STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2018AP1346

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DENNIS FRANKLIN & SHANE SAHM,

Defendants-Appellants.

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On certification of a state-law question from the
United States Court of Appeals for the Seventh Circuit

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# BRIEF AND APPENDIX OF DEFENDANTS-APPELLANTS

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## STATEMENT OF THE ISSUE

This Court has accepted certification of this question from the Federal Court of Appeals for the Seventh Circuit:

> Whether the different location subsections of the Wisconsin burglary statute, Wis. Stat. § 943.10(1m)(a)–(f), identify alternative elements of burglary, one of which a jury must unanimously find beyond a reasonable doubt to convict, or whether they identify alternative means of committing burglary, for which a unanimous finding beyond a reasonable doubt is not necessary to convict?

## STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument and publication are appropriate for any case that this Court accepts for review.

## BACKGROUND

Wisconsin's burglary statute covers unlawful entry into any one of a number of locations:

> (1m) Whoever intentionally enters any of the following places without the consent of the person in lawful possession and with intent to steal or commit a felony in such place is guilty of a Class F felony:
>
> (a) Any building or dwelling; or
>
> (b) An enclosed railroad car; or
>
> (c) An enclosed portion of any ship or vessel; or
>
> (d) A locked enclosed cargo portion of a truck or trailer; or
>
> (e) A motor home or other motorized type of home or a trailer home, whether or not any person is living in any such home; or
>
> (f) A room within any of the above.

Wis. Stat. § 943.10(1m).

The certified question is whether subs. (a)–(f) list distinct elements of six different offenses or merely six means of committing one offense. Put more concretely, the question is whether at trial, jurors would have to unanimously agree on the location subsection, such that in a case involving burglary of a boat where someone was living, if jurors can't agree whether it should be deemed a ship or a dwelling, they would have to return a not-guilty verdict. Or, to put it another way, in that same case, could the prosecutor charge two counts of burglary—one under sub. (1m)(a) ("dwelling") and another under sub. (1m)(c) ("ship")?

However this question is framed, the answer is obvious. Section 943.10(1m)'s location subsections are means of committing a single offense: burglary. They are not elements of six different crimes.

The fact that the Seventh Circuit has certified the question might cause this Court to assume that it is more complicated than it appears. But the certification has more to do with recent developments in federal law than with the complexity of state law. Thus, some history is in order.

The underlying federal litigation is about the Armed Career Criminal Act (ACCA), a three-strikes sentence enhancement that attaches to the crime of being a prohibited person (*e.g.* felon) in possession of a firearm. 18 U.S.C. § 924(e); *see also* 18 U.S.C. § 922(g). ACCA covers anyone convicted under § 922(g) who has three prior convictions that can be categorized as a "violent felony" or "serious drug offense," and it has a huge impact—it increases the potential sentence from a *maximum* of 10-years' imprisonment, § 924(a), to a *minimum* of 15 years and a maximum of life. § 924(e).

ACCA defines "violent felony" as any offense that has an element of force or, relevant here, "is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another." § 924(e). The listed crimes are known as ACCA's "enumerated offenses"; the last phrase ("or otherwise involves...") is a catch-all provision known as the "residual clause."

Decades ago, the Supreme Court held that in determining whether a prior conviction fits within one of these categories, federal courts cannot consider what

the defendant actually did; they can only consider the elements of the statutory offense. *Taylor v. United States*, 495 U.S. 575, 600–02 (1990). And it held that a prior burglary conviction only counts as *ACCA* burglary if the statute of conviction requires proof of these elements: "unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime." *Id.* at 598. In ACCA parlance, this is known as "generic burglary." *Id.* at 598.

But even post-*Taylor*, until recently, nearly all burglary priors counted as ACCA predicates—for two reasons. First, *Taylor* says that when it is unclear whether a statutory crime has the elements of generic burglary, federal courts may consult documents from the underlying state case, *id.* at 602, and federal courts used this procedure in an expansive way to declare prior offenses to be generic burglary, *see Descamps v. United States*, 570 U.S. 254, 265–67 (2013). Second, federal courts generally held that even non-generic burglary fit within ACCA's "residual clause." *See, e.g., James v. United States*, 550 U.S. 192, 197 (2007), *overruled by Johnson v. United States*, 135 S. Ct. 2551 (2015) (striking down ACCA's residual clause).

