any appropriate balancing test that needs to take place here.

It seems to me if the statute by restricting the right to carry arms, keep and bear arms is unconstitutional, it's unconstitutional, whether they chose to impose a criminal or a civil sanction, and similarly, if it's Constitutional, the choice that the States in how to enforce the scheme is Constitutional regardless of whether they impose criminal, civil sanctions or both, quite frankly.

So I'm going to deny the motion on that ground, which gets us to the – obviously, the underlying issue here is whether this statute comports with the Supreme Court's recent finding in Heller, and I do find that it does. In this case, the Heller case was specifically restricted to the District of Columbia's ban on handgun possession in the home, as well as the prohibition against rendering any lawful firearm in the home operational for the purpose of immediate self-defense.

That was the restriction that was – the interpreter [sic] of the challenge that was placed on the case by the Court of Appeals not challenged by the citizen, Mr. Heller, and his colleagues, and it is ultimately what the Supreme Court was dealing with.

The Supreme Court acknowledges that there may be some restrictions, and they specifically say, even upon finding that the District's ban violated the Second Amendment, they said that assuming that Heller is not disqualified from the exercise of Second Amendment rights, such as being mentally defective or a convicted felon and the like, the District must permit

him to register his handgun and must issue him a license to carry it in his home, and Mr. Heller did not challenge the right to require that there be registration and a license to carry.

Further, the Heller Court did specifically say – and I'm now quoting from page 2816 – that would be 128, Supreme Court at 2816: Like most rights, the rights secured by the Second Amendment is not unlimited, and they cite to Blackstone and commentators and courts that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. They do talk about some regulations.

Mr. Hopewell in his motion said that that is the sum total. In the footnote to that section, they say: We identify these presumptively lawful regulatory measures only as examples. Our list does not purport to be exhaustive.

And in this case, what is prohibited, what the defendant has been found to have violated is the wearing, carrying or transporting a handgun, whether concealed or open, on or about the person. And were that applied to the home, that would be, obviously, a violation of Heller. That is not the case here.

In this case, in Maryland, the statute specifically does provide for the wearing, carrying or transporting of a handgun by a person to whom a permit to wear, carry or transport the handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article, and that, in turn, provides an entire scheme for the application for a permit, criminal history records check, and qualifications for the permit, which permits the second [sic] to issue a permit within the reasonable time to a person who the

second [sic] finds is an adult, has not been convicted of certain crimes, is not an alcoholic or drug addict, and based on an investigation, has not exhibited a propensity for violence or instability, and has good and substantial reason to wear, carry or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against an apprehended danger.

Of course, that is what Heller talks about is the right of somebody to have a handgun in their home for the purpose of defense. Certainly, that is the case. The person, by statute, specifically can have one on real estate that they own or lease or where they reside without anything further.

That's not the case in this – that's not the situation in this case. In this case, the defendant had the handgun in a public place, and even that would be permitted had he obtained a permit, which he acknowledges he did not.

And frankly, the restrictions on obtaining one of those permits seem to be precisely the ones that are approved by the Supreme Court in Heller.

So for those reasons, I don't find that the statute on its face, nor as applied to Mr. Williams, violates the Supreme Court decision in Heller or the Second Amendment in general.

So for those reasons, I do find the defendant guilty of the sole count of the indictment. That would be carrying a handgun on or about his person, in violation of Section 4-203(a)11 [sic] of the Criminal Law Article.

THE COURT: Mr. Williams, do you want to stand up? Is there anything you want to tell me before I sentence you?

THE DEFENDANT: Basically, I mean, honestly, I was just going home, and that was basically it in terms of defense. I was minding my business. I was getting off work. I had a nice day. I stopped to see my girlfriend and had my property to pick up that was property, and was going straight home from there, and I guess after the turn of events, the altercation occurred, and here I am now. I mean, I'm sorry for the situation, and I'm sorry that I had to go through this basically to myself. That's it.

THE COURT: All right, Mr. Williams. It's this Court's view that we have a serious problem in our community with young men carrying handguns, and quite frankly, I don't believe that it's a problem with just people carrying them for their defense, but I think that there's a sense among the young men of this community that carrying guns are cool or the "in" thing to do, and the problem is, they present a huge danger, and it's been my experience that the carrying of guns in the community presents an extreme danger not only to the other people in the community, but to the people carrying the guns, and frankly, I'm familiar with a couple of instances in which people have been shot and killed by law enforcement, because they were observed carrying weapons, and the police officers felt threatened by it.

So it's a dangerous thing for you and for everybody around you. It's fortunate that in this instance, the police officers found it hidden under the

bush in the woods there where they saw you hide it and didn't suddenly come upon it, observe it in your waistband or some other place, because the outcome may have been much different.

In any event, it is a problem, and it's a problem that needs to be dealt with, and I am going to sentence you to three years' incarceration. I'm going to suspend all but one year of that sentence.

Is there any time served, a day? You were locked up for a day?

THE DEFENDANT: Yes, sir.

THE COURT: I'm going to give you credit for one day time served.

Upon your release, I'm going to place you on three years of supervised probation, with all the regular conditions that are imposed on a probation.

Now, in light of the issues, and as I told your lawyer, I'm going to allow you to remain on bond pending appeal. So you can continue to stay out under the conditions that were previously imposed, stay out of trouble. Bond still remains in effect.

