IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2018

No. 2431

EDWARD H. WHALEN,

Appellant,

v.

HANDGUN PERMIT REVIEW BOARD,

Appellee.

On Appeal from the Circuit Court for Baltimore City
(John S. Nugent, Judge)

BRIEF OF APPELLEE

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STATEMENT OF THE CASE

This appeal arises out of the administrative decision of the Maryland State Police ("MSP" or the "Department") to deny appellant Edward H. Whalen's application to obtain a permit to wear, carry, or transport a handgun. MSP's decision was reviewed by the Handgun Permit Review Board of the Department of Public Safety ("Board") at a hearing conducted on September 19 2017. (E. 12-41.) The Board issued its decision affirming the denial of Mr. Whalen's application on May 4, 2016. (E. 43-45.)

Mr. Whalen sought judicial review of the Board's decision in the Circuit Court for Baltimore City. (E. 103.) Following a hearing, the circuit court affirmed the decision of the Board on August 24, 2018. (E. 101.) This appeal followed.

QUESTIONS PRESENTED

1) Has Mr. Whalen waived his argument that the "good and substantial reason" requirement of Maryland's handgun permit law violates the Second Amendment by failing to raise the issue before the administrative agency or the circuit court?

2) Is Maryland's "good and substantial reason" requirement constitutional given that the Court of Appeals of Maryland has held that laws regulating public wear and carry of handguns fall outside the scope of the Second Amendment?

3) Was the decision of the Handgun Permit Review Board that Mr. Whalen lacked "good and substantial reason" to obtain a permit to carry a handgun legally correct and supported by substantial evidence?

STATEMENT OF FACTS

The Statutory Framework

Subject to numerous exceptions, Maryland law generally makes it a misdemeanor to wear, carry, or transport a handgun on one's person or in a vehicle. Md. Code Ann.,

Criminal Law ("CL") § 4-203(a).[3] Exceptions include the wear, carry, or transport of a handgun:

- in one's home or business or on property one owns, CL § 4-203(b)(6);
- in connection with, among other activities, hunting, trapping, a target shoot, formal or informal target practice, a sport shooting event, certain firearms and hunter safety classes, or an organized military activity, CL § 4-203(b)(4);
- in the moving of a gun collection for exhibition by a bona fide gun collector, CL § 4-203(b)(5);
- by a supervisory employee in the course of business under certain conditions, CL § 4-203(b)(7); and
- while transporting the handgun between places or activities where the individual is allowed to possess it, CL § 4-203(b)(3).

Maryland law generally requires an individual to apply for a permit in order to wear and carry a handgun in public, outside of these and other protected places, and apart from these and other protected activities. CL § 4-203(b)(2).

An individual is eligible to obtain a handgun wear and carry permit (a "Permit") if that person is an adult who has not been convicted of certain criminal offenses, is not presently an alcoholic, addict, or habitual drug user, and, based on an investigation by the MSP: (1) has not exhibited a propensity for violence or instability that may render his/her possession of a handgun a danger; and (2) "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." Md. Code Ann, Public Safety ("PS") § 5-306(a).

[3] The criminal and permit statutes relevant to this case apply only to handguns. Maryland's permit laws do not apply to other firearms, including rifles, shotguns, or other "long guns."

Mr. Whalen's Permit Application

On March 1, 2017, Mr. Whalen submitted an application to the MSP to obtain a permit to carry a handgun. (E. 13.) In answer to question 23 on the application, Mr. Whalen stated that his reason for seeking a permit was, "Personal protection and all other lawful purposes." (*Id.*)

On July 5, 2017, Mr. Whalen's application was disapproved due to the lack of "good and substantial reason" to issue the permit and a letter was sent to him. (E. 4-5.) Mr. Whalen requested an informal review of the disapproval which was held on July 27, 2017, with MSP First Sergeant Kevin Moriarty. (E.10.) At the informal review, Mr. Whalen provided a letter with his statement of "good and substantial reason" noting that he had served as a legislative assistant for a member of the House Republican Leadership and was currently serving as Majority Counsel for the Chairman of Senate Committee on Indian Affairs, and that he was a Commissioner with an Advisory Neighborhood Commission ("ANC") in the District of Columbia where he resides. (E 7-8.) Mr. Whalen stated that he had received threats while working in Congress and that assaults had occurred at ANC meetings; however, Mr. Whalen produced no documentary or other evidence showing that he had personally been threatened or assaulted.