Now the Supreme Court has put a stop to both of these *Taylor* work-arounds. In *Mathis v. United States*, 136 S. Ct. 2243 (2016), the Court barred reliance on state-court documents in most cases.[1] And in *Johnson v. United States*, 135 S. Ct. 2551 (2015), the Supreme Court

[1] A federal court is permitted to use state-court documents to declare an offense to be generic burglary only when the statute of conviction is divisible (defines multiple criminal offenses with distinct elements), for the purpose of determining which of the distinct offenses was the offense of conviction. *Id.*

struck down ACCA's residual clause. So post-*Johnson* and *Mathis*, when the statute of conviction is broader than generic burglary, based only on consideration of its essential elements, it simply is not an ACCA predicate. *Mathis*, 136 S. Ct. at 2256–57. Most typically, this occurs with state burglary statutes that cover unlawful entry of both buildings and vehicles. *See id.*

So when a state burglary statute contains location alternatives, at least one of which is a building (generic burglary) and another of which is a vehicle (not generic burglary), federal courts must determine whether the alternatives are elements or means. *Mathis*, 136 S. Ct. at 2256–57. This question of state law can mean the difference between a maximum 10-year sentence and up-to-life imprisonment. § 924(a)&(e). The Seventh Circuit does not want to get this wrong, as it relates to Wisconsin burglary, so it has certified the question to this Court.

## STATEMENT OF THE CASE

Dennis Franklin and Shane Sahm were each convicted in federal court of being a felon in possession of a firearm. *United States v. Franklin*, 884 F.3d 331, 332–33 (7th Cir. 2018), *reh'g granted, judg't vacated*, 895 F.3d 954 (7th Cir. 2018).[2] They were each found to be "armed career criminals" under ACCA, based on Wisconsin burglary convictions,[3] and sentenced to the mandatory-minimum 15 years' imprisonment. *Id.* These findings were made before the Supreme Court issued *Mathis*.

Sahm and Franklin both appealed to the Seventh Circuit, and their cases were stayed pending *Mathis* and then pending a circuit case that would apply *Mathis* in a closely related context: *United States v. Edwards*, 836 F.3d 831 (7th Cir. 2016). In *Edwards*, the Seventh Circuit was considering a different recidivist provision that covered only burglary "of a dwelling," relying on the same categorical analysis as ACCA. *Id.* at 832–33. The Seventh Circuit ultimately held that Edwards's prior Wisconsin burglary conviction, which the judgment referenced as "943.10(1m)(a)," was not (categorically) burglary of a dwelling, although state-court documents indicated that he had, in fact, burglarized a dwelling. *Id.* at 837–38.

In *Edwards*, in the course of holding that Wis. Stat. § 943.10(1m)'s first location subsection ((a), "building or dwelling") was not internally divisible, the court also

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[2] These opinions are in the appendix, but citations are to the federal reporter.

[3] Some convictions were under the superseded Wis. Stat. § 943.10(1) or the aggravated burglary section, § 943.10(2), but the legal question about the statute's location alternatives is the same regardless, so this brief refers solely to § 943.10(1m), for simplicity.

noted that "any one" of the subdivided location alternatives "satisfy the location requirement for burglary," strongly suggesting that the subdivided location alternatives were means, not elements. *Id.* at 837. *Edwards* was authored by former Wisconsin Supreme Court Justice, now Seventh Circuit Judge Diane Sykes—a fact that would later play a role in rehearing filings. *Id.* at 832.

Once *Mathis* and *Edwards* were settled, the present appeals were consolidated, then briefed and argued. After argument, one of the judges on the three-judge panel retired; on February 26, 2018 the remaining two judges ruled that Wisconsin burglary, § 943.10(1m), is "divisible": each of its location subsections ((a)–(f)) contain unique elements of distinct offenses. *Franklin*, 884 F.3d at 332 (vacated).