When this appeal is over, if you win, obviously, the conviction will be vacated. If you lose, you'll have to turn yourself in to begin serving your sentence.

Okay?

THE DEFENDANT: Yes, sir.

THE COURT: In light of the fact that you are

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going to file an appeal, I'm going to require the clerk to hold all the exhibits.

MR. HOPEWELL: Your Honor, we completed the PSI.

(The proceedings were concluded.)

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

STATE OF MARYLAND *
v. * CT800537X
CHARLES FRANCIS *
WILLIAMS, JR. *
* * * * *

ORDER OF COURT

Upon consideration of the Defendant's Motion to Dismiss the Indictment, it is the 23rd Day of September 2008, in the Circuit Court for Prince George's County, Maryland,

ORDERED, that the Defendant's Motion to Dismiss the Indictment be, and is, hereby **DENIED** for the reasons set forth in the Memorandum and Opinion of Court dated September 23, 2008.

/s/
Graydon S. McKee, III, Judge

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Copies sent to:

Jonathan Church, Esquire
Office of the State's Attorney

James B. Hopewell, Esquire
6309 Baltimore Avenue
Suite 201
Riverdale, Maryland 20737

/s/ _____ 9/23/08
Paralegal Date

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

STATE OF MARYLAND *
v. * CT800537X
CHARLES FRANCIS *
WILLIAMS, JR. *
* * * * * * * * *

MEMORANDUM AND OPINION OF COURT

Upon consideration of the Defendant's Motions to Dismiss the Indictment, opposition to the Motion to Dismiss, Memorandums of Law and hearing having been held, it is this 23rd Day of September 2008, in the Circuit Court for Prince George's County, Maryland that the court issues the following Memorandum and Opinion of Court;

The Defendant came before the court on a Motions Hearing August 25, 2008 at which time the Defendant argued a Motion to Dismiss the Indictment. According to the Statement of Facts the arresting officer exited the Baltimore-Washington Parkway and after seeing the defendant enter a wooded area and appear to be hiding something, the officer then went into the wooded area. The arresting officer stated that

he found a handgun, and the defendant admitted it was his¹. The Defendant was subsequently indicted on one count of Carry Handgun in violation of Md. Crim. Law Code Ann. §4-203(a)(1)(i), which provides:

"Prohibited (1) Except as provided in subsection (b) of this section, a person may not:

(i) wear, carry or transport a handgun, whether concealed or open, on or about the person"

Md. Crim. Law Code Ann. §4-203 (b) enumerates exceptions to this general rule:

"(b) Exceptions. - This section does not prohibit:

(1) the wearing, carrying, or transporting of a handgun by a person who is on active assignment engaged in law enforcement, is authorized at the time and under the circumstances to wear, carry, or transport the handgun as part of the person's official equipment, and is:

(i) a law enforcement official of the United States, the State, or a county or city of the State;

(ii) a member of the armed forces of the United States or of the National Guard on duty or traveling to or from duty;

¹The defendant's Motion to Suppress Statement was denied at the Motions Hearing.

(iii) a law enforcement official of another state or subdivision of another state temporarily in this State on official business;

(iv) a correctional officer or warden of a correctional facility in the State;

(v) a sheriff or full-time assistant or deputy sheriff of the State; or

(vi) a temporary or part-time sheriff's deputy;

(2) the wearing, carrying, or transporting of a handgun by a person to whom a permit to wear, carry, or transport the handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article;

(3) the carrying of a handgun on the person or in a vehicle while the person is transporting the handgun to or from the place of legal purchase or sale, or to or from a bona fide repair shop, or between bona fide residences of the person, or between the bona fide residence and place of business of the person, if the business is operated and owned substantially by the person if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(4) the wearing, carrying, or transporting by a person of a handgun used in connection with an organized military activity, a target shoot, formal or informal target practice, sport shooting event, hunting, a Department of Natural Resources-sponsored firearms and hunter safety class, trapping, or a dog obedience

training class or show, while the person is engaged in, on the way to, or returning from that activity if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(5) the moving by a bona fide gun collector of part or all of the collector's gun collection from place to place for public or private exhibition if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(6) the wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or leases or where the person resides or within the confines of a business establishment that the person owns or leases;

(7) the wearing, carrying, or transporting of a handgun by a supervisory employee:

(i) in the course of employment;

(ii) within the confines of the business establishment in which the supervisory employee is employed; and

(iii) when so authorized by the owner or manager of the business establishment;

or

(8) the carrying or transporting of a signal pistol or other visual distress signal approved by the United States Coast Guard in a vessel on the waterways of the State or, if the signal pistol or other visual distress signal is unloaded and carried in an enclosed case, in a vehicle."

The Defendant has based the Motion to Dismiss the Indictment on the recent ruling of the United States Supreme Court in *District of Columbia v. Heller*, 554 US__ (U.S. June 26, 2008)(No.07-290). According to the Defendant, the U.S. Supreme Court held in *Heller* that individuals have the right to keep and bear arms for their personal defense under the second amendment. The Defendant argues the provisions of Md. Crim. Law Code Ann. §4-203 are unconstitutionally restrictive of the right of the defendant to own and keep a handgun and violate the holding in *Heller*. The Defendant further asserts that at the time Md. Crim. Law Code Ann. §4-203 was drafted the legislature was without knowledge that persons have a constitutional right to bear and keep arms for personal safety and the only authority for these restrictions results from legislative action. According to the defense, *Heller* sets forth specific regulations a State can impose and any restrictions outside of these enumerations are unconstitutional. If the Maryland statute is revised to comply with *Heller* there would be no basis for charging the defendant and the indictment should be dismissed.