Mr. Whalen also submitted a "Statement of good and substantial reason" as "Addendum #3" to his application. (E. 1-3.) In this document he referred to his service as a Commissioner on an ANC; the fact that his father was a federal tax court judge; his employment as a staff member of two Congressmen; and, the fact that he had been the victim of identity theft when his Social Security Number had been purchased by a man in

California in 1990. (*Id.*) Again, however, Mr. Whalen failed to provide any documentation or other proof that he had been threatened or physically harmed as a result of any of these circumstances.

On August 9, 2017, F/Sgt. Moriarty issued a letter informing Mr. Whalen that he was upholding the decision to deny his handgun permit application and advising Mr. Whalen of his right to a hearing before the Board. (E. 10.) Mr. Whalen requested a hearing before the Board, which was held on September 19, 2017. (E.12-42.) At no time before the Board did Mr. Whalen challenge the constitutionality of the good and substantial reason requirement.

On January 25, 2018, the Board issued its decision upholding the denial of Mr. Whalen's application on the basis that Mr. Whalen had failed to provide sufficient evidence to show that he had a good and substantial reason to obtain a handgun carry permit. (E.43-45.) Mr. Whalen sought judicial review of that decision. Again, Mr. Whalen failed to raise any constitutional challenge to the good and substantial reason requirement before the circuit court. The circuit court affirmed the decision of the agency. Mr. Whalen filed a timely appeal.

ARGUMENT

I. THIS COURT REVIEWS THE DECISION OF THE ADMINISTRATIVE LAW JUDGE TO DETERMINE WHETHER IT IS LEGALLY CORRECT AND SUPPORTED BY SUBSTANTIAL EVIDENCE.

A court reviewing the final decision of an administrative agency shall determine "(1) the legality of the decision and (2) whether there was substantial evidence from the

record as a whole to support the decision." *Lanzaron v. Anne Arundel County*, 402 Md. 140, 147 (2007) (quoting *Baltimore Lutheran High Sch. v. Emp't Sec. Admin.*, 302 Md. 649, 662 (1985) (internal quotation marks omitted)).

In reviewing administrative decisions, Maryland appellate courts bypass the judgment of the circuit court and look directly to the administrative decision. *White v. Workers Comp. Comm'n*, 161 Md. App. 483, 487 (2005). Appellate review of the agency's decision is "'narrow; it is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determin[ing] if the administrative decision is premised upon an erroneous conclusion of law.'" *Hill v. Motor Vehicle Admin.*, 415 Md. 231, 239 (2010) (quoting *Maryland Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005) (citations and internal quotation marks omitted)). Under the substantial evidence standard, a reviewing court "must review the agency's decision in the light most favorable to it; . . . the agency's decision is prima facie correct and presumed valid, and . . . it is the agency's province to resolve conflicting evidence and to draw inferences from that evidence." *Motor Vehicle Admin. v. Salop*, 429 Md. 410, 421 (2014) (quoting *Noland*, 386 Md. at 571). A reviewing court may not set the decision aside unless a reasoning mind could not have reached the factual conclusion the agency reached. *Id.* at 420; *see Charles County Dep't of Soc. Servs. v. Vann*, 382 Md. 286, 299 (2004) (noting the particular suitability of deference in fact-intensive cases). Where the decision "does not exceed the agency's authority, is not unlawful, and is supported by competent, material and substantial evidence," an appellate court cannot reverse that

decision, barring an "extreme or egregious" abuse of discretion considered "'arbitrary or capricious.'" *Maryland Transp. Auth. v. King*, 369 Md. 274, 291 (2002).

II. THE "GOOD AND SUBSTANTIAL REASON" REQUIREMENT DOES NOT VIOLATE THE SECOND AMENDMENT.

A. Mr. Whalen Waived His Constitutional Arguments Because He Did Not Raise Them Before the Circuit Court or the Administrative Agency.