The now-vacated panel opinion reasoned that "[e]ach subsection can be delineated from the others (i.e., buildings, railroad cars, ships, motor homes, cargo portions of trucks)." *Id.* at 335. That is, except for the last subsection—sub. (1m)(f)—covering "a room within any of the above." *Id.* But the panel "put aside subsection (f) for these appeals." *Id.* The panel acknowledged that it was possible even for the other subsections to overlap, as with a houseboat, but said the appellants' concerns about that were "overstate[d]." *Id.* It is not clear what the panel meant by this—that no prosecutor would double-charge a houseboat burglary, even if that were legally permissible; that there would never be a burglary of a houseboat; or something else. *See id.*

The panel also thought it was significant that § 943.10(1m) "enumerates each potential location" (with

the letters (a)–(f)), so prosecutors would "usually charge a specific subsection for each burglary offense," and state appellate opinions addressing burglary convictions often specify the location subsection. *Id.* at 335–36. In the appellants' cases, circuit-court documents specifically referred to sub. (1m)(a). *Id.*

In addition, the panel relied on an Eighth Circuit case holding that § 943.10(1m) is divisible. The Eighth Circuit said that a Wisconsin case, *State v. Baldwin*, 101 Wis. 2d 441, 304 N.W.2d 742 (1981), indicated that itemized subsections are considered divisible as a matter of state law, while *State v. Derango*, 2000 WI 89, 236 Wis. 2d 721, 613 N.W.2d 833, suggested otherwise. *Franklin*, 884 F.3d at 336 n.3 (citing *United States v. Lamb*, 847 F.3d 928 (8th Cir. 2017), which in turn cited to this Court's cases). The panel agreed with the Eighth Circuit that it was unclear whether *Baldwin* or *Derango* governed, and thus it did not factor state case law into its analysis. *Id.*

Franklin and Sahm petitioned for rehearing. They explained that *Derango* is the leading elements/means case in Wisconsin, and the panel was wrong (as a matter of both federal and state law) to disregard it. (Pet. for reh'g at 8–9, 11-14.) The petition pointed out that the author of *Derango* was now-Judge Sykes, who was on the *Edwards* panel and expressly said at the *Edwards* oral argument that none of § 943.10(1m)'s location alternatives were "distinct elements." (Pet. for reh'g at 3 (quoting Oral Argument, *United States v. Edwards*, No. 15-2373, at 05:42–44 (7th Cir. Dec. 10,

2015)).)[4] She explained that the "burglary statute in Wisconsin is um, describes the crime of burglary and sets forth alternative means of committing it—including intentionally entering any one of a number of listed places; and the fact that building or dwelling is in one subsection and the railroad car and the boat and the ship or vessel and all of the other enclosures are in other separate subsections doesn't make the separate subsections separate elements, they're just different ways of committing the offense of burglary." (*Id.* at 4-5 (quoting Oral Argument, *supra*, at 05:43–6:23).)

The appellants acknowledged that Judge Sykes's remarks at the *Edwards* argument did not have any legal authority. (Pet. for reh'g at 3.) But they argued that it was "truly remarkable that the author of Wisconsin's leading jury-unanimity opinion, now a judge on this Court, addressed precisely the question presented here and answered it in the appellants' favor." (*Id.*)

The UW Law School's Remington Center filed an amicus brief in support of the petition, arguing that the panel opinion was wrong on state law. (Amicus at 5–10.) The Remington Center expressed concern that the opinion might confuse state courts and practitioners. (*Id.* at 10–13.) It could embolden prosecutors to charge multiple crimes for a single act, lead defense attorneys to give erroneous advice, and undermine guilty pleas—at least, until this Court could get the opportunity to correctly decide the issue. (*Id.*)

The Seventh Circuit granted the petition for rehearing, vacated the panel opinion, and certified the

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[4] *Available at* http://media.ca7.uscourts.gov/sound/2015/gw.15-2373.15-2373_12_10_2015.mp3.

state-law question to this Court in a per curiam opinion. *Franklin*, 895 F.3d at 955. The court in this new opinion acknowledged the implications of the now-vacated panel opinion. If § 943.10(1m)'s location alternatives are elements, rather than means, then in Wisconsin:

- If a homeowner-victim testifies that someone stole her computer, but isn't sure whether it was taken from the garage or an RV in the driveway, jurors could only convict if they could unanimously agree on whether the defendant burglarized the garage or the RV. *Franklin*, 895 F.3d at 959.