The sole issue before the U.S. Supreme Court in *Heller* was whether the District of Columbia's ban on "the possession of usable handguns in the home" violated the second amendment of the U.S. Constitution. *Heller* at 1. The Court held that the second amendment confers an individual right to keep and bear arms, however the Court further stated this right is subject to limitations just as the first amendment right to free speech is. *Id.* at 22, 54.

The U.S. Supreme Court stated second amendment rights cannot be infringed by Congress, however the States are free to restrict or protect these rights through their police powers². *Heller* at 47. The court also states the opinion in *Heller* does not provide an "exhaustive historical analysis" of the full scope of the second amendment and that nothing in the opinion is meant to "cast doubt on the long standing prohibitions on the possession of fire arms 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" relying on the historical tradition of prohibiting the carrying of "dangerous and unusual weapons" as support for their statement. *Heller* at 54-55. It is these four enumerations the Defendant argues are the only restrictions the States can place on the right to bear and keep arms to be in compliance with the holding of *Heller*.

While the Court does specifically identify these four restrictions, they also state in a footnote that the list of "presumptively" constitutional regulations provided was not meant to be exhaustive. *Heller* at 55, n. 26. The Court does express that States have tools to combat the problem of handgun violence, including the use of measures to regulate handguns³ and, quoting *Cruikshank*, "the people must look for their protection against any violation by their fellow-citizens of the

²See *U.S. v. Cruikshank*, 92 U.S. 542 (1875).

³Citing *Heller* at 54-55.

rights it recognizes' to the States' police power." *Heller* at 47-48. In addition, the Court did not address the constitutionality of licensing by the States and did not fully analyze the issue of limitations and restrictions a state can place on the right to keep and bear arms because those issues were not before the Court. *Id.* at 55, 59, 63-64.

In *Heller* the Court held that an absolute ban on operable firearms in the home would fail to pass any constitutional test and that handguns are covered by the second amendment because the "American people have considered the handgun to be the quintessential self-defense weapon ... and a complete prohibition of their use is invalid." *Heller* at 57. While invalidating a complete ban the Court expresses that the States can regulate handguns under their police powers. The Court enumerated certain exceptions to the right to bear and keep arms but noted the list was "presumptively" constitutional and not meant to be exhaustive.

This court finds that the four enumerated exceptions set out in the opinion by the U.S. Supreme Court in *Heller* were not intended by that court to be the only restrictions to the right to bear and keep arms that States are permitted to confer on individuals. The District of Columbia law was a complete ban on the right to possess operable handguns in the home and therefore unconstitutional. In contrast, Maryland's statute⁴ permits an individual to wear, carry or transport a firearm on real estate or leased by the

⁴Md. Crim. Law Code Ann. § 4-203.

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person or where the person resides and within a business the person owns or leases.

The Circuit Court in determining the validity of a statute presumes the legislature acted constitutionally. In addition, this court finds that the exceptions set forth by the Maryland Legislature in Md. Crim. Law Code Ann. §4-203 complies with the holding in *Heller*.

/s/
Graydon S. McKee, III, Judge

Copies sent to:

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Suite 201
Riverdale, Maryland 20737

/s/ 9/23/08
Paralegal Date

**UNITED STATES CONSTITUTION,
AMENDMENT II**

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.

**UNITED STATES CONSTITUTION,
AMENDMENT XIV, §1**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

MD. CODE ANN., CRIM. LAW, § 4-203

§ 4-203. Wearing, carrying, or transporting handgun

Prohibited

(a)(1) Except as provided in subsection (b) of this section, a person may not:

- (i) wear, carry, or transport a handgun, whether concealed or open, on or about the person;
- (ii) wear, carry, or knowingly transport a handgun,

whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State;

(iii) violate item (i) or (ii) of this paragraph while on public school property in the State; or

(iv) violate item (i) or (ii) of this paragraph with the deliberate purpose of injuring or killing another person.

(2) There is a rebuttable presumption that a person who transports a handgun under paragraph (1)(ii) of this subsection transports the handgun knowingly.

Exceptions

(b) This section does not prohibit:

(1) the wearing, carrying, or transporting of a handgun by a person who is on active assignment engaged in law enforcement, is authorized at the time and under the circumstances to wear, carry, or transport the handgun as part of the person's official equipment, and is:

(i) a law enforcement official of the United States, the State, or a county or city of the State;

(ii) a member of the armed forces of the United States or of the National Guard on duty or traveling to or from duty;

(iii) a law enforcement official of another state or subdivision of another state temporarily in this State on official business;

(iv) a correctional officer or warden of a correctional facility in the State;

(v) a sheriff or full-time assistant or deputy sheriff of

the State; or

(vi) a temporary or part-time sheriff's deputy;

(2) the wearing, carrying, or transporting of a handgun by a person to whom a permit to wear, carry, or transport the handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article;