For the first time on appeal to this Court, Mr. Whalen argues that the Permit application's good and substantial reason requirement violates the Second Amendment to the United States Constitution. Because Mr. Whalen failed to raise the issue before the circuit court, this Court should decline to address it. *See* Md. Rule 8-131 (providing that appellate courts generally will not decide any non-jurisdictional issue that was not raised in and decided by the trial court); *see also, e.g.*, *Robinson v. State*, 404 Md. 208, 218 (2008) (refusing to consider constitutional argument raised for the first time on appeal); *Burch v. United Cable Television of Baltimore Ltd. P'ship*, 391 Md. 687, 696 (2006) (same). Further, Mr. Whalen was required to bring all issues before the administrative agency, including constitutional issues, which he failed to do. *See Comptroller of the Treasury v. Zorzit*, 221 Md. App. 274, 295 (2015) (explaining that administrative agencies "are fully competent to resolve issues of constitutionality and the validity of statutes or ordinances in adjudicatory administrative proceedings which are subject to judicial review," which includes "the constitutionality of an enactment as applied, as well as the constitutionality of an enactment as a whole" (citations omitted)). For these reasons, Mr. Whalen has

waived the argument that the permit statute is unconstitutional, this Court should decline to address the argument, and there is no justification for a stay of the proceedings.

B. The Court of Appeals Has Already Held that Laws Regulating the Wear and Carry of Handguns in Public Fall Outside the Scope of the Second Amendment.

As discussed above, Mr. Whalen did not preserve his argument that the good and substantial reason requirement violates the Second Amendment. In any event, the Court of Appeals of Maryland has held that the State's criminal prohibitions against wearing, carrying, or transporting a handgun without a permit and outside of one's home fall "outside the scope of the Second Amendment." *Williams v. State*, 417 Md. 479, 481, *cert. denied*, 565 U.S. 815 (2011). Although the petitioner in *Williams* did not have standing to challenge the permitting scheme at issue here, the Court of Appeals flatly rejected his contention that the Second Amendment protected his right to wear and carry a handgun in public. The Court of Appeals has subsequently acknowledged that "[t]he constitutionality of the State handgun law and the permitting scheme have been upheld by this Court and the United States Court of Appeals for the Fourth Circuit." *Blue v. Prince George's County*, 434 Md. 681, 685 n5 (2013).

In *Williams*, the petitioner had argued that the Supreme Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010) should be read to establish "a general 'right of persons to keep and bear arms for lawful purposes.'" *Williams*, 417 Md. at 488-89 (quoting petitioner). The Court of Appeals, however, after thoroughly analyzing the Supreme Court decisions, *id.* at 489-94,

concluded that Maryland's prohibitions on public wear and carry did not fall "within the ambit of *Heller* and *McDonald*" because those decisions emphasized "that the Second Amendment is applicable to statutory prohibitions against home possession," *id.* at 496. The Court of Appeals made clear that it would not interpret the holding in *Heller* or *McDonald* "to extend beyond home possession" absent an express holding of the Supreme Court to that effect. *Id.* at 496.

The Court of Appeals, thus, ruled that because Maryland's statute permitted home possession of a handgun, the criminal prohibition was "wholly consistent" with *Heller*. *Id.* at 496. Here, too, the permitting scheme does not impact Mr. Whalen's right to possess a handgun in his home for self-defense, and, thus, the holding in *Williams* that the Second Amendment does not extend beyond the home controls the outcome of this case. *See Blue*, 434 Md. at 685 n.5.[4]

[4] Despite the Court of Appeals' holding in *Williams*, Mr. Whalen contends that "the historical and traditional understanding of the right to keep and bear arms" supports his view. Appellant's Br. 19-20. But Mr. Whalen's cursory discussion of history is incomplete and unpersuasive. Rather, the long history of significant restrictions on the public carry of firearms both before and after the Founding era in the interest of public safety, including limits and bans on easily-concealable firearms, demonstrates that the pre-existing right codified in the Second Amendment was not generally understood to extend to the public carry of easily-concealable, highly-lethal firearms without a good and substantial reason. *See generally* Brief of Amicus Curiae Everytown for Gun Safety in Support of Defendants-Appellees, *Malpasso v. Pallozzi*, No. 18-2377, ECF 26-1, at 5-24 (4th Cir. Feb. 1, 2019) (setting forth "centuries-long pedigree" of Maryland's wear-and-carry law), attached as an appendix to Appellee's Brief for ease of reference.

C. The Fourth Circuit Has Correctly Concluded that Maryland's Good and Substantial Reason Requirement Does Not Violate the Second Amendment.

