

COMMITTEE ASSIGNMENTS

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- Licenses Committee

VICE CHAIR

- Zoning, Neighborhoods and Development



MILELE A. COGGS
ALDERWOMAN, 6TH DISTRICT

MEMBER

- Finance and Personnel Committee
- Library Board
- Neighborhood Improvement Development Corporation Board
- Special Joint Committee on the Redevelopment of Abandoned and Foreclosed Homes
- Steering and Rules Committee
- Wisconsin Center District Board

December 7, 2023

To the Honorable, the Common Council

Honorable Members:

Re: Common Council File Number 231162

Attached are written objections to File Number 231162 Motion relating to the recommendations of the Licenses Committee relative to licenses, relating to a recommendation of:

Renewal with a 45 (forty five) day suspension of the Tattoo and Body Piercing license for Francisco V. Flores. Jr., upon the preponderance of the evidence in the police report, the applicant and the aldermanic testimony that demonstrates the operation results in a threat to health, safety or welfare of the public; for the premises located at 3180 S 27th St. ("World Class Tattoos") in the 13th aldermanic district.

This matter will be heard by the full Council at its Tuesday, December 12, 2023 meeting. Pursuant to City Ordinances, a roll call vote will be taken to confirm that all members have read the attached statement and materials.

Respectfully,

Milele Coggs, Chair
Licenses Committee

cc: All Council Members
City Attorney's Office
Common Council/City Clerk – License Division
CCF 231162





December 6, 2023

Re: World Class Tattoos, 3180 S. 27th Street
Frank V. Flores Jr.

Dear Common Counsel:

Please be advised my office received correspondence from the City of Milwaukee, Office of City Clerk, today with a deadline for response of 4:45pm today. I find it very disheartening that I have received the findings of fact, conclusions of law and recommendation by the Licenses Committee with less than 3 hours to prepare an adequate response for my client.

Nonetheless, please allow this to serve as my notice of objection and supplement to the record.

It is not in dispute that World Class Tattoos' Tattoo and Body Piercing License expired June 30, 2023. This was an oversight by Mr. Flores, as he had opened a secondary location in Green Bay, WI in 2020. While operating the Green Bay location Mr. Flores resided in Green Bay the majority of his time and returned to Milwaukee weekly to handle banking and supply issues in Milwaukee. Mr. Flores recognized a deficiency with management while he tended to the Green Bay location, and to remedy that issue he returned to Milwaukee to manage that World Class Tattoo location himself.

In the beginning of 2023, Mr. Flores had begun the process of closing the Green Bay location and focusing solely on the S. 27th Street location. Mr. Flores does not dispute that management of the Milwaukee location was lacking in the time period in which he was managing the Green Bay location. Mr. Flores returned full time to manage the Milwaukee location and began reorganizing the staff, policies, and procedures of the Milwaukee location.

In early 2023, there had been significant renovations done at the S. 27th Street location and as a result of those renovations at some point in time all documents (license included) displayed on the wall were removed. The posting of the Tattoo and Piercing License as well as the expiration of the same slipped through the cracks of Mr. Flores' oversight until he was contacted by the City of Milwaukee Health Department in October 2023.

On October 12, 2023, Mr. Flores went to the City of Milwaukee to renew the expired license and paid the \$350 renewal fee. This renewal was denied by Alderman Spiker. A hearing was scheduled for November 28, 2023, at which time my client appeared before the Licenses Committee and

presented evidence along with support from various individuals that had firsthand knowledge of Mr. Flores' character.

A major issue of contention by the committee stemmed from a search warrant, issued April 20, 2023, and executed on April 21, 2023 (see attached Exhibit A). A vague police report from Police Officer Robert Lawrence, dated April 22, 2023, was submitted to the Licensing Committee (see attached Exhibit B). The police report states the target of the search warrant was Francisco Vargas-Flores. Interestingly enough, the search warrant referenced in the police report did not contain Vargas-Flores' name, nor any insinuation that he was the target of said warrant. The search warrant was issued for 3178/3180 S. 27th Street and covered World Class Tattoo Shop and the living quarters located in the upper unit. The living quarters referenced was not the residence of Mr. Flores but had been utilized for years as a common place for World Class Tattoo employees to stay at, take breaks, prepare meals, or meet other daily needs of the employees.

