Circuit Court for Montgomery County
Case No. 138914C

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1496

September Term, 2022

EVA MARIE GARDNER

v.

STATE OF MARYLAND

Friedman,
Kehoe, S.,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: April 18, 2025

A jury sitting in the Circuit Court for Montgomery County found Eva Marie Gardner, appellant, guilty of carrying a loaded handgun on or about her person and knowingly transporting a loaded handgun in a vehicle. The court sentenced her to a suspended sentence and a term of probation.

Appellant is a Virginia resident who held a valid permit to carry a handgun in the Commonwealth, but who did not have a Maryland permit. She has noted this appeal, contending that the circuit court erred in denying her motion to dismiss the charges on constitutional grounds. We shall affirm.

BACKGROUND

The underlying facts in this case are not in dispute. On Saturday, January 16, 2021, appellant was traveling from her home in Virginia to her mother's home in Pennsylvania. She had packed a "bag of clothes" and her dog. She was carrying $3,000 in cash, which she had just received from a customer. Her holstered Beretta Px4 Storm semiautomatic pistol was in the locked glove compartment of her Jeep Wrangler. As appellant was driving northbound on I-270 near the interchange with Maryland Route 28 in Rockville, in Montgomery County, a Ford Crown Victoria, driven by Kahlid Binafif, struck her vehicle twice. According to appellant, Mr. Binafif's vehicle "looked like a police car[.]" Appellant believed that Mr. Binafif intentionally struck her vehicle and forced her off the road.

Both drivers came to a stop in the right-hand lane of the roadway. Fearing for her safety, appellant called 911 to report the incident. She informed the dispatcher that she had a gun. Mr. Binafif exited his vehicle and approached appellant's car, presumably to exchange insurance information. Appellant unlocked the glove compartment of her

vehicle, removed her holstered handgun, "showed" it to him, and told him in "a very loud voice" to return to his car. Mr. Binafif "hesitated" and then complied with her demand.

Maryland State Trooper Joseph Ekani responded to the scene in a marked Ford Explorer. The 911 dispatcher had alerted Trooper Ekani that "one of the parties was displaying a handgun." When he arrived at the accident scene, both vehicles, "a green Jeep Wrangler" and "a black and white color Ford Crown Victoria[,]" were parked in the far-right lane of I-270.

A woman later identified as appellant was sitting in the Jeep, and a male driver later identified as Mr. Binafif was sitting in the Crown Victoria. Trooper Ekani asked both drivers "[t]o move out of the roadway." According to Trooper Ekani, both vehicles had only "[v]ery light damage[,]" and, had it not been for the weapon involved, the drivers would have "just exchange[d] information and drive[n] away."

Appellant did not move her vehicle when first asked. Trooper Ekani "saw her reach over . . . to the passenger's side of her vehicle." He "had to go back to her and tell her to move her vehicle to the right shoulder." While doing so, Trooper Ekani observed a handgun, in its holster, "on the right passenger's seat," with "the red on her gun . . . showing," indicating to him that "the gun [was] in a fire position" which meant that appellant had "disengage[d] the safety."[1]

[1] Appellant later claimed that, initially, she was unsure whether Trooper Ekani was a law enforcement officer, a fact she verified only by speaking with the 911 dispatcher. In addition, appellant believed that Trooper Ekani ordered her to pull over to a position that was unsafe because it placed Mr. Binafif's car between appellant's Jeep and Trooper Ekani's Explorer.

Trooper Ekani "immediately retrieved her gun." He put the safety lever on, extracted the magazine, and further made sure to remove the cartridge that was in the firing chamber, thereby rendering the firearm safe.

Appellant explained to the trooper that the other vehicle had struck her twice, as if he were "trying to do a police maneuver or something," "trying to push [her] off the road." According to appellant, after both drivers had come to a stop, Mr. Binafif approached her vehicle on foot, as if he were "going to grab ahold of [her] door." At that time, appellant's "doors were still locked." She brandished her firearm because she believed that Mr. Binafif had "hit [her] on purpose." Appellant claimed that she did not, at that time, disengage the safety, and she told Mr. Binafif to "get back in [his] car." Appellant further explained to Trooper Ekani that she disengaged the safety when the trooper first approached her vehicle and asked her to move off the roadway "[b]ecause [she] didn't know what was going on" and "was terrified."