Assuming without deciding that the Second Amendment extends outside the home, the Fourth Circuit has held that the Permit law does not violate the Second Amendment. *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir.), *cert. denied*, 571 U.S. 952 (2013). In *Woollard*, the Fourth Circuit applied intermediate scrutiny to the wear-and-carry law, because, as the court had already determined, "intermediate scrutiny applies 'to laws that burden [any] right to keep and bear arms outside of the home.'" *Id.* at 876 (quoting *United States v. Masciandaro*, 638 F.3d 458, 470-71 (4th Cir. 2011)). In adopting intermediate scrutiny as the proper standard for laws that apply outside the home, the Fourth Circuit explained that "as we move outside the home, firearm rights have always been more limited, because public safety interests often outweigh individual interests in self-defense." *Masciandaro*, 638 F.3d at 470-71; *accord Kachalsky v. County of Westchester*, 701 F.3d 81, 96 (2d Cir. 2012) ("Because our tradition so clearly indicates a substantial role for state regulation of the carrying of firearms in public, we conclude that intermediate scrutiny is appropriate in this case.").

At the first step of the intermediate scrutiny analysis, the Fourth Circuit "readily conclude[d]" that Maryland's objectives of "protecting public safety and preventing crime . . . are substantial governmental interests." *Woollard*, 712 F.3d at 877. The court emphasized the codified legislative findings that accompanied the wear and carry permitting law, *id.* at 876-77:

> (1) the number of violent crimes committed in the State has increased alarmingly in recent years;
>
> (2) a high percentage of violent crimes committed in the State involves the use of handguns;
>
> (3) the result is a substantial increase in the number of deaths and injuries largely traceable to the carrying of handguns in public places by criminals;
>
> (4) current law has not been effective in curbing the more frequent use of handguns in committing crime; and
>
> (5) additional regulations on the wearing, carrying, and transporting of handguns are necessary to preserve the peace and tranquility of the State and to protect the rights and liberties of the public.

Md. Code Ann., Crim. Law § 4–202. The court further relied on "more recent evidence proffered by the State" in those proceedings, which reflected the high rates of violent crime in the State and nearly universal use of handguns in committing such crimes, and the threat posed by handguns to law enforcement officers. *Woollard*, 712 F.3d at 877.

The Fourth Circuit went onto to conclude that the good-and-substantial-reason requirement is "reasonably adapted" to Maryland's significant interests. First, the Fourth Circuit noted that under Maryland law, "even without a permit," the plaintiff in that case was permitted to "wear, carry, and transport handguns not only in his own home and on his personal and business properties, but also in many public places" for example, he "may move handguns to and from bona fide repair shops and places of legal purchase and sale"; he "may also wear, carry, and transport handguns if he engages in target shoots and practices, sport shooting events, hunting and trapping, specified firearms and hunter safety classes, and gun exhibitions." *Id.* at 879 (citing Md. Code Ann., Crim. Law §§ 4-203(b), 4-203(b)(3), 4-203(b)(4)(5)).

Next, the Fourth Circuit concluded that "[t]he State has clearly demonstrated that the good-and-substantial-reason requirement advances the objectives of protecting public safety and preventing crime because it reduces the number of handguns carried in public." *Id.* at 879. The court detailed the State's evidence demonstrating how "limiting the public carrying of handguns protects citizens and inhibits crime" by: (1) "Decreasing the availability of handguns to criminals via theft"; (2) "Lessening 'the likelihood that basic confrontations between individuals would turn deadly'"; (3) "Averting the confusion, along with the 'potentially tragic consequences' thereof, that can result from the presence of a third person with a handgun during a confrontation between a police officer and a criminal suspect"; (4) "Curtailing the presence of handguns during routine police-citizen encounters"; (5) "Reducing the number of 'handgun sightings' that must be investigated"; and (6) "Facilitating the identification of those persons carrying handguns who pose a menace." *Id.* at 879-80 (quoting and discussing record evidence). The court then noted that while the Permit law "reduces the number of handguns carried in public, . . . the good-and-substantial-reason requirement ensures that those persons in palpable need of self-protection can arm themselves in public places where Maryland's various permit exceptions do not apply." *Id.* at 880.