- If someone burglarizes a single houseboat, a prosecutor could charge four crimes: burglary of a dwelling, burglary of a vessel, burglary of a room within a dwelling, burglary of a room within a vessel. *Id.*

Thus, the per curiam opinion found that the state-law question was tougher than the panel had previously recognized. *Id.* at 961. And it noted that a wrong decision on the matter could cause "substantial confusion and uncertainty" in both the federal and state courts. *Id.* Thus, the Seventh Circuit certified the state-law question to this Court. Once this Court answers the question, the Seventh Circuit can decide the underlying federal question and resolve these appeals.

## ARGUMENT

### I. Section 943.10(1m)'s location alternatives are not elements of distinct crimes—they are means of committing burglary.

This Court's leading case on jury unanimity in the elements-versus-means context is *State v. Derango*, 2000 WI 89, 236 Wis. 2d 721, 613 N.W.2d 833. "The threshold question . . . is whether the statute creates multiple offenses or a single offense with multiple modes of commission." *Id.* at ¶14. That is precisely the question that the Seventh Circuit has certified to this Court, regarding Wisconsin burglary.

To resolve this question, the Court "examine[s] four factors: 1) the language of the statute, 2) the legislative history and context of the statute, 3) the nature of the proscribed conduct, and 4) the appropriateness of multiple punishment for the conduct." *Id.* at ¶15 (citing *State v. Hammer*, 216 Wis. 2d 214, 220, 576 N.W.2d 285 (Ct. App. 1997), and *Manson v. State*, 101 Wis. 2d 413, 422, 304 N.W.2d 729 (1981)). The point is to determine legislative intent: "did the legislature intend to create multiple, separate offenses, or a single offense capable of being committed in several different ways?" *Id.* This analysis is conducted de novo. *State v. Dearborn*, 2008 WI App 131, ¶19, 313 Wis. 2d 767, 758 N.W.2d 463.

Here, all four factors show that § 943.10(1m)'s location alternatives are not elements of distinct offenses about which jurors would have to unanimously agree. They are various means of committing a single offense: burglary.

### A. The language of the burglary statute indicates that the location alternatives are means of committing a single offense.

In *Derango*, this Court examined the state's child enticement statute, quoted below.[5] The state's burglary statute, also quoted below, has a similar structure.[6]

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[5] Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class BC felony:

> (1) Having sexual contact or sexual intercourse with the child in violation of s. 948.02 or 948.095.
>
> (2) Causing the child to engage in prostitution.
>
> (3) Exposing a sex organ to the child or causing the child to expose a sex organ in violation of s. 948.10.
>
> (4) Taking a picture or making an audio recording of the child engaging in sexually explicit conduct.
>
> (5) Causing bodily or mental harm to the child.
>
> (6) Giving or selling to the child a controlled substance or controlled substance analog in violation of ch. 961.

*Derango*, 2000 WI 89, ¶16 (quoting Wis. Stat. § 948.07 (1999-2000)).

[6] Whoever intentionally enters any of the following places without the consent of the person in lawful possession and with intent to steal or commit a felony . . . is guilty of a Class F felony:

> (a) Any building or dwelling; or
>
> (b) An enclosed railroad car; or
>
> (c) An enclosed portion of any ship or vessel; or
>
> (d) A locked enclosed cargo portion of a truck or trailer; or
>
> (e) A motor home or other motorized type of home or a trailer home, whether or not any person is living in any such home; or
>
> (f) A room within any of the above.

Wis. Stat. § 943.10(1m).