Trooper Ekani gave appellant *Miranda* warnings, and she stated to the trooper, "I'll talk to you, until I get a lawyer." Appellant once again acknowledged that she brandished her weapon but claimed that she did not point it at Mr. Binafif when he approached her vehicle. "At some point" during the investigation, appellant "showed" Trooper Ekani her Virginia handgun carry permit, which he verified. At no time did she ever show him a Maryland permit, and in fact she did not have one.

In September 2021, a criminal information was filed in the Circuit Court for Montgomery County, charging appellant with carrying a loaded handgun on or about her

person, knowingly transporting a loaded handgun in a vehicle, and assault in the second degree against Mr. Binafif.

Appellant filed *pro se* a veritable blizzard of motions, most of which bore only the most tenuous relation to this case. In addition, she filed a motion to dismiss,[2] claiming, among other things, that "no crime has been committed" because the Second Amendment to the Constitution of the United States guarantees the right to self-defense. Following a hearing, the court denied her motion.

Thereafter, the Public Defender entered an appearance on appellant's behalf and filed a supplemental motion to dismiss, asserting that the intervening decision by the Supreme Court of the United States in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), rendered subsequently to the circuit court's ruling, "requires a different result." According to appellant, *Bruen* invalidated Maryland's "good and substantial reason" standard for obtaining a handgun carry permit; that she would not have qualified for a Maryland permit at the time of the alleged offenses solely because of that standard; that, at that same time, she nonetheless possessed a valid carry permit issued by the Commonwealth of Virginia and that "Maryland should give full faith and credit to" that permit; and that, under the Second and Fourteenth Amendments, she lawfully possessed a handgun at the time of the alleged offenses.

The State, in opposition, asserted that "[t]he [*Bruen*] Court did not indicate that states such as Maryland have to give reciprocity to other states." Because appellant has

[2] Appellant's *pro se* motion invoked Maryland Rule 2-322, which applies to civil, not criminal, cases.

never applied for a Maryland handgun carry permit, she, according to the State, "was not permitted to carry a firearm in her vehicle or on her person" at the time of the alleged offenses, and it urged the court to deny her motion to dismiss.

On August 23, 2022, the circuit court held a hearing on the supplemental motion to dismiss. The court denied that motion, declaring:

> [T]he Court's reading of Bruen seems to be very clear that in these types of statutes that are prevalent in the vast majority of the country, have not been deemed by the Supreme Court to be presumptively unconstitutional [as] in this case. And so, for those reasons the Court will deny, in the alternative that I was not permitted to find a contempt and waive,[3] I deny the motion to dismiss for those grounds, also for the fact that I have not [seen] any law that says full faith and credit must be given in this situation to the statute in Virginia, which clearly does not exactly mirror. They have very similar requirements, but they certainly don't mirror each other, and the full faith and credit clause talks about public (unintelligible) records and judicial proceedings. I'm not certain it would cover this situation. So, for those reasons it's denied.

A one-day jury trial was held the following day. Prior to jury selection, the State nol prossed the second-degree assault charge. After the jury was selected and sworn, two witnesses testified: Trooper Ekani testified for the State, and appellant testified on her own

[3] The circuit court also denied the supplemental motion on the ground of waiver because defense counsel had been on leave during a two-week period shortly before the scheduled motions hearing and had been unable to respond to the court's requests for proposed voir dire, proposed jury instructions, proposed verdict sheet, and all motions *in limine*. Because the court, in the alternative, denied the supplemental motion on its merits, we need not address the alternative ground for denial.

behalf.[4] After a brief deliberation,[5] the jury found appellant guilty of carrying a loaded handgun on or about her person, and knowingly transporting a loaded handgun in a vehicle. The court imposed a thirty-day suspended sentence for carrying a loaded handgun on or about her person, merged the other handgun offense for sentencing purposes, and imposed six months of unsupervised probation.