(3) the carrying of a handgun on the person or in a vehicle while the person is transporting the handgun to or from the place of legal purchase or sale, or to or from a bona fide repair shop, or between bona fide residences of the person, or between the bona fide residence and place of business of the person, if the business is operated and owned substantially by the person if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(4) the wearing, carrying, or transporting by a person of a handgun used in connection with an organized military activity, a target shoot, formal or informal target practice, sport shooting event, hunting, a Department of Natural Resources-sponsored firearms and hunter safety class, trapping, or a dog obedience training class or show, while the person is engaged in, on the way to, or returning from that activity if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(5) the moving by a bona fide gun collector of part or all of the collector's gun collection from place to place for public or private exhibition if each handgun is unloaded and carried in an enclosed case or an enclosed holster;

(6) the wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or leases or where the person resides or within the confines of a business establishment that the person owns or leases;

(7) the wearing, carrying, or transporting of a handgun by a supervisory employee:

(i) in the course of employment;

(ii) within the confines of the business establishment in which the supervisory employee is employed; and

(iii) when so authorized by the owner or manager of the business establishment; or

(8) the carrying or transporting of a signal pistol or other visual distress signal approved by the United States Coast Guard in a vessel on the waterways of the State or, if the signal pistol or other visual distress signal is unloaded and carried in an enclosed case, in a vehicle.

Penalty

(c)(1) A person who violates this section is guilty of a misdemeanor and on conviction is subject to the penalties provided in this subsection.

(2) If the person has not previously been convicted under this section, § 4- 204 of this subtitle, or § 4-101 or § 4-102 of this title:

(i) except as provided in item (ii) of this paragraph, the person is subject to imprisonment for not less than 30 days and not exceeding 3 years or a fine of not less than \$250 and not exceeding \$2,500 or both; or

(ii) if the person violates subsection (a)(1)(iii) of this section, the person shall be sentenced to imprisonment for not less than 90 days.

(3)(i) If the person has previously been convicted once under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title:

1. except as provided in item 2 of this subparagraph, the person is subject to imprisonment for not less than 1 year and not exceeding 10 years; or
2. if the person violates subsection (a)(1)(iii) of this section, the person is subject to imprisonment for not less than 3 years and not exceeding 10 years.

(ii) The court may not impose less than the applicable minimum sentence provided under subparagraph (i) of this paragraph.

(4)(i) If the person has previously been convicted more than once under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title, or of any combination of these crimes:

1. except as provided in item (2) of this subparagraph, the person is subject to imprisonment for not less than 3 years and not exceeding 10 years; or
2. A. if the person violates subsection (a)(1)(iii) of this section, the person is subject to imprisonment for not less than 5 years and not exceeding 10 years; or
B. if the person violates subsection (a)(1)(iv) of this section, the person is subject to imprisonment for not less than 5 years and not exceeding 10 years.

(ii) The court may not impose less than the applicable minimum sentence provided under subparagraph (i) of this paragraph.

MD. CODE ANN., PUB. SAFETY, §§ 5-301-5-314

§ 5-301. Definitions

In general

(a) In this subtitle the following words have the meanings indicated.

Board

(b) "Board" means the Handgun Permit Review Board.

Handgun

(c) "Handgun" has the meaning stated in § 4-201 of the Criminal Law Article.

Permit

(d) "Permit" means a permit issued by the Secretary to carry, wear, or transport a handgun.

Secretary

(e) "Secretary" means the Secretary of State Police or the Secretary's designee.

§ 5-302. Handgun Permit Review Board

Established

(a) There is a Handgun Permit Review Board in the

Department of Public Safety and Correctional Services.

Membership; appointment

(b) The Board consists of five members appointed from the public by the Governor with the advice and consent of the Senate.

Tenure; vacancies

- (c)(1) The term of a member is 3 years.
- (2) The terms of the members are staggered as required by the terms provided for members of the Board on October 1, 2003.
- (3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.
- (4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.
- (5) A member of the Board is eligible for reappointment.

Compensation

- (d) A member of the Board is entitled to:
 - (1) compensation in accordance with the State budget for each day that the member actually is engaged in the discharge of the member's official duties; and
 - (2) reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§ 5-303. Permit required

A person shall have a permit issued under this subtitle before the person carries, wears, or transports a handgun.

§ 5-304. Application for permit

Oath

(a) An application for a permit shall be made under oath.

Fees--In general

(b)(1) Subject to subsections (c) and (d) of this section, the Secretary may charge a nonrefundable fee payable when an application is filed for a permit.

(2) The fee may not exceed:

- (i) \$75 for an initial application;
- (ii) \$50 for a renewal or subsequent application; and
- (iii) \$10 for a duplicate or modified permit.

(3) The fees under this subsection are in addition to the fees authorized under § 5-305 of this subtitle.

Fees--Reduction

(c) The Secretary may reduce the fee under subsection (b) of this section accordingly for a permit that is granted for one day only and at one place only.

Fees--Exceptions

(d) The Secretary may not charge a fee under subsection (b) of this section to:

- (1) a State, county, or municipal public safety employee who is required to carry, wear, or transport a handgun as a condition of governmental employment; or
- (2) a retired law enforcement officer of the State or a county or municipal corporation of the State.

Fees--Method of payment

(e) The applicant may pay a fee under this section by a personal check, business check, certified check, or money order.

§ 5-305. Criminal history records check

"Central Repository" defined

(a) In this section, "Central Repository" means the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services.

Application required

(b) The Secretary shall apply to the Central Repository for a State and national criminal history records check for each applicant for a permit.