The police report further details "During the execution of the search warrant the agent who is a convicted felon per Milwaukee County Case 09-CF-001426 was found to be in possession of six (6) firearms including rifles, along with an assortment of firearm accessories". This statement in the police report is factually incorrect, it is clearly referring to Mr. Flores as the "agent" and Mr. Flores was *not* in possession of any firearms or firearm accessories. The police report goes on to allege Mr. Flores was found to be in possession of a silencer/suppressor which is nothing more than a fabricated statement, and not supported by any fact.

Please see the Wisconsin Jury Instruction 1343, Possession of a Firearm, in violation of Wisconsin Statute section 941.29(1m) (see attached Exhibit C). As you will see, by the elements that must be established to convict an individual with this crime includes the individual must possess a firearm. "Possess" means the individual knowingly had actual physical control of a firearm. Inherent in the legal definition of "possession" is the concept of knowing or conscious possession. See *Schwartz v. State*, 192 Wis. 414, 418, 212 N.W. 664 (1927); *Doscher v. State*, 194 Wis. 67, 69, 214 N.W. 359 (1927). There is no supporting evidence offered to demonstrate Mr. Flores actual possession or exercised control or intended to possess any firearm.

As of today's date, over 7 months have passed, and no charges have been issued against Mr. Flores, or any individual, stemming from the search warrant execution on April 21, 2023.

In addition, the police report submitted to the License Committee references "A second subject" was found to be in possession of 104.57 grams of THC and it is suggested that said "subject" is distributing narcotics and not for personal use. What the police report fails to detail is the "subject" was a patron of World Class Tattoos and the THC was located in said patron's vehicle. There is nothing provided by law enforcement to show that anyone associated with World Class Tattoos had any knowledge of items located in a patron's vehicle. However, law enforcement continues to paint a picture insinuating that Mr. Flores somehow had knowledge of the patron's contents of his vehicle, this is simply incorrect, as a side note, this "second subject" was never charged with Possession of THC with Intent to Distribute or any other crime associated with the April 21, 2023 search warrant.

This has created a dire hardship for Mr. Flores and World Class Tattoos as his establishment has been closed since October 12, 2023. Not only has Mr. Flores suffered a great financial loss, but he has also lost several employees due to this closure.

Mr. Flores has taken great strides in implementing policies and changes at World Class Tattoos location on S. 27th Street since the execution of the search warrant in April as well as the closure of the business November 3, 2023.

There have been a multitude of changes that Mr. Flores has applied at World Class Tattoos to ensure a safe and successful environment, most notably, Mr. Flores has returned to Milwaukee and himself serves as on-site manager, several employees have been terminated, and business practices have been modified.

A significant change has been contracting with a licensed security company to protect the business location and implementing a policy for his employees disallowing them to possess any type of firearm on World Class Tattoo property. World Class Tattoos was the victim of a break-in and robbery in the not-so-distant past, and it is common knowledge that this is a high crime area, with many of their neighboring businesses also falling victim to this type of crime. Therefore, even though this is an added expense and may portray an atmosphere that this area is dangerous and subject to victimization we believe the retention of private licensed security is the best way to protect the safety of our patrons and neighbors. The statistical analysis of the neighborhood clearly demonstrates this neighborhood is riddled with crime with many of the businesses surrounding World Class Tattoos, including World Class Tattoos, being the subject of robbery in recent years. These businesses have not been adequately protected and have had to take security into their own hands.

Another issue that was addressed at the Licenses Committee meeting was the suggestion to Mr. Flores that he reduce the cash transactions at his business to be less of a target and victim of robbery. Mr. Flores is in the process of modifying his business plan to transition from a basis that includes a high number of cash paying clients and switching over to utilizing cashless payment methods. It is our hope that the elimination of cash on the premises will reduce the vulnerability of their location being robbed in the future.

At the Licensing Committee meeting on November 28, 2023, Alderman Spiker stated he was "highly disturbed" that a felon was in possession of all these weapons. Mr. Flores was not at the S. 27th Street premises on April 21, 2023, and further had no knowledge at that time of any firearms being kept at the S. 27th Street upper location. Alderman Spiker stated he is "bothered" by the amount of THC located during the search, and he has concerns because the shop was neglected, and that Mr. Flores did not know what was going on at the business. Therefore, it was Alderman Spiker's recommendation for a 90-day suspension of the Tattoo and Piercing License. This seems to be an excessive recommendation considering Mr. Flores and World Class Tattoos were not involved in any criminal activity and did not create a safety issue for the community.