This Court in *Derango* explained that the child enticement "statute, by its straightforward language, creates one offense with multiple modes of commission." 236 Wis. 2d at 733, ¶17. It criminalizes the act of causing or attempting to cause a child to go into a secluded place "with *any* of six possible prohibited intents. The act of enticement is the crime, not the underlying intended sexual or other misconduct." *Id.*

The burglary statute operates the same way. It criminalizes the act of intentionally entering *any of six possible prohibited locations* without consent and with the intent to steal or commit a felony. *See* § 943.10(1m). In other words, the act of burglarious entry is the crime, not the particular location that is entered. *See id.* Long ago, common law burglary covered only "the breaking and entering of the dwelling house of another in the nighttime with the intent to commit a felony." Wayne R. LaFave, 3 Subst. Crim. L. § 21.1 (2d ed. 2016). Now, most states have expanded on that definition, such that the offense can occur in additional locations, can occur during the day, and can involve an intent to commit non-felonious crimes. *See id.* But nonconsensual-entry-with-intent remains constant—that is what makes burglary, *burglary*. *See id.* In other words, nonconsensual-entry-with-intent is the "gravamen" of burglary. *See Derango*, 236 Wis. 2d at 734, ¶19 (discussing the "gravamen" of child enticement).

Also similarly to the child enticement statute, the text of § 943.10(1m) does not set out different penalties for the various location alternatives. Whether a burglar enters a building or a ship or a room within a house-boat, she has committed a Class F felony. § 943.10(1m). There is a distinct crime in subsection (2), for burglary

committed under aggravating circumstances, such as when a defendant steals a weapon—a Class E felony. But that doesn't impact the location alternatives. So whether a burglar breaks into a building or a ship, he has committed a Class F felony; and whether the crime involves a building or ship, if the burglar steals a firearm, he has committed a Class E felony. § 943.10(1m) & (2). Thus, the burglary statute's penalty structure indicates that the six location subsections do not distinguish separate offenses. They merely describe the various locations that can be burglarized.

### B. This reading is supported by the statute's legislative history.

In *Derango*, this Court explained that an older version of the child-enticement statute "did not set forth a specific list of requisite intents, but referred to the general intent to 'commit a crime against sexual morality.'" 236 Wis. 2d at 734–35, ¶20. The legislature replaced this general language with an enumerated list of prohibited intents, and the drafting file indicates that this change was intended to "replace and clarify" the general language; there was "no indication in the legislative history that the legislature intended to take what was once a single crime and replace it with six." *Id.* This supported the Court's reading of the statute as defining a single crime with alternative means. *Id.*

The history of § 943.10 is much the same. The modern burglary statute "was created as part of the comprehensive revision of the Wisconsin Criminal Code." *Champlin v. State*, 84 Wis. 2d 621, 624, 267 N.W.2d 295 (1978). The original draft of the statute, passed in a provisional bill, defined burglary with

general location language: "Whoever enters any structure without the consent of the owner and with intent to steal or commit a felony therein may be imprisoned not more than 10 years." *Id.* at 625 (quoting S.B. 784 (1951)); *see also* 1953 Wis. Laws 623, § 343.10, p. 670. The provisional statute defined "structure" as "any inclosed building or tent, any inclosed vehicle (whether self-propelled or not) or any room within any of them." 1953 Wis. Laws 623, § 339.22, p. 661. And it defined "vehicle" to include any device for moving on land, rails, water, or in the air. *Id.*

Then the legislature's advisory committee made several changes related to burglary locations. First, it decided to exclude automobiles.[7] Then there was a redraft that replaced the word "structure" with "building, dwelling, or any room within a building or dwelling"; but committee members complained that the redraft was "too restrictive" and "if the redraft were adopted, the present law would be changed."[8] So later that same day, the committee incorporated the various locations that had been in the definition of structure into the burglary statute itself: "building, dwelling, enclosed railroad car or the enclosed portion of any ship or vessel, or any room therein."[9]

The next day, a committee member proposed adding "or any locked enclosed cargo portion of truck

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[7] Wisconsin Legislative Council, Meeting of the Criminal Code Advisory Committee (June 3, 1954); App. 128–98.

[8] Wisconsin Legislative Council, Meeting of the Criminal Code Advisory Committee at 7 (July 23, 1954); App. 131.