Contents of application

(c) As part of the application for a criminal history records check, the Secretary shall submit to the Central Repository:

(1) two complete sets of the applicant's legible fingerprints taken on forms approved by the Director of the Central Repository and the Director of the Federal Bureau of Investigation;

(2) the fee authorized under § 10-221(b)(7) of the Criminal Procedure Article for access to Maryland criminal history records; and

(3) the mandatory processing fee required by the Federal Bureau of Investigation for a national criminal history records check.

Information forwarded to applicant and State Police

(d) In accordance with §§ 10-201 through 10-234 of the Criminal Procedure Article, the Central Repository shall forward to the applicant and the Secretary a printed statement of the applicant's criminal history record information.

Restrictions on information

(e) Information obtained from the Central Repository under this section:

(1) is confidential and may not be disseminated; and

(2) shall be used only for the licensing purpose authorized by this section.

Subject may contest contents

(f) The subject of a criminal history records check under this section may contest the contents of the

printed statement issued by the Central Repository as provided in § 10-223 of the Criminal Procedure Article.

§ 5-306. Qualifications for permit

In general

(a) Subject to subsection (b) of this section, the Secretary shall issue a permit within a reasonable time to a person who the Secretary finds:

(1) is an adult;

(2)(i) has not been convicted of a felony or of a misdemeanor for which a sentence of imprisonment for more than 1 year has been imposed; or

(ii) if convicted of a crime described in item (i) of this item, has been pardoned or has been granted relief under 18 U.S.C. § 925(c);

(3) has not been convicted of a crime involving the possession, use, or distribution of a controlled dangerous substance;

(4) is not presently an alcoholic, addict, or habitual user of a controlled dangerous substance unless the habitual use of the controlled dangerous substance is under legitimate medical direction; and

(5) based on an investigation:

(i) has not exhibited a propensity for violence or instability that may reasonably render the person's possession of a handgun a danger to the person or to another; and

(ii) has good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger.

Applicant under age of 30 years

(b) An applicant under the age of 30 years is qualified only if the Secretary finds that the applicant has not been:

(1) committed to a detention, training, or correctional institution for juveniles for longer than 1 year after an adjudication of delinquency by a juvenile court; or

(2) adjudicated delinquent by a juvenile court for:

(i) an act that would be a crime of violence if committed by an adult;

(ii) an act that would be a felony in this State if committed by an adult; or

(iii) an act that would be a misdemeanor in this State that carries a statutory penalty of more than 2 years if committed by an adult.

§ 5-307. Scope of permit

In general

(a) A permit is valid for each handgun legally in the possession of the person to whom the permit is issued.

Limitations

(b) The Secretary may limit the geographic area, circumstances, or times of the day, week, month, or year in which a permit is effective.

§ 5-308. Possession of permit required

A person to whom a permit is issued or renewed shall carry the permit in the person's possession whenever the person carries, wears, or transports a handgun.

§ 5-309. Term and renewal of permit

Term of permit

(a) A permit expires on the last day of the holder's birth month following 2 years after the date the permit is issued.

Renewal of permit

(b) A permit may be renewed for successive periods of 3 years each if, at the time of an application for renewal, the applicant possesses the qualifications for the issuance of a permit and pays the renewal fee stated in this subtitle.

§ 5-310. Revocations

In general

(a) The Secretary may revoke a permit on a finding that the holder:

- (1) does not meet the qualifications described in § 5-306 of this subtitle; or
- (2) violated § 5-308 of this subtitle.

Return of permit

(b) A holder of a permit that is revoked by the Secretary shall return the permit to the Secretary within 10 days after receipt of written notice of the revocation.

§ 5-311. Informal review of Secretary's action

Request for informal review

(a) A person who is denied a permit or renewal of a permit or whose permit is revoked or limited may request the Secretary to conduct an informal review by filing a written request within 10 days after receipt of written notice of the Secretary's initial action.

Personal interview

(b) An informal review:

- (1) may include a personal interview of the person who requested the informal review; and
- (2) is not subject to Title 10, Subtitle 2 of the State Government Article.

Action by Secretary

(c) In an informal review, the Secretary shall sustain, reverse, or modify the initial action taken and notify the person who requested the informal review of the decision in writing within 30 days after receipt of the request for informal review.

Request for review by Board

(d) A person need not file a request for an informal review under this section before requesting review under § 5-312 of this subtitle.

§ 5-312. Action by Board

Request for review authorized

(a)(1) A person who is denied a permit or renewal of a permit or whose permit is revoked or limited may request the Board to review the decision of the Secretary by filing a written request with the Board within 10 days after receipt of written notice of the Secretary's final action.

(2) A person whose application for a permit or renewal of a permit is not acted on by the Secretary within 90 days after submitting the application to the Secretary may request a hearing before the Board by filing a written request with the Board.

Form of review

(b) Within 90 days after receiving a request to review a decision of the Secretary, the Board shall:

- (1) review the record developed by the Secretary; or
- (2) conduct a hearing.

Evidence

(c) The Board may receive and consider additional evidence submitted by a party in conducting a review of the decision of the Secretary.

Decision by Board

(d)(1) Based on the Board's consideration of the record and any additional evidence, the Board shall sustain, reverse, or modify the decision of the Secretary.

(2) If the action by the Board results in the denial of a permit or renewal of a permit or the revocation or limitation of a permit, the Board shall submit in writing to the applicant or the holder of the permit the reasons for the action taken by the Board.