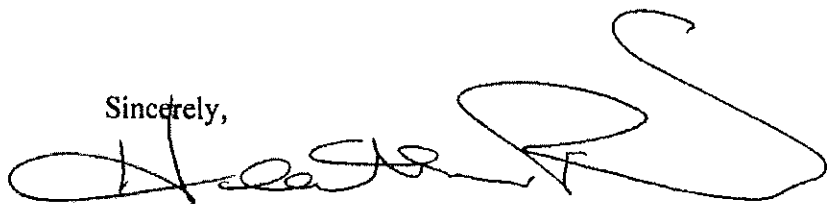
It is clear under Wisconsin law that Mr. Flores was not in possession of any weapons, rather the firearms were legally owned by employees of the establishment. Further, as to the amount of THC found it cannot be ignored that the individual that was found to be in possession with intent of the THC was not Mr. Flores, not an employee, not an agent of World Class Tattoos, but merely a patron

with the THC located in his vehicle, in the parking lot with no knowledge by World Class Tattoos or Mr. Flores. Further, it is unclear how the validity of the search warrant extended to non-related third parties vehicles located within a parking lot, nonetheless, the THC seized by law enforcement had no connection to Mr. Flores or any agent of World Class Tattoos.

A significant fact to note, World Class Tattoos has been at the S. 27th Street location for approximately 12 years. During that timeframe there were no calls for service of law enforcement due to criminal activity and World Class Tattoos has been an asset to their community. Neighbors seek out assistance from Mr. Flores and staff when dealing with their own issues. World Class Tattoos has been a legitimate tax paying business in the 13th district for over a decade. It would be unjust to deny the license renewal to World Class Tattoos based on allegations that cannot be supported by fact and the lapse in renewing the Tattoo and Piercing License in a timely fashion.

We respectfully request the Tattoo and Piercing License of World Class Tattoos be reinstated forthwith.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather L. Richmond". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Attorney Heather L. Richmond
State Bar No. 1073869



CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF WISCONSIN
COUNTY OF MILWAUKEE

SEARCH WARRANT

The State of Wisconsin, to any Law Enforcement Officer of the State of Wisconsin:

WHEREAS, Police Officer Robert Lawrence has this day complained (by attached affidavit) to this Court upon oath showing probable cause that on **Thursday, April 20th, 2023**, in the County of Milwaukee, there is now located and concealed in and upon certain premises, located within the City of Milwaukee, in said County, and more particularly described as follows:

DESCRIBE PREMISES: 3178/3180 S. 27th Street is a building consisting of the World Class Tattoo Shop on the first floor and utilized as a living quarters on the upper. The structure utilizes the address of 3180 which includes the residence on the top floor, the majority of the Tattoo shop, including the basement. The building consists of brown brick siding with a gray shingled roof, with the numbers "3180" prominently displayed in the center of the West facing door to 3180 South 27th Street. 3178 is listed above a second west facing door that is to the north of the door with 3180 above it. This premises is located in the City and County of Milwaukee, State of Wisconsin; search to include all storage areas and vehicles associated with and accessible to 3178/3180 South 27th Street and all persons present on premises, certain goods, chattels and property, to-wit:

DESCRIBE OBJECTS OF SEARCH:

1. Marijuana, a green plant-like substance and associated paraphernalia used for sale;
2. Documents, utility bills, keys, cancelled mail envelopes, bank statements, and other items used to show who is in control of premises; documentation displaying ownership of vehicles and/or other property, assets, U.S. currency obtained as proceeds of drug dealing, CD's, writings and/or electronically recorded data and equipment utilized such as books, records, receipts, notes, ledgers evincing drug trafficking; receipts relating to the purchase of financial instruments and/or the transportation, ordering, sale and distribution of controlled substances; cell phones and/or computers used to communicate with customers and suppliers of drug related transactions; and to record transactions;
3. Weapons such as firearms, electronic weapons, knives, explosives, and other implements capable of causing great bodily harm;

Which thing(s) (were used in the commission) or (may constitute evidence) of a crime, to-wit:

DESCRIBE CRIME OR CRIMES:

- (1) Possession of a Controlled Substance and/or With Intent to Deliver (Marijuana);
- (2) Felon in Possession of a Firearm

Committed in violation of Section(s) 961.41(1m)(h), 941.29(1m)(a), of the Wisconsin State Statutes.