The Fourth Circuit was "convinced by the State's evidence that there is a reasonable fit between the good-and-substantial-reason requirement and Maryland's objectives of protecting public safety and preventing crime." *Id.* at 880; *see also Kachalsky,* 701 F.3d at 83–84 (rejecting the theory that New York's handgun licensing scheme violates the Second Amendment by requiring an applicant to demonstrate "proper cause"—i.e., a

special need for self-protection—as a prerequisite for a license to carry a concealed handgun in public). In rejecting the challenger's contentions, the Fourth Circuit recognized that the Court "cannot substitute those views for the considered judgment of the General Assembly that the good-and-substantial-reason requirement strikes an appropriate balance between granting handgun permits to those persons known to be in need of self-protection and precluding a dangerous proliferation of handguns on the streets of Maryland." *Woollard*, 712 F.3d at 881; *see also Kachalsky*, 701 F.3d at 100 ("New York determined that limiting handgun possession to persons who have an articulable basis for believing they will need the weapon for self-defense is in the best interest of public safety and outweighs the need to have a handgun for an unexpected confrontation.").

The Fourth Circuit recently affirmed the dismissal of a subsequent Second Amendment challenge to the good and substantial reason requirement on the basis of the *Woollard* decision. *Malpasso v. Pallozzi*, 767 F. App'x 525 (2019).[5] The possibility that the Supreme Court might grant certiorari in that case or a challenge to a similar statutory scheme in the future does not warrant staying proceedings in this matter, particularly given that Mr. Whalen waived his Second Amendment argument.

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[5] Mr. Whalen relies on the D.C. Circuit's holding in *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017) that the District's "good cause" restrictions on the issuance of handgun carry permits violated the Second Amendment. However, the D.C. Circuit's holding that the Second Amendment extends outside the home is at odds with the Court of Appeals' holding in *Williams* that Maryland's laws regulating public wear and carry are outside the scope of the Second Amendment.

III. SUBSTANTIAL EVIDENCE SUPPORTS THE BOARD'S CONCLUSION THAT MR. WHALEN LACKED "GOOD AND SUBSTANTIAL REASON" TO OBTAIN A PERMIT TO CARRY A HANDGUN.

In reaching its decision, the Board found that Mr. Whalen did not provide any documentation that he has been threatened, and further noted that he had not applied for a handgun carry permit in the District of Columbia where he is employed, serves as a ANC Commissioner, and resides. (R. 5, p.2.) The Board's findings, as well as its conclusion that Mr. Whalen has not demonstrated a good and substantial reason to wear, carry or transport a handgun, are supported by substantial evidence.

In support of his assertion that he has a "good and substantial reason" to wear, carry and transport a handgun, Mr. Whalen points to his employment as a Congressional staff member and his possession of a "Secret" level security clearance.[6] However, while Mr. Whalen states that he received threats while working as a Congressional staff member and that assaults have occurred at ANC meetings, he did not produce any documentation or other evidence to support his claims that he was threatened.[7] Mr. Whalen also did not state

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[6] In the court below, Mr. Whalen also argued that his service as a Commissioner on a District of Columbia Advisory Neighborhood Counsel; the fact that his father is a federal tax court judge; and, the fact that his Social Security Number was purchased by a man in California in 1990 who has used it to obtain fraudulent loans constituted good and substantial reasons. He has dropped his status as a Commissioner from his argument because he no longer holds that position. In his brief in this Court, he does not raise his identity theft claim, and states that if the case is remanded he will ask the Board to reconsider the relevance of his relationship with his father (a retired federal judge) who was issued an unrestricted carry permit by the State Police on an "assumed risk" basis.

[7] Mr. Whalen testified at the Board hearing that if Congressional staff members believed threats were serious enough, they reported the threats to the Capitol Police. (E. 20.) He did not produce any Capitol Police reports for any threats against him.

that he had received any threats arising out of his father's position as a federal tax court judge or in connection with the theft and misuse of his Social Security Number.

This Court clearly stated that it is the Board, and not the individual concerned, that determines whether given facts constitute "apprehended danger" sufficient to warrant issuance of a permit to carry a handgun. *Snowden v. Handgun Permit Review Bd.*, 45 Md. App. 464, 469, *cert. denied*, 288 Md. 742 (1980). Accordingly, Mr. Whalen's subjective belief as to his need for a handgun carry permit is irrelevant. It is the function of the Board to determine if Mr. Whalen has a "good and substantial reason" to justify the issuance of a handgun carry permit. In this case, the Board correctly determined Mr. Whalen did not.

