

Circuit Court for Montgomery County
Case No. C-15-CR-22-000359

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1196

September Term, 2022

CHRIS BOURDEAU

v.

STATE OF MARYLAND

Wells, C.J.,
Leahy,
Wright, Alexander, Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: October 10, 2023

*This is an unreported opinion. It may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Chris Bourdeau was charged with one count of transporting a handgun in a vehicle. After the United States Supreme Court issued its opinion in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. ___, 142 S. Ct. 2111 (2022), where the Court held that the “good and substantial” requirement for obtaining a permit to carry a concealed handgun in New York was unconstitutional, Bourdeau moved to dismiss the sole charge against him. The Circuit Court for Montgomery County denied the motion. Bourdeau subsequently entered a not-guilty plea based on an agreed statement of facts and the court found him guilty. Bourdeau appealed and asks whether the court properly applied *Bruen* to deny his motion to dismiss. We conclude that the circuit court did and affirm its judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On January 31, 2022, the Montgomery County Police stopped an allegedly stolen vehicle in which Bourdeau was a passenger. After officers confirmed the vehicle was in fact stolen, Bourdeau was arrested. While in custody and still on the scene of the stop, Bourdeau told the police his registered handgun was in the vehicle. Officers checked with the Maryland State Police Gun Center,¹ which showed that Bourdeau owned the handgun but did not have a Maryland permit to carry it. Bourdeau was arrested and, ultimately, on

¹ From the Maryland State Police website: “In accordance with the Firearms Safety Act of 2013, the Maryland State Police have developed a web/mobile accessible Licensing Portal where citizens may submit, and Maryland firearms dealers have the ability to access, firearms applications. The Portal is a web ‘dashboard’ that provides citizens the ability to submit and track multiple application types.” <https://mdsp.maryland.gov/Organization/Pages/CriminalInvestigationBureau/LicensingDivision/Portal.aspx>.

April 11, 2022, the State charged him with transporting the handgun in a vehicle under Maryland Code, Criminal Law (“CR”) Article § 4-203(a)(b).

Two months later, on June 23, 2022, the United States Supreme Court issued its opinion in *Bruen*, holding that a New York law requiring those seeking gun permits to have a “good and substantial” reason for obtaining them was unconstitutional. In so doing, the Court all but outright held that analogous provisions in state statutes, such as Maryland’s, were also unconstitutional. As a result, we held that Maryland’s analogous licensing requirement under Maryland Code, Public Safety Article (“PS”) § 5-306(a)(6)(ii) was also unconstitutional in *In the Matter of William Rounds*, 255 Md. App. 205 (2022).

Before the circuit court, Bourdeau moved to dismiss his charges based on a Second Amendment due process argument. Specifically, Bourdeau contended that, under his interpretation of *Bruen*, his Second and Fourteenth Amendment rights were violated when he was arrested and charged with transporting a handgun without a permit. In his view, the U.S. Supreme Court’s holdings in *Bruen*, *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010) mean statutes that prohibited carrying or transporting firearms outside the home, such as Maryland’s gun permit licensing scheme in Maryland Code, PS § 5-306(a)(6)(ii), were unconstitutional. Therefore, he argued he did not need a permit to transport the handgun in his case, as he had a Second Amendment right to do so anyway. After a hearing, the Circuit Court for Montgomery County denied Bourdeau’s motion to dismiss. Bourdeau then moved forward

by entering not-guilty plea based on an agreed statement of facts. The court found him guilty. Bourdeau immediately appealed his conviction to this Court.

DISCUSSION

The Circuit Court Was Correct to Deny Bourdeau’s Motion to Dismiss Based on Standing

On appeal, Bourdeau argues the circuit court erred in denying his motion to dismiss the sole charge against him. He does not dispute his failure to possess a permit to carry or otherwise transport a handgun in a vehicle in violation of CR § 4-203(a)(b). Instead, he argues that Section 4-203 is unconstitutional because it violates his Second Amendment right to keep and bear arms in self-defense. Bourdeau asserts that *Bruen* supports his contention.

A. Standard of Review

“The standard of review of the grant or denial of a motion to dismiss is whether the trial court was legally correct.” *Fooks v. State*, 255 Md. App. 75, 88 (2022) (quoting *Myers v. State*, 248 Md. App. 422, 430–31 (2020)), cert. granted, 482 Md. 141 (2022). “The proper scope of a constitutional right, and its application to a particular set of facts, are issues of law.” *Pizza di Joey, LLC v. Mayor of Balt.*, 470 Md. 308, 339 (2020). “Therefore, we review such questions *de novo*.” *Id.* (citing *Schisler v. State*, 394 Md. 519, 535 (2006)).