THEREFORE, in the name of the State of Wisconsin, you are commanded forthwith to search the said premises and/or the said person(s) for said things, and take possession thereof, if found. You are further commanded to return this warrant within forty-eight hours before the Assistant Chief Deputy Clerk of the Circuit Court, Criminal Misdemeanor, Traffic Division, or his designee, to be dealt with according to law.

WITNESS, the Honorable Barry Phillips, Judicial Court Commissioner of the First Judicial District of Wisconsin, Milwaukee, Wisconsin, at 11:00 on April 20th, 2023.

(Hour, AM/PM)

(Month, Day, Year)

Judicial Court Commissioner of the Circuit Court
BARRY PHILLIPS



Milwaukee Police Department

749 W. State Street Milwaukee, WI 53233

414-933-4444

Case #:231110092

OtherEvent #: 23-LP-1182

Incident

3180 S 27TH ST MILWAUKEE, WISCONSIN 53215

Incident Date/Time:: 04/21/2023 13:49:00
CAD Number:: 231110683
District:: 6
Beat:: 830
Reporting Area:: 6522

Business Agent (1)

FLORES, FRANK VARGAS JR

Person Involvement: (Must choose Agent
AGENT from drop down):

DOB:: 09/14/1979

Sex:: MALE

Race:: WHITE

Phone 1 Number:: 414-745-3044

Phone 1 Type:: Phone

Address:: 1200 S 28TH ST

City:: MILWAUKEE

State:: WISCONSIN

Zip Code:: 53215

Licensed Persons Involved (1)

LUNA, KRISTINA H

DOB:: 05/11/2001

Sex:: FEMALE

Race:: WHITE

Licensed Premise Data (1)

WORLD CLASS TATTOO SHOP

Address:: 3180 S 27TH ST

City:: MILWAUKEE

State:: WISCONSIN

Zip Code:: 53215

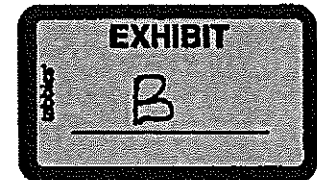
License Type:: Tattoo

Licensee Notification Was Made:: No

Business Was Cited For Violation:: No

Licensee was cooperative: (If not explain in narrative): No

Licensee or Manager was on premises at time of violation/incident:: No



Narrative (1)

LICENSED PREMISE REPORT

Milwaukee Police Department

749 W. State Street Milwaukee, WI 53233

414-933-4444

Case #:231110092

OtherEvent #: 23-LP-1182

Lawrence, Robert H 029805

04/22/2023

This report is written by Police Officer Robert Lawrence, assigned to Milwaukee Police Department District Six (6), Early Shift, Violent Crime Reduction Team (VCRT).

The Following are details surrounding a narcotics search warrant at the location of 3178/3180 South 27th Street in the City and County and Milwaukee.

Application of the Search warrant

On April 20th, 2023, at 4:29PM, I obtained a residential search warrant for the location 3178/3180 South 27th Street which is located in the City and County of Milwaukee. The target of the search warrant was identified as Francisco Vargas-Flores (Hispanic, Male, Date of Birth 09/14/1979). The search warrant was granted by the Honorable Commissioner Barry Phillips, Judicial Court Commissioner of Circuit Court Brach PE, in the City and County of Milwaukee.

Target Location of Search Warrant

*3178/3180 S. 27th Street*s a building consisting of the World Class Tattoo Shop on the first floor and utilized as a living quarter on the upper. The structure utilizes the address of 3180 which includes the residence on the top floor, the majority of the Tattoo shop, including the basement. The building consists of brown brick siding with a gray shingled roof, with the numbers "3180" prominently displayed in the center of the West facing door to *3180 South 27th Street*. 3178 is listed above a second west facing door that is to the north of the door with 3180 above it. This premises is located in the City and County of Milwaukee, State of Wisconsin.