This timely appealed followed. Thereafter, we granted appellant's unopposed motion for a stay pending the decision of the Supreme Court of Maryland in *Fooks v. State*, No. 24, Sept. Term, 2022. On August 15, 2023, the Supreme Court of Maryland issued a stay in *Fooks*, pending a decision by the Supreme Court of United States in *United States v. Rahimi*, No. 22-915, October Term, 2023. *Fooks v. State*, 485 Md. 52 (2023) (per curiam).[6] Then, on October 27, 2023, we granted appellant's unopposed motion to lift the stay in this case.

[4] In addition to their testimony, which we have summarized previously, excerpts from the dash cam video from Trooper Ekani's vehicle, depicting parts of the conversation between the trooper and appellant, were broadcast to the jury.

[5] The transcript does not indicate how long the jury deliberated, but it must have been for only a brief time. The transcript indicates that the jury retired for deliberation, followed by a single line indicating, "Recess," followed by the court going back on the record to take the verdict. There were no jury notes.

[6] The Supreme Court of the United States subsequently rendered a decision in *Rahimi*, sharply curtailing the seemingly expansive language in *Bruen* concerning the historical test and upholding 18 U.S.C. § 922(g)(8), which bans possession of a firearm by a person subject to a domestic violence restraining order. *United States v. Rahimi*, 602 U.S. 680, 690 (2024). According to the Court, historical precedents concerning firearms regulations from the founding era "were not meant to suggest a law trapped in amber." *Id.* at 691. Rather, a proposed law or regulation "must comport with the principles underlying (continued…)

DISCUSSION

Parties' Contentions

Appellant contends that Criminal Law Article, § 4-203 of the Maryland Code, the statute she was found guilty of violating, is unconstitutional because it does not "contain an exception that would permit an out-of-state resident with a valid out-of-state carrying license to travel through Maryland on their way from their home state to another state." According to appellant, the "plain text" of the Second Amendment "covered [her] conduct of carrying a handgun in public for self-defense[,]" and therefore, the State bore the burden, under *Bruen*, to show that Section 4-203 "'is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.'" (Quoting *Bruen*, 597 U.S. at 19.) "The State," she avers, "has not met that burden."

Appellant further contends that "at the time of the incident in 2021, the licensing scheme to obtain a valid Maryland carrying license was itself unconstitutional[,]" as would be borne out subsequently by the decision of the Supreme Court of the United States in *Bruen*, and as we thereafter acknowledged in *Matter of Rounds*, 255 Md. App. 205, 212-13 (2022). Even assuming that Maryland could "constitutionally require" an out-of-state resident, who possessed a valid out-of-state handgun permit, to obtain a Maryland permit

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the Second Amendment, but it need not be a 'dead ringer' or a 'historical twin.'" *Id.* at 692 (quoting *Bruen*, 597 U.S. at 30).

Fooks is still pending before the Supreme Court of Maryland. Following the entry of stay and the decision in *Rahimi*, the Supreme Court of Maryland ordered supplemental briefing, and a decision in that case presumably will be filed no later than August 29, 2025, the last day of the September 2024 Term.

to carry a handgun in Maryland and could criminalize the failure to comply with the Maryland permit requirement, "[i]t could not," appellant insists, "criminalize carrying a handgun without a permit unless it provided a constitutional way to obtain a permit." Because the Maryland handgun permit scheme was, at the time of the incident in 2021, unconstitutional, she posits that "Section 4-203, which rested on that scheme, was therefore also unconstitutional."