B. Parties’ Contentions

Bourdeau argues the circuit court erred by not dismissing the charges against him because at the time of his arrest he was lawfully exercising his Second Amendment right to possess a firearm. He specifically claims Maryland law did not provide him a

constitutional way to obtain a permit because *Bruen* made Maryland’s “good and substantial” licensure requirement unconstitutional. Therefore, in Bourdeau’s view, Maryland had no constitutional permitting scheme at the time of his arrest. “[L]egally speaking, Maryland had no permitting scheme at all.” He further argues that he had a constitutional right to possess and transport a handgun in a vehicle because (1) there was no constitutional way for him to obtain a permit, and (2) *Bruen* expressly overruled *Williams v. State*, 417 Md. 479 (2011), by holding that the Second Amendment extends outside of the home. In his brief, Bourdeau explained, “the [S]tate cannot criminally punish an individual for exercising a constitutional right without first providing a legal way to exercise said right.”

As far as standing to challenge CR § 4-203 is concerned, Bourdeau argues that, because he was convicted under CR § 4-203, he clearly has standing. He is emphatic that he is not challenging PS § 5-306.

The State contends Bourdeau’s arguments are meritless. The State argues *Bruen*’s holding applies only to the licensing process in effect at the time that it was decided and does not extend to laws criminalizing the unlicensed transportation of handguns, such as CR § 4-203. According to the State, Bourdeau unreasonably expands *Bruen*’s holding because he asserts PS § 5-306’s permit scheme unconstitutionally interferes with his Second Amendment right, therefore, the unconstitutionality extends to CR§ 4-203.

Additionally, the State argues Bourdeau does not have standing to challenge the permitting requirements of PS § 5-306, which provides an affirmative defense to CR§ 4-

203(a), because Bourdeau never attempted to obtain a permit and does not provide any evidence suggesting he would have been ineligible had he applied.

C. Analysis

At the time he was convicted, CR § 4-203(a) stated:²

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.

CR § 4-203(b) provides exceptions to the prohibitions found in subsection (a) including, “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 § 5-307 of the Public Safety article,³ by a person to whom a permit to wear, carry, or transport the handgun has been issued under Title 5, subsection 3 of the Public Safety Article.”

PS § 5-306, in effect at the time of Bourdeau’s arrest and conviction, listed the qualifications for obtaining a handgun permit.

- (a) Subject to subsection (c) 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

² In the wake of *Bruen*, the legislature amended CR § 4-203 during the 2023 legislative session.

³ PS § 5-307(a) states “[a] permit is valid for each handgun legally in the possession of the person to whom the permit is issued.”

- (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;
- (5) except as provided in subsection (b) of this section, has successfully completed prior to application and each renewal, a firearms training course approved by the Secretary that includes:
 - (i) 1. for an initial application, a minimum of 16 hours of instruction by a qualified handgun instructor; or
 - 2. for a renewal application, 8 hours of instruction by a qualified handgun instructor;
 - (ii) classroom instruction on:
 - 1. State firearm law;
 - 2. home firearm safety; and
 - 3. handgun mechanisms and operation; and
 - (iii) a firearms qualification component that demonstrates the applicant’s proficiency and use of the firearm; and
- (6) 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.

We said in *Rounds* that, consistent with *Bruen*, PS § 5-306(6)(ii)’s requirement that permit applicants demonstrate a “good and substantial reason” for needing a handgun was unconstitutional. *Rounds*, 255 Md. App at 212–13.⁴

Nowhere does CR § 4-203 proscribe who can obtain a permit to transport a firearm. And, certainly, CR § 4-203 contains none of the offending language about permit holders

⁴ The during the 2023 session, the General Assembly enacted a new licensing scheme under PS § 5-306.

having to have a “good and substantial reason” to obtain one. The permitting reference in CR § 4-203(b) serves to announce a defense to prosecution. There is no bright line language indicating a connection between CR § 4-203 and PS § 5-306 for us to accept Bourdeau’s contention that PS § 5-306(6)(ii)’s unconstitutionality extends to CR § 4-203. For this reason, Bourdeau’s claim that he has standing is meritless, despite his vehement assertions otherwise, because his challenge really is to the permitting scheme in PS § 5-306.

In denying his motion to dismiss the circuit court noted as much saying,

“Well, I don’t believe that *Bruen* invalidates the entirety of Maryland’s handgun regulatory scheme, or this statute in particular; or prevents the prosecution of the defendant for the two charges that are alleged; and I also believe that he lacks standing because there’s no evidence that he ever applied for a permit or was refused a permit. So, the motion is denied.”