It is imperative to note that the execution of this search warrant took place on 04/21/2023 and at the time of execution the businesses license was not displayed inside or out.

Items recovered during Search Warrant per officer report

During the execution of a search warrant the agent who is a convicted felon per Milwaukee County case 2009CF001426 was found to be in possession of Six (6) firearms including rifles along with assortment of firearm accessories.

He was also found to be in possession of silencer/suppressor which was affixed to a firearm at the time of recovery.

A second subject was found to be in possession of 140.57 grams of positive testing THC which suggest that the subject is distributing narcotics and not for personal use.

That concludes this report.

Officer (2)

Reporting Officer:	Lawrence, Robert H (029805)	04/21/2023 19:00:00
Section: (Work Location):	62	
Approving Officer:	Murrell, Lawson H (018127)	04/23/2023 16:26:04

Milwaukee Police Department

749 W. State Street Milwaukee, WI 53233

414-933-4444

Case #:231110092

OtherEvent #: 23-LP-1182

Section: (Work Location): 62

MILWAUKEE POLICE DEPARTMENT LICENSING

CRIMINAL RECORD/ORDINANCE VIOLATION/INCIDENTS SYNOPSIS

DATE: 10/13/23

LICENSE TYPE:

NEW:

RENEWAL:

No. 357682

Application Date:

License Location: 3180 S. 27th St

Business Name: World Class Tattoo Shop

Licensee/Applicant: Flores, Francisco V.
(Last Name, First Name, MI)

Date of Birth: 09/14/79

Home Address: 2630 W EUCLID AV

City: Milwaukee

State: WI **Zip Code:** 53215

Home Phone:

This report is written by Police Officer Xavier Benitez, assigned to the License Investigation Unit, Days.

The Milwaukee Police Department's investigation regarding this application revealed the following:

1. On 04/20/23 at 4:29pm, Milwaukee Police severed a search warrant at the location of 3180 S. 27th St. The search warrant was for the whole building consisting of the business 3180 S. 27th St and the upper residence of the building, 3178 S. 27th. Various firearms were found to be in possession of the agent, who is a convicted felon. A second subject, was found to be in possession of an amount of THC, not used for personal use.

1343 POSSESSION OF A FIREARM — § 941.29(1m)**Statutory Definition of the Crime**

Section 941.29(1m) of the Criminal Code of Wisconsin is violated by a person who possesses a firearm if that person has been convicted of a felony.¹

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant possessed a firearm.

“Firearm” means a weapon which acts by the force of gunpowder.² [It is not necessary that the firearm was loaded or capable of being fired.]³

“Possess” means that the defendant knowingly⁴ had actual physical control of a firearm.⁵

ADD THE FOLLOWING PARAGRAPHS THAT ARE SUPPORTED BY THE EVIDENCE.

[An item is (also) in a person's possession if it is in an area over which the person has control and the person intends to exercise control over the item.]

[It is not required that a person own an item in order to possess it. What is required is that the person exercise control over the item.]

[Possession may be shared with another person. If a person exercises control



over an item, that item is in his or her possession, even though another person may also have similar control.]

2. The defendant had been convicted of a felony before (date of offense).⁶

[(Name of felony) is a felony in Wisconsin.]⁷

[The parties have agreed that the defendant was convicted of a felony before (date of offense) and you must accept this as conclusively proved.]⁸

Jury's Decision

If you are satisfied beyond a reasonable doubt that both elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1343 was originally published in 1983 and revised in 1984, 1986, 1987, 1993, 1996, 1999, 2007, 2011, 2016, and 2019. This revision was approved by the Committee in February 2021; it added to the Comment.

Section 941.29 was revised by 2015 Wisconsin Act 109. The offense definition did not change but is now found in sub. (1m); the instruction was revised to reflect that change. In addition, Act 109 repealed former sub. (2) and created sub. (4m) to require a minimum sentence for cases involving persons with a prior record relating to a "violent felony" or a "violent misdemeanor." Those terms are defined in new sub. (1g). [The effective date of Act 109 is November 13, 2015; but § 941.29(4m)(b) states: "This subsection does not apply to sentences imposed after July 1, 2020."]