In *Snowden*, this Court affirmed the Board's determination that a threat to harm the applicant overheard by a neighbor and documented attacks on residents of the applicant's neighborhood did not amount to "good and substantial reason" warranting the issuance of a handgun carry permit. In the later case of *Scherr v. Handgun Permit Review Board*, 163 Md. App. 417 (2005), this Court, quoting from *Snowden*, affirmed the Board's decision to deny an application based on the applicant's status as an attorney, radio talk show host, and former prosecutor. This Court noted that the justification for denying Scherr's application was much stronger than in *Snowden* because Scherr had never been threatened by anyone. 163 Md. App. at 438.

As was the case in *Scherr*, Mr. Whalen presented no evidence that he has ever been threatened, in connection with his employment as a Congressional staff member (or his prior position as an Advisory Neighborhood Commissioner, his father's position as a federal tax court judge or the theft of his Social Security Number). Mr. Whalen's

generalized apprehension for his safety, like that of the applicants in *Snowden* and *Scherr*, is clearly insufficient to justify the issuance of an unrestricted handgun carry permit.

Mr. Whalen argues that *Snowden* and *Scherr* have been abrogated by the decisions in *Heller*, 554 U.S. 570 and *McDonald*, 561 U.S. 742. The Supreme Court's holdings in those cases regarding the application of the Second Amendment do abrogate that portion of *Scherr* which stated that the Second Amendment did not create an individual right that could not be infringed upon by state action. However, nothing in *Heller* or *McDonald* abrogate the application of the substantial evidence standard used by this Court in *Snowden* and *Scherr* to the review of the Board's denial of the individuals' handgun permit applications.

Mr. Whalen also argues that Board improperly considered his lack of a District of Columbia handgun permit as a reason for denying his application. The Board did refer to the fact that Mr. Whalen had not applied for a carry permit in the District of Columbia in its decision. (E. 44.) However, the Board further stated that it "does not see the need for a Maryland permit when Mr. Whalen's activities, work and residence are all in the District of Columbia." (*Id.*) At the hearing, the Board Chairman stated, "if you had the D.C. permit and you also would still have to show why in the State of Maryland you would have that need, and I'm not sure I've heard anything that really substantiates that right now." (E. 33.) The record clearly demonstrates that the lack of good and substantial reason to wear, carry and transport a handgun in Maryland, not Mr. Whalen's lack of a District of Columbia handgun permit, was the basis for the Board's decision.

Finally, Mr. Whalen argues that *Woollard* created a new standard for determining whether an applicant has a "good and substantial reason" – "palpable need" – and that an applicant need not show any particularized need greater than that of his or her fellow citizens. Mr. Whalen misreads *Woollard*.

While noting that "the good-and-substantial-reason requirement ensures that those persons in palpable need of self-protection can arm themselves in public places where Maryland's various permit exceptions do not apply," 712 F.3d at 880, *Woollard* did not state or even suggest that "palpable need" (a phrase which appears only once in the decision) was a standard by which "good and substantial reason" should be determined. Rather, *Woollard* noted that the State Police had established four primary categories under which an applicant can demonstrate "good and substantial reason": business activities; regulated professions; assumed risk professionals and for personal protection. *Id.* at 869-70. With regard to the personal protection category, *Woollard* quoted from both *Scherr* and *Snowden*. *Id.* at 870. The Fourth Circuit went on to recite the factors that MSP considers in evaluating a permit sought for personal protection: "(1) the "nearness" or likelihood of a threat or presumed threat; (2) whether the threat can be verified; (3) whether the threat is particular to the applicant, as opposed to the average citizen; (4) if the threat can be presumed to exist, what is the basis for the presumption; and (5) the length of time since the initial threat occurred." *Id.*

While *Woollard* did not expressly endorse the use of such factors, its recitation of them, and its quotations from *Scherr* and *Snowden*, clearly indicate that the court did not

create a new standard for determining whether an applicant has a "good and substantial reason" for obtaining a handgun carry permit.

The Board's decision is supported by substantial evidence and the Circuit Court's decision must be affirmed.

CONCLUSION

The judgment of the Circuit Court for Baltimore City should be affirmed.

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 4,626 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

Mark H. Bowen