Administrative procedures

(e)(1) Any hearing and any subsequent proceedings of judicial review shall be conducted in accordance with Title 10, Subtitle 2 of the State Government Article.

(2) Notwithstanding paragraph (1) of this subsection, a court may not order the issuance or renewal of a permit or alter a limitation on a permit pending a final determination of the proceeding.

§ 5-313. Failure to return revoked permit

Prohibited

(a) A person may not fail to return a revoked permit.

Penalty

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine of not less than \$100 or exceeding \$1,000 or both.

§ 5-314. Carrying, wearing, or transporting handgun while under influence of alcohol or drugs

Prohibited

(a) A person who holds a permit may not wear, carry, or transport a handgun while the person is under the influence of alcohol or drugs.

Penalty

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.

MD. CODE REGS. 29.03.01.03

Title 29 DEPARTMENT OF STATE POLICE

Subtitle 03 Weapons Regulations

Chapter 01 Regulated Firearms

.03 Application to Purchase or Transfer Regulated Firearms.

A. The Secretary shall adopt an application to purchase, rent, or transfer a regulated firearm to be used at the time of purchase or transfer. The application shall contain the following information:

- (1) The applicant's declaration of, or exemption from, completing a certified firearms safety course;
- (2) The applicant's name, address, driver's license or photographic identification soundex number, Social Security number, occupation, place and date of birth, height, weight, race, sex, eye and hair color, and home and work telephone numbers;
- (3) The dealer identification number, dealer name, address, telephone number, and salesperson name;
- (4) The seller's driver's license number, name, address, social security number, date of birth, race, sex, and home and work telephone numbers;
- (5) The make, caliber, type, finish, barrel length, model, serial number, and country of origin for each regulated firearm to be purchased;
- (6) If the firearm is new or used;
- (7) If a handgun:
 - (a) Whether it was manufactured after December 31, 2002;
 - (b) If it was manufactured after December 31, 2002,

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whether it is equipped with an approved integrated mechanical safety device;

(c) Whether it was manufactured after January 1, 1985;

(d) If it was manufactured after January 1, 1985, whether it is listed on the handgun roster; and

(e) If new as defined in Regulation .01 of this chapter, a dealer shall state:

(i) Date of manufacture;

(ii) Name of manufacturer;

(iii) Federal firearms license number; and

(iv) If the shell casing was included in the box with the handgun; and

(8) In order to verify the accuracy of the applicant's representations, the applicant's written authorization to the Department of Health and Mental Hygiene, or any other similar agency or department of another state, to disclose to the Department of State Police information as to whether the applicant:

(a) Suffers from a mental disorder and has a history of violent behavior against anyone; or

(b) Has been confined for more than 30 consecutive days to a mental health facility.

B. The applicant shall sign the application and certify under penalty of perjury that the:

(1) Information in the application is true and correct;

(2) Applicant is not prohibited by law from purchasing or possessing a regulated firearm; and

(3) Purchase is not a straw purchase.

C. Application Form for Multiple Purchase or Transfer.

(1) The Secretary shall adopt an application form for the multiple purchase or transfer of regulated

firearms.

(2) Except as set forth in §C(5) of this regulation, the application for a multiple purchase or transfer shall be attached to the application to purchase or transfer and forwarded to the Secretary by a dealer or a designated law enforcement agency.

(3) The application shall contain the following information:

(a) The applicant's name, address, telephone number, driver's license or photographic identification soundex number, place and date of birth, height, weight, race, and sex;

(b) The number and type of regulated firearms to be purchased;

(c) A brief statement as to the purpose for the multiple purchase of the regulated firearms, which must be one of the following:

(i) A collection or collector series,

(ii) A bulk purchase from an estate sale,

(iii) A dealer discount (maximum purchase of 2 regulated firearms), or

(iv) A similar purpose.

(4) The application shall be signed by the applicant as prescribed in §B of this regulation, and be witnessed by a dealer or designated law enforcement agency.

(5) An individual who has been designated by the Secretary as a collector pursuant to Regulation .04D—F of this chapter is not required to complete and submit an application form for multiple purchase or transfer of regulated firearms.

D. The application form shall be typewritten or printed legibly. If the completed form is illegible, it will be disapproved and returned to the dealer who submitted

it. An application may be resubmitted.

E. The application form shall contain the following statutorily required statement:

"Any false information supplied or statement made in this application is a crime which is punishable by imprisonment for a period of not more than 3 years or a fine of not more than \$5,000, or both".

F. The application form may not be folded and shall be forwarded to the Firearms Registration Section in an envelope of sufficient size to prevent the folding of the application form.

G. The Secretary shall adopt a continuation form which shall be used for the purchase of more than one regulated firearm at the same time. The driver's license or photographic identification soundex number, the date of sale, and regulated firearms information shall match the information provided on the application forms cited in §§A and B of this regulation.

H. If an applicant wishes to purchase additional regulated firearms at a later date, the necessary application forms shall be properly completed and submitted.

I. These applications shall be used for dealer and secondary sales, rentals, or transfers of regulated firearms within this State.

MD. CODE REGS. 29.03.02.01 *et seq.*

Title 29 DEPARTMENT OF STATE POLICE
Subtitle 03 Weapons Regulations
Chapter 02 Handgun Permit Unit

.01 Introduction.