The State counters that *Bruen* "simply does not speak to" the issue appellant raises concerning a state's authority not to recognize an out-of-state carry permit in enforcing its own laws regulating the carrying and transport of handguns. According to the State, appellant's "argument would create a de facto single standard for gun licensing in the United States set by the State with the loosest requirements[,]" which it characterizes as "a race-to-the-bottom[.]" As for appellant's second contention, indirectly challenging the Maryland handgun permit scheme, the State maintains that appellant lacks standing to challenge that scheme because she never applied for a Maryland permit.

Standard of Review

Ordinarily, we "'review a trial court's decision on a motion to dismiss an indictment for abuse of discretion.'" *Jackson v. State*, 485 Md. 1, 28 (2023) (quoting *Kimble v. State*, 242 Md. App. 73, 78 (2019)). But where, as here, its ruling on a motion to dismiss involves interpretation of a statute and whether the statute comports with a constitutional provision, we review the trial court's ruling without deference. *Id.*; *Schisler v. State*, 394 Md. 519, 535 (2006) (noting that a trial court must exercise its discretion "in accordance with correct legal standards" and that, consequently, a trial court's discretionary ruling "involv[ing] an

interpretation and application of Maryland constitutional, statutory or case law" is reviewed de novo (quotation marks and citations omitted)). *See Brasse v. State*, __ Md. App. __, No. 1070, Sept. Term, 2023, slip op. at 3 (filed Mar. 27, 2025) (stating that the standard of review governing the grant or denial of a motion to dismiss based upon an alleged constitutional violation is "whether the trial court was legally correct" (quotation marks and citations omitted)).

Analysis

I. Whether Section 4-203 is unconstitutional because it does not contain an exception that would permit an out-of-state resident with a valid out-of-state carrying license to travel through Maryland on their way from their home state to another state.

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. The Second Amendment to the United States Constitution is enforceable against the states through the Fourteenth Amendment. *Bruen*, 597 U.S. at 8-9; *McDonald v. Chicago*, 561 U.S. 742, 791 (2010) (plurality opinion of Alito, J.); *McDonald*, 561 U.S. at 806 (Thomas, J., concurring in the judgment).[7]

[7] The justices who voted in favor of the judgment in *McDonald* did not all agree whether the Due Process Clause or the Privileges and Immunities Clause of the Fourteenth Amendment provided the basis for enforcing the Second Amendment against the states. *McDonald*, 561 U.S. at 791 (plurality opinion of Alito, J.) (declaring that "the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in" *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008)); *id.* at 806 (Thomas, J., concurring in the judgment) (declaring that "the right to keep and bear arms is a privilege of American citizenship that applies to the States through the Fourteenth Amendment's Privileges or Immunities Clause"). For our purposes it does not matter. *See Bruen*, 597 U.S. at 8-9 (declaring that "the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense"); *id.* at 10 (continued…)

In *Bruen*, the Supreme Court of the United States addressed whether a state handgun permitting scheme, known as "may issue," which permitted denial of an application for an unrestricted license to carry outside the home unless the applicant could "'demonstrate a special need for self-protection distinguishable from that of the general community[,]'" was consistent with the Second Amendment. *Bruen*, 597 U.S. at 12 (quoting *In re Klenosky*, 428 N.Y.S.2d 256, 257 (N.Y. App. Div. 1980)). The Court set forth a historical analysis that lower courts should follow in considering similar Second Amendment challenges:

> In keeping with *Heller*, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command." *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n.10 (1961).

Id. at 17. *See also id.* at 24 (reiterating this test).

Applying that test, the Court held that the permitting scheme was unconstitutional. *Id.* at 31-71. In so holding, the Court noted that the New York "may issue" statutory scheme, governing issuance of permits to carry firearms in public, was substantially similar to Maryland law at that time. *Id.* at 15 (noting that "only California, the District of Columbia, Hawaii, Maryland, Massachusetts, and New Jersey have analogues to the [New York] 'proper cause' standard" that it held unconstitutional). In a footnote, the Court cautioned:

(holding that "the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home").

> To be clear, nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes, under which a general desire for self-defense is sufficient to obtain a permit.

Id. at 38 n.9 (cleaned up).