See Wis JI-Criminal 1343A for material to add to this instruction in cases where the narrow defense of privilege recognized in State v. Coleman, 206 Wis.2d 198, 556 N.W.2d 701 (1996), is raised.

See Wis JI-Criminal 1343B for violations of § 941.29(4), furnishing a firearm to a felon.

See Wis JI-Criminal 1344 for violations of § 941.29(1m)(f) and (g), possession of a firearm by a person subject to an injunction.

The state has jurisdiction to enforce § 941.29 on tribal reservations. State v. Jacobs, 2007 WI App 155, 302 Wis.2d 675, 735 N.W.2d 535.

The right to bear arms amendment to the state constitution did not invalidate § 941.29. State v. Thomas, 2004 WI App 115, 274 Wis.2d 513, 683 N.W.2d 497. The statute is not unconstitutionally vague or over broad and it does not deny the equal protection of the laws. Id.

Wisconsin's possession of a firearm by a felon law is not unconstitutional as applied to a defendant convicted of a non-violent felony. The Wisconsin Supreme Court has held that prohibiting all felons from possessing firearms under § 941.29, even those convicted of non-violent offenses, is substantially related to the important governmental objectives of public safety and the prevention of gun violence. State v. Roundtree, 2021 WI 1, 395 Wis.2d 94, 952 N.W.2d 765. Accordingly, § 941.29 is constitutional as applied to all felons, regardless of the nature or age of the underlying felony conviction. Id.

The holding in Roundtree was based primarily on the Seventh Circuit decision in Kanter v. Barr, 919 F.3d 437 (7th Cir. 2019) which provided "the government has shown that prohibiting even non-violent felons like Kanter from possessing firearms is substantially related to its interest in preventing gun violence." Id., at 448. Furthermore, the court in Roundtree found that data demonstrating nonviolent felony offenders have a proportionately high rate of recidivating with a violent crime sufficiently supports "a substantial relation between keeping firearms out of the hands of those convicted of non-violent felonies and the public safety objective of preventing gun violence." 952 N.W.2d 765, 774.

Section 2 of Chapter 141, Laws of 1981, related to the applicability of the law and was not printed in the statutes. It provided: "This act applies to persons regardless of the date the crime specified under § 941.29(1) of the statutes, as created by this act, is committed." However, for the statute to apply, the possession of the firearm would have had to occur after the statute's effective date, which was March 31, 1982.

Section 973.033, effective March 31, 1990, requires that whenever a defendant is sentenced for a felony, "the court shall inform the defendant of the requirements and penalties under s. 941.29." This does not add a requirement to a charge under § 941.29, that the required advice was given. State v. Phillips, 172 Wis.2d 391, 493 N.W.2d 238 (Ct. App. 1992). Phillips confirmed that the offense has two elements: being a convicted felon and possessing a firearm. 172 Wis.2d 391, 354.

In State v. Thiel, 188 Wis.2d 695, 524 N.W.2d 641 (1994), the court upheld the application of § 941.29 to a person whose felony conviction occurred in 1970, eleven years before § 941.29 was enacted. The court concluded that "the statute was not enacted with the intent to punish convicted felons and as such is not an ex post facto law as applied to [Thiel]." 188 Wis.2d 695, 697.

1. The instruction is drafted for cases involving possession of a firearm by a person convicted of a felony. However, the statute also applies to other categories of individuals. See § 941.29(1m)(a) through (g). This instruction is suitable for use in cases involving subs. (1m)(a) and (b). (See discussion in note 7.) For cases involving subs. (1m)(c) through (em), the instruction must be modified. [Subsection (1m)(em) was created by 2009 Wisconsin Act 258.] For cases involving subs. (1m)(f) and (g), see Wis JI-Criminal 1344.

The statement of the elements in the instruction is a substantial shortening of the full statutory definition. Note that there are exceptions to the coverage of the statute in subsections (5) through (9) of § 941.29. The exception in subsection (5)(b) was added by 1985 Wisconsin Act 259. The cited provision, 18 U.S.C. § 925(c), allows the secretary of the treasury to grant relief from the disabilities relating to possession of firearms if the person's conviction did not involve a firearm offense and the secretary is satisfied "that Wisconsin Court System, 2021

(Release No. 59)

the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be contrary to the public interest.”