Chapter 13 of the Acts of 1972, Codified as Public Safety Article, Title 5, Subtitle 3, Annotated Code of Maryland (Handgun Permit Law), provided for the Secretary of State Police to issue handgun permits under specified conditions. The following regulations have been adopted pursuant to this legislation.

.02 Application for Permit.

A. Applications for a handgun permit may be obtained at Department of State Police Headquarters, Pikesville, Maryland, and State Police installations throughout the State.

B. All questions on the application shall be answered. Answers should be printed or typed and shall be signed by the applicant under oath before a notary public. Two photographs, 1-1/2 inches x 1-1/2 inches, or a computer disk with one or two photographs, showing head and shoulders, no hat, and light background, taken within 30 days preceding the filing of the application, shall be affixed to the application. The applicant should report to a State Police installation to be fingerprinted. The photographs, fingerprint cards, and a check or money order payable to the Department of State Police for an amount which includes the \$75 application fee plus the cost associated with

performing the fingerprint card criminal history background check, shall be forwarded to the Maryland State Police Licensing Division, 7751 Washington Boulevard, Jessup, Maryland 20794-9307.

.03 Investigation of Applicant.

Upon receipt of the application and the supporting material described, the Secretary shall cause an investigation of the applicant to be conducted for the purpose of determining whether the applicant possesses the qualifications for a permit as required by Public Safety Article, §5-306, Annotated Code of Maryland.

.04 Criteria for Issuance of Permit.

In making a determination as to whether a permit will be issued to the applicant, the following areas will be a part of every investigation and will be considered in determining whether a permit will be issued:

- A. Verification of the information supplied by the applicant in the application;
- B. Occupation or profession of the applicant;
- C. Geographical area of residence and employment of the applicant;
- D. Criminal record of applicant, including any juvenile record for an applicant younger than 30 years old, as specifically outlined in Public Safety Article, §5-306(b), Annotated Code of Maryland;
- E. Medical history of applicant as it may pertain to the applicant's fitness to wear, carry, or transport a handgun;

F. Psychiatric or psychological background of applicant as it may pertain to the applicant's fitness to wear, carry, or transport a handgun;

G. Reasons given by the applicant as to whether those reasons are good and substantial;

H. Age of applicant;

I. Applicant's use of intoxicating beverages and drugs;

J. Information received from personal references and other persons interviewed;

K. Information received from business or employment references as may be necessary in the discretion of the investigator;

L. Whether the applicant has any alternative available to him for protection other than a handgun permit;

M. Whether the applicant falls within those classes of individuals who do not need permits as outlined in the Handgun Permit Law;

N. The applicant's propensity for violence or instability which could reasonably render his wearing, carrying, or transporting of a handgun a danger to himself or other persons he may come in contact with;

O. Whether the permit is necessary as a reasonable precaution for the applicant against apprehended danger.

.05 False or Omitted Information.

If the investigation discloses that the applicant has furnished false information on the application for the permit, or has omitted significant information on the application for the permit, or has caused false

information to be given in connection with the investigation, the Secretary may consider that activity as exhibiting a propensity for instability which may reasonably make the applicant's possession of a handgun a danger to himself or other law abiding persons. Any knowing material omission or false statement, of itself, may be considered grounds for denial of a permit.

.06 Notification of Issuance or Denial of Permit.

Upon the completion of the investigation, the Secretary of State Police shall notify the applicant by letter either that the permit has been issued or that it has been denied.

.07 Renewal of Permits.

An application for renewal of a handgun permit shall contain the same information and type of photographs as for an original application, one fingerprint card, and a check or money order for an amount which includes payment for the \$50 renewal fee and the cost associated with performing the fingerprint card criminal history background check. To ensure adequate time for processing, an application for renewal of a handgun permit should be filed at least 90 days before the expiration date of the handgun permit which is to be renewed. However, if the application for renewal is not filed before the expiration date of the current permit, the application for renewal, when filed, shall be treated as an original application.

.08 Replacement or Modification of Permit.

A. If a handgun permit or renewal permit is lost or stolen, notification of the loss or theft shall be made in writing to the Secretary, Department of State Police, Pikesville, Maryland within 10 days upon discovery of the loss or theft. A fee in the amount of \$10 payable to Department of State Police, by check or money order, shall accompany the notification to cover the cost of the issuance of a replacement permit. An affidavit, under oath before a notary public, stating that the permit has been lost or stolen, shall accompany the notification and fee.

B. If a handgun permit must be modified, at the request of the permit holder, the request shall be made in writing to the Secretary. A fee in the amount of \$10 payable to Department of State Police by check or money order and one photograph 1-1/2 inches by 1-1/2 inches, showing head and shoulders, no hat, and light background, taken within 30 days preceding the request, shall accompany the request.

C. If a handgun permit must be modified as a result of action by the Handgun Permit Review Board, a fee may not be charged.

.09 Change of Address or Employment.

Whenever a person to whom a handgun permit or renewal permit has been issued changes the person's address or employment, the Secretary of State Police, Pikesville, Maryland, shall be notified in writing within 10 days of the change. Failure to afford this notification may be the basis for revocation of the permit by the Secretary.

.10 Revocation of Permit.