At the time of the offenses in this case, Maryland Code (2002, 2021 Repl. Vol.), Criminal Law Article ("CR"), § 4-203[8] provided in relevant part:

> (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;
>
> (iv) violate item (i) or (ii) of this paragraph with the deliberate purpose of injuring or killing another person; or
>
> **(v) violate item (i) or (ii) of this paragraph with a handgun loaded with ammunition.**
>
> (2) There is a rebuttable presumption that a person who transports a handgun under paragraph (1)(ii) of this subsection transports the handgun knowingly.
>
> (b) This section does not prohibit:

[8] Two years after the date of the offenses in this case, the maximum penalty for a violation of this statute was increased from three to five years of imprisonment, CR § 4 203(c)(2), and the qualifying language in subsection (b)(2) was slightly modified, but in all other respects, the statute remains unchanged. 2023 Md. Laws. chs. 651, 680.

> (1) the wearing, carrying, or transporting of a handgun by a person who 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, in compliance with any limitations imposed under § 5-307[9] of the Public Safety Article, 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**[.]

(Emphasis added.)

At that same time, Maryland Code (2003, 2018 Repl. Vol.), Public Safety Article ("PS"), § 5-306(a)(6)(ii) provided:

> [T]he Secretary [of the Maryland State Police] shall issue a permit within a reasonable time to a person who the Secretary finds . . . based

[9] At the time of the offenses, PS § 5-307 provided:

> (a) A permit is valid for each handgun legally in the possession of the person to whom the permit is issued.
>
> (b) The Secretary may limit the geographic area, circumstances, or times of the day, week, month, or year in which a permit is effective.

> on an investigation[,] . . . **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.

(Emphasis added.)

Shortly after *Bruen* was decided, we acknowledged that PS § 5-306(a)(6)(ii), as it then existed, was unconstitutional. *Matter of Rounds*, *supra*, 255 Md. App. at 212-13. But the claim before us is different. Here, appellant challenges Maryland's lack of a reciprocity provision in CR § 4-203. In other words, she contends that Maryland was required to honor her Virginia handgun permit in the same manner that possession of a Maryland permit is a defense against a charge of violating CR § 4-203. The short answer to this contention is that *Bruen* expressly noted that "nothing in [its] analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes[.]" *Bruen*, 597 U.S. at 38 n.9.

Although it is true that the Maryland licensing scheme at the time of appellant's offenses would not have passed muster under *Bruen*, a question we address in Part II of this opinion, that is a different question than whether a state must give reciprocity to another state's valid handgun permit. We hold that reciprocity is not mandated under *Bruen*. Unless and until the Supreme Court of the United States holds otherwise, or unless Congress enacts a statute requiring nationwide reciprocity, we hold that Maryland was entitled to require a resident of another state to possess a Maryland handgun permit to legally transport a loaded handgun on the public roads of this State. *See Commonwealth v. Marquis*, 252 N.E.3d 991 (Mass. 2025) (rejecting constitutional challenges under the Second and Fourteenth

Amendments to a Massachusetts nonresident permit requirement for legally transporting a firearm while traveling through the Commonwealth).[10]

II. Whether Section 4-203 was unconstitutional at the time of the offense because it rested upon an unconstitutional "may issue" handgun permit licensing scheme.

Whether Section 4-203 was unconstitutional at the time of the offenses is an interesting question that involves questions such as severability; that is, whether there is a construction of Section 4-203 that survives scrutiny after its incorporation of PS § 5-301 *et seq.*, which plainly was unconstitutional at the time appellant was charged,[11] is severed from CR § 4-203. *See*, *e.g.*, *State v. Burning Tree Club, Inc.*, 315 Md. 254, 296-97 (1989) (explaining that "[r]esolving questions of severability involves ascertaining what would have been the intent of the Legislature had the partial invalidity been known" (quotation

[10] In her brief, appellant cites a federal statute, 18 U.S.C. § 926A, which provides a safe harbor for anyone who is not otherwise a prohibited person; such a person

> shall be entitled to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle[.]