The Wisconsin Attorney General has concluded that subsec. (5)(a) has been invalidated by congressional action. Effective November 15, 1986, 18 U.S.C. app. § 1203, was repealed in favor of 18 U.S.C. § 921(a)(20). “Any pardon granted . . . since November 15, 1986, will give the recipient the right to . . . possess . . . firearms unless the pardon ‘expressly provides that the person may not ship, transport, possess or receive firearms.’ 18 U.S.C. § 921(a)(20).” OAG 6 89, Feb. 20, 1989.

2. The term “firearm” is considered to mean a weapon that acts by the force of gunpowder. See, for example, Harris v. Cameron, 81 Wis. 239, 51 N.W. 437 (1892).

3. Possession of a disassembled and inoperable firearm is a violation of § 941.29. The “term ‘firearm’ is appropriately defined as a weapon that acts by force of gunpowder to fire a projectile irrespective of whether it is inoperable due to disassembly.” State v. Rardon, 185 Wis.2d 701, 706, 518 N.W.2d 330 (Ct. App. 1994), citing Wis JI-Criminal 1343 with approval. Also see State v. Johnson, 171 Wis.2d 175, 491 N.W.2d 110 (Ct. App. 1992), reaching a similar conclusion with respect to the definition of “shotgun” under § 941.28.

4. Inherent in the legal definition of “possession” is the concept of knowing or conscious possession. See Schwartz v. State, 192 Wis. 414, 418, 212 N.W. 664 (1927), Doscher v. State, 194 Wis. 67, 69, 214 N.W. 359 (1927).

5. The definition of “possess” is the one provided in Wis JI-Criminal 920. The first sentence should be given in all cases. The bracketed optional paragraphs are intended for use where the evidence shows that the object is not in the physical possession of the defendant or that possession is shared with another:

See the Comment to Wis JI-Criminal 920 for a discussion of various issues relating to “possession” in criminal cases, including so called constructive possession.

In State v. Black, 2001 WI 31, 242 Wis.2d 126, 624 N.W.2d 363, the court suggested that “handling” a firearm was sufficient to satisfy the “possession” element. The court concluded that a criminal complaint alleging that the defendant handled a firearm provided a sufficient factual basis to support a guilty plea to violating § 941.29.

6. The date of the offense should be inserted in this blank.

7. The statute applies to persons convicted of a felony in Wisconsin and also to persons convicted of crimes in other states that would be felonies in Wisconsin. In the Committee’s judgment, the way the second element is phrased should be suitable for handling either alternative. Where the crime committed in another state has a name not used in Wisconsin, it may be helpful to add a sentence to the effect that the offense would have been a felony if committed in this state. The Committee concluded that the statutory elements of the crime of which the defendant was convicted in the other state should be compared with the statutory elements of the comparable Wisconsin offense. One must be able to say that those elements “would be a felony if committed in this state.”

The Committee also concluded that the statute need not be interpreted to require that the defendant “know he was convicted of a felony” or know that he was prohibited from possessing a firearm. A person may fairly be held to know the nature of a crime of which he was convicted and to know the disabilities Wisconsin Court System, 2021

(Release No. 59)

that may attend such a conviction. See State v. Roundtree, supra, 2021 WI 1, 395 Wis.2d 94, 952 N.W.2d 765.

Section 939.23(1) provides: “When criminal intent is an element of a crime in chs. 939 to 951, such intent is indicated by the term ‘intentionally,’ the phrase ‘with intent to,’ the phrase ‘with intent that,’ or some form of the verbs ‘know’ or ‘believe.’” The Committee generally applies the converse of this rule: if a statute does not use one of the “intent words” – in this case it would most likely be “knowingly” – a mental state is not required.

[Compare § 941.29 with its federal counterpart, 18 USC 924(a)(2) which refers to one who “knowingly” violates the federal prohibition in 18 USC 922(g) on firearm possession. 18 USC 924(a)(2) was interpreted in Rehaif v. United States, 139 S.Ct. 2191 [No. 17-9560, decided June 21, 2019] to require that the defendant knew he possessed a firearm and knew that he was an alien unlawfully in the country and thus prohibited from possessing a firearm under 18 USC 922(g). Because it is a decision interpreting a federal statute and is not constitutionally based, Rehaif has no direct application to § 941.29.]