The trial court was correct. A person who has not applied for a handgun carry permit does not have standing to challenge the constitutionality of the permitting scheme itself.

Williams v. State, 417 Md. 479 (2011), is instructive. There, Williams also sought to overturn his conviction for unlawful possession of a handgun under CR § 4-203, arguing that Maryland’s permitting scheme was unconstitutional. *Id.* at 480. Williams allegedly purchased the gun at a store for “self-defense,” but he did not apply for a permit to carry the gun in Maryland. *Id.* at 482. This Court ruled that because Williams failed to apply for a permit to wear, carry, or transport a handgun, he lacked standing to challenge the permitting scheme. *Id.* Like Williams, Bourdeau provided no evidence that he made any attempts to apply for a permit or that he would have received one but for the “good and substantial reason requirement.”

Bourdeau seeks to invalidate *Williams* arguing that the Supreme Court of Maryland (at the time called the Court of Appeals) read *Heller* and *McDonald* “narrowly” to invalidate statutes that prohibited possession of firearms inside the home. He adds that our Supreme Court stated, “if the [U.S.] Supreme Court, in this dictum meant its holding [in *McDonald* and by extension *Heller*] to extend beyond home possession, it will need to say so more plainly.” *Williams*, 417 Md. at 496. In his opening brief, Bourdeau contends that *Bruen* was the U.S. Supreme Court’s outright expansion of *McDonald* and *Heller* to mean that the Second Amendment applies to wearing or transporting a firearm anywhere.

Well now, we have all been told by the holding in *Bruen* that the right to bear arms does extend beyond the home. The [U. S.] Supreme Court has now said in plain terms that the Second amendment extends outside the home. *Williams* has now been expressly overruled.

Bruen is not nearly as expansive as Bourdeau contends. *Bruen* addresses only the constitutionality of the “proper cause” provision in New York’s handgun licensing statute. “New York’s proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising the right to keep and bear arms.” *Bruen*, 142 S. Ct. at 2156. Moreover, to provide context, the U.S. Supreme Court mentions forty-three “shall issue” state licensure programs and does not express any doubt as to their constitutionality; the Court cautioned explicitly that “nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States’ ‘shall-issue’ licensing regimes, . . . which often require applicants to undergo a [criminal] background check” and “are designed to ensure only that those bearing arms in the jurisdiction are, in fact, ‘law-abiding, responsible citizens.’” *Id.* at 2138 n.9 (*quoting*

Heller, 554 U.S. at 635). Rather, the Court narrowed its focus only to the additional “special need” requirement. *Id.* at 2122. Thus, *Bruen* did not prohibit states from regulating conceal carry licensing, and Bourdeau admits as much in his opening brief and his appellate counsel conceded the same point at oral argument.

However, we need not explore CR § 4-203’s constitutionality in greater detail because Bourdeau lacks standing to challenge the provision. With respect to Bourdeau’s argument that he should not have to subject himself to an “unconstitutional licensure,” in addition to *Williams*’ reasoning, we also agree with the Second Circuit’s rationale in *United States v. Decastro* that, “as a general matter, to establish standing to challenge an allegedly unconstitutional policy, a plaintiff must submit to the challenged policy[.]” 682 F.3d 160, 164 (2d Cir. 2012) (quoting *Jackson–Bey v. Hanslmaier*, 115 F.3d 1091, 1096 (2d Cir. 1997)). However, under *Decastro*, Bourdeau could still have standing even without applying for a permit if he “makes a substantial showing that submitting an application would have been futile[.]” *Id.* To demonstrate futility, *Decastro* explained a defendant must show he would be “statutorily ineligible for a license.” *Id.* (citing *Bach v. Pataki*, 408 F.3d 75, 82–83 (2d Cir.2005)). Again, there is no evidence suggesting Bourdeau would not have received a handgun permit but for “the good and substantial reason” requirement. To the contrary, Bourdeau admits that he purchased the handgun legally and licensing authorities in Washington D.C. and Utah issued him valid carry permits. Because Bourdeau was able to legally obtain a handgun carry permit in other jurisdictions, it likely would not have been futile for him to also apply for a similar permit in Maryland.

For these reasons, we conclude that Bourdeau lacks standing to challenge the permitting scheme that would have afforded him a defense to his conviction for transporting a handgun under CR § 4-203.

**THE JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY IS AFFIRMED.
APPELLANT TO PAY THE COSTS.**