That provision does not apply in this case because appellant's firearm was loaded and was readily accessible to her. The constitutionality of that statute in light of *Bruen* is not at issue in this case.

[11] At the time appellant was charged, Maryland's permit scheme was unconstitutional because it predicated eligibility for a permit on a showing of a "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." PS § 5-306(a)(6)(ii). *See* 2023 Md. Laws, ch. 651 (amending this subsection). *See Matter of Rounds*, 255 Md. App. at 212-13 (holding that prior version of PS § 5-306(a)(6)(ii) was unconstitutional under *Bruen*).

marks and citation omitted)); *id.* at 297 (explaining that there is a "strong presumption that a legislative body generally intends its enactments to be severed if possible" and that "when the dominant purpose of a statute may largely be carried out notwithstanding the invalid provision, courts will ordinarily sever the statute and enforce the valid portion" (quotation marks and citations omitted)). We do not answer that question, however, because the Supreme Court of Maryland has held that a person convicted under CR § 4-203, who has not applied previously for a Maryland handgun permit pursuant to Public Safety Article, Title 5, Subtitle 3, does not have standing to challenge the constitutionality of the permit scheme incorporated into CR § 4-203. *Williams v. State*, 417 Md. 479, 488 n.7 (2011) (declaring 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.* of the Public Safety Article, as well as Title 29, subtitle 3 of the Code of Maryland Regulations"). Moreover, the Supreme Court of Maryland did not distinguish in *Williams* whether its rule of standing applies only to as-applied challenges or extends to facial challenges. The Court was clear in saying that a person who has not applied for a Maryland permit simply lacks standing. *Id.* Unless and until the Supreme Court of Maryland overrules or reconsiders *Williams*, that decision is binding on us. Therefore, we hold that appellant lacks standing to raise this challenge, and we shall not address it on its merits.[12]

[12] The Supreme Judicial Court of Massachusetts recently affirmed the dismissal of one count of a charging document alleging a violation of a statute similar to Maryland's CR § 4-203. *Commonwealth v. Donnell*, 252 N.E.3d 475, 477-78 (Mass. 2025). In November 2021, Donnell, a New Hampshire resident legally allowed to carry a firearm under New Hampshire law (no permit is required there, but the person must not be (continued…)

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS ASSESSED TO APPELLANT.

disqualified under state law, N.H. Rev. Stat., c. 159, § 6), was "arrested in Massachusetts for operating a motor vehicle while under the influence of alcohol following a collision on Interstate 495 in Lowell[,]" Massachusetts. *Id.* at 477. An ensuing search uncovered "a handgun and ammunition stored inside a duffel bag." *Id.* Because Donnell did not have "a Massachusetts nonresident firearm license," he was charged with "unlawful possession of a firearm in violation of" a Massachusetts statute, *id.*, which criminalized, among other things, "knowingly [having] under his control in a vehicle[] a firearm, loaded or unloaded" without a license. Mass. G.L. c. 269, § 10 (a). The case reached the Supreme Judicial Court on the Commonwealth's application for direct review following a trial court's dismissal of the charge. *Donnell*, 252 N.E.3d at 477.

Massachusetts applies a different law of standing in such a case; a defendant may always raise a facial challenge but may only raise an as-applied challenge if he has applied for a permit. *Id.* at 479 n.4. The license scheme at that time was substantially similar to that in Maryland. *See Bruen*, 597 U.S. at 15 (noting that "only California, the District of Columbia, Hawaii, Maryland, Massachusetts, and New Jersey have analogues to the [New York] 'proper cause' standard" that it held unconstitutional). The Supreme Judicial Court held that the nonresident licensing scheme was facially invalid, *Donnell*, 252 N.E.3d at 482-84, that it was "not capable of separation because the discretionary language was so entwined in the licensing procedure that its removal would not result in a constitutionally enforceable law[,]" and that, therefore, the trial court had correctly granted Donnell's motion to dismiss. *Id.* at 484-85.