Where the out-of-state conviction is under a statute that is broader than its Wisconsin counterpart, courts should evaluate whether the conduct that led to the conviction would be considered a felony if committed in Wisconsin. If it would, the out-of-state conviction can be the basis for the application of § 941.29. State v. Campbell, 2002 WI App 20, 250 Wis.2d 238, 642 N.W.2d 230.

Wisconsin law clearly distinguishes between a pardon and a restoration of rights. Under § 941.29(5)(a), a pardon – not merely a restoration of rights – remains necessary for a felon to be relieved of his or her firearms disabilities. Where the removal of a felon’s political disabilities imposed as a result of an out-of-state conviction restores the felon’s right to possess a firearm in that state, a pardon is still required for the felon to possess firearms in Wisconsin. Moran v. Wisconsin Department of Justice, 2019 WI App 38, 388 Wis.2d 193, 932 N.W.2d 430.

8. Defendants may offer to stipulate to the fact of their felon status. The bracketed statement in the instruction includes the standard statement on the effect of a stipulation found in Wis JI-Criminal 162, **AGREED FACTS**. The effect of a stipulation in a prosecution for violating § 941.29 has been described as follows:

. . . where prior conviction of a felony is an element of the offense with which the defendant is charged and the defendant is willing to stipulate that he or she is a convicted felon, evidence of the nature of the felony is irrelevant if offered solely to establish the felony-conviction element of the offense. The trial court therefore abused its discretion in allowing the prosecutor to inform the jury as to the nature of McAllister’s crime.

State v. McAllister, 153 Wis.2d 523, 525, 451 N.W.2d 764 (Ct. App. 1989).

The fact of felon status may still be revealed; it is the nature of the felony that is not to be disclosed. State v. Nicholson, 160 Wis.2d 803, 804, 467 N.W.2d 139 (Ct. App. 1991).

Care must be taken where a stipulation goes to an element of a crime. A waiver should be obtained. See Wis JI-Criminal 162A Law Note: Stipulations.

An example of a complete waiver inquiry is as follows:

TO THE DEFENDANT:

1. Do you understand that one of the elements of the crime of felon in possession of a firearm is that you have been convicted of a felony before the date of this offense?
2. Do you understand that you have the right to have a jury, that is, twelve people, decide whether or not the state has proved beyond a reasonable doubt that you have been convicted of a felony before the date of this offense?
3. Do you understand that the State has to convince each member of the jury that you have been convicted of a felony before the date of this offense?
4. With this stipulation, you are agreeing that I tell the jury that you have been convicted of a felony before the date of this offense, and that they are to accept this fact as conclusively proved?
5. Has your attorney explained the pros and cons, that is, the advantages and disadvantages of entering into this agreement?
6. Have you had enough time to talk all of this over with your attorney?
7. Has anyone pressured you or threatened you in any way, or made any promises to you, to get you to enter into this agreement?
8. Are you entering into this agreement of your own free will?
9. Have you had enough time to make your decision?

TO DEFENSE COUNSEL:

1. Are you satisfied that your client thoroughly understand (his) (her) right to enter into this agreement regarding (his) (her) prior conviction or to not enter into this agreement?
2. Are you satisfied that your client is entering into this agreement freely, voluntarily, intelligently, and knowingly?

FINDING: The court is also satisfied that the defendant is entering into this agreement freely, voluntarily, intelligently, and knowingly. The court therefore accepts the stipulation.

Also see State v. Aldazabal, 146 Wis.2d 267, 430 N.W.2d 614 (Ct. App. 1988), where the defendant, charged with violating § 941.29, stipulated that he had been convicted of a felony. The stipulation was not formally admitted into evidence, but the court of appeals held that the mentioning of the stipulation during the prosecutor's opening statement was sufficient to support the conviction.



December 7, 2023

Re: World Class Tattoos, 3180 S. 27th Street
Frank V. Flores Jr.

Dear Common Counsel:

My office submitted response and objection to the Findings of Fact received yesterday concerning the above referenced matter. On the third page, first sentence, I incorrectly listed the date of closing as October 12, 2023. The date of closure, as referenced later in the response, was actually November 3, 2023.

I apologize for the error and want to correct the response. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Heather L. Richmond', with a large, looping flourish extending to the right.

Heather L. Richmond
State Bar No. 1073869