The Secretary may revoke a handgun permit if the holder of a permit has exhibited a propensity for violence or instability which may reasonably render his possession of a handgun a danger to himself or other law abiding persons. In making this determination, the Secretary may consider:

- A. Any indiscriminate display of a handgun or behavior by the holder of a permit which would result in undue apprehension of an existing danger by the general public or any individual or group while the holder is wearing, carrying, or transporting a handgun;
- B. Any false statements or false representation made in any application for a permit or renewal to carry a handgun;
- C. Causing any false information to be given in connection with an investigation for a handgun permit;
- D. Any alteration or forgery of a permit or part of a permit;
- E. The selling, renting, or otherwise transferring of a handgun permit to another;
- F. Any violation of the permit restrictions imposed by the Secretary as provided in Public Safety Article, §5-309, Annotated Code of Maryland;
- G. Failure to notify the Secretary of any change in address or employment, or any acts, representations, or omissions that exhibit a propensity for violence or instability which may reasonably make the possession of a handgun a danger to the holder himself or any other law abiding person. However, the Secretary is

not limited to these acts, representations, or omissions in making this determination.

.11 Qualified Handgun Instructors.

A. For the purpose of implementing Article 27, §36E(i), Annotated Code of Maryland, the Secretary of State Police may approve persons who are eligible to be qualified handgun instructors. An applicant shall:

- (1) Complete a qualified handgun instructor application form which is available from the Licensing Division, Department of State Police;
- (2) Provide evidence of formal training received in the care, safety, and use of handguns, including a minimum qualification score of 80 percent on a practical police course;
- (3) Provide evidence of a minimum of 1 year of experience in instruction in the care, safety, and use of handguns.

B. Qualified Handgun Instructor Card.

- (1) Upon receipt of the required evidence, the Secretary, upon approval, shall issue the applicant a qualified handgun instructor card.
- (2) This card is evidence that the holder is authorized to conduct handgun training courses, as outlined in Regulation .12 of this chapter. These courses are a prerequisite for obtaining and renewing handgun permits as provided in Article 27, §36E(i), Annotated Code of Maryland.
- (3) This card remains the property of the Department of State Police and shall be returned upon request.

C. The Secretary may revoke any qualified handgun instructor's card for cause. Sufficient cause may include, but not be limited to, evidence of:

- (1) Unsafe range practices;
- (2) Falsification of permit applicant qualification scores;
- (3) Significant deviation from the prescribed training course;
- (4) Conviction for a criminal offense which would preclude the holder from purchasing or possessing firearms; or
- (5) Conviction for a criminal offense involving the possession, use, or distribution of any controlled dangerous substance.

D. Upon notification of revocation, the qualified handgun instructors card shall be returned to the Licensing Division, Department of State Police within 10 days.

E. A person aggrieved by the revocation may request, in writing, a hearing before the Secretary to appeal his actions. The hearing shall be requested within 10 days of notification of revocation.

.12 Training and Qualification in the Use of Handguns.

The Secretary, before issuing a handgun permit in accordance with Article 27, §36E(i), Annotated Code of Maryland, shall require an applicant for the permit to be approved by a "qualified handgun instructor". This approval shall certify and constitute evidence that the

applicant is trained and qualified in the use of handguns, and shall be made upon completion by the applicant of a course conducted by the qualified handgun instructor. This course shall include the following as minimum curriculum:

A. Lecture on Safety. A minimum of 1 hour discussing and demonstrating safety with the handgun on the range, off the range, at home, transporting, and while on duty. Safety shall be given priority over all other aspects of training and should be integrated into every phase of the training.

B. Training Regarding Legal Responsibilities. A minimum of 1 hour instruction on when a person has the legal right to use the weapons.

C. A minimum of 6 hours of training in nomenclature, maintenance, sight alignment, position shooting, dry-firing and range practice and qualification shall be given. Participants shall use either a .38 caliber revolver with a minimum 2-inch and a maximum 6-inch barrel or a 9 MM pistol. A qualifying score of 70 percent shall be fired on a practical police course. An applicant may not be required to fire in excess of 25 yards during qualification.

D. In the discretion of the Secretary, applicants who were formerly law enforcement officers, military personnel trained in the use of handguns, or members of accredited gun clubs who are approved by a qualified instructor may be issued permits without completing the course described above.

.13 Qualifications Upon Permit Renewal.

Individuals holding handgun permits issued pursuant to the provisions of Article 27, §36E(i), Annotated Code of Maryland, whether or not the training required in Regulation .12 of this chapter was required before the issuance of the permit, shall be required to attend 4 hours of training and fire a qualifying score of 70 percent to be eligible for renewal of their handgun permit. This training will be administered by a certified handgun instructor and consist of a refresher course on safety and legal responsibilities in addition to firing a qualifying score on a practical police course.

B. Individuals who shall attend training and fire a qualifying score to be eligible for renewal of a handgun permit are:

- (1) Holder of a special police commission;
- (2) Uniformed security guard;
- (3) Special railway police;
- (4) Watchman;
- (5) Private detective;
- (6) Employee of a private detective; and
- (7) Guard in the employ of a:
 - (a) Bank,
 - (b) Savings and loan association,
 - (c) Building and loan association,
 - (d) Express agency, or
 - (e) Armored car agency.

.14 Qualification Forms.

Appropriate qualification forms will be furnished by and may be obtained from the Department of State Police, Licensing Division, 7751 Washington Boulevard, Jessup, Maryland 20794-9307.