[9] Wisconsin Legislative Council, Meeting of the Criminal Code Advisory Committee at 9 (July 23, 1954); App. 132.

or trailer."[10] Then committee members "suggested that it might be better now if the section were set up in a-b-c fashion," and the committee decided to send the statute back to the technical staff for that purpose.[11]

Later that day, there was a proposal to significantly alter the burglary statute with four sections that would presumably carry different penalties, and would cover automobiles: (1) burglary of a "building, dwelling, enclosed railroad car or the enclosed portion or any ship or vessel, or any room therein, or any locked enclosed cargo portion of truck, trailer, or semi-trailer"; (2) burglary of a locked vehicle other than a passenger car or the locked cab of a truck; (3) burglary of an unlocked vehicle or of a locked passenger car or locked cab of a truck; (4) armed burglary.[12] Even in this version of the statute, which seemed to propose distinct offenses, burglary of a "building, dwelling, enclosed railroad car or the enclosed portion or any ship or vessel, or any room therein, or any locked enclosed cargo portion of truck, trailer, or semi-trailer" was proposed as a single offense. *See id.*

It is not clear (at least, not from undersigned counsel's research) when the committee rejected that version of the statute. But ultimately, they reverted back to something more like the previous version, except "in a-b-c fashion."[13]

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[10] Wisconsin Legislative Council, Meeting of the Criminal Code Advisory Committee at 11 (July 24, 1954); App. 134.

[11] App. 134.

[12] App. 134.

[13] Wisconsin Legislative Council, Meeting of the Criminal Code Advisory Committee at 1–2 (Sept. 16, 1954); App. 135–36.

As finally enacted in 1955, the relevant portion of the statute read:

> (1) Whoever intentionally enters any of the following places without the consent of the person in lawful possession and with intent to steal or commit a felony therein may be imprisoned not more than 10 years:
>
> (a) Any building or dwelling; or
>
> (b) An enclosed railroad car; or
>
> (c) An enclosed portion of any ship or vessel; or
>
> (d) A locked enclosed cargo portion of a truck or trailer; or
>
> (e) A room within any of the above.

1955 Wis. Laws 696, § 1, p. 990. This structure has carried through to the current version, with the legislature making only minor changes. *See* § 943.10(1m) (2017–18).

Thus, just like the child-enticement statute, the burglary statute started out with general language. And when the legislature replaced the general term "structure" with a list of specific locations, it wasn't a material change. The revision was intended to "replace and clarify" the general language, not to "take what was once a single crime and replace it with six." *See Derango*, 236 Wis. 2d at 735, ¶20. Indeed, given the definition of "structure" in the original, provisional bill, the revisions didn't change much at all, other than excluding automobiles and airplanes. They just made the statute easier to read by including the definition of structure in the statute, in "a-b-c fashion."

### C. The nature of the proscribed conduct and the inappropriateness of multiple punishments confirms that the alternatives are means.

Again, the gravamen of burglary is nonconsensual entry with criminal intent. The location subsections merely list the places that can satisfy a single element of burglary—the *place* (or location or premises) element. As the state's pattern jury instruction explains, "the offense of burglary is complete upon the slightest entry by the defendant into *any one of the places described in § 943.10(1)(a)–(f)* without the consent of the person in lawful possession, when such entry is made with the required intent." Wis. JI–Criminal 1421 n.3 (emphasis added).

This Court in *Derango* said that "acts warrant separate punishment when they are separate in time or are significantly different in nature." 236 Wis. 2d at 735, ¶21. With child enticement, the Court said that there was only one act—enticing a child—that "could be committed with one or more of six possible mental states." *Id.* So it "would not be appropriate" for defendants to receive "multiple punishments" for a single act of enticement. *Id.*

Just so here: burglary is one act—nonconsensual entry with burglarious intent—that can be committed in any one of six possible locations. And just as a child-enticer might "possess more than one prohibited intention," a burglar could enter a place that fits within multiple location subsections. Indeed, a defendant will almost always enter both a location and a room within that location. *See* § 943.10(1m)(f) ("room within any of

the above"). The now-vacated Seventh Circuit panel opinion "put aside subsection (f)" when analyzing the statute. *Franklin*, 884 F.3d at 335. But this Court can't ignore sub. (1m)(f), both because state practitioners and trial courts can't ignore multiplicity problems when they arise and because principles of statutory construction do not permit this court to ignore part of a statutory whole. *State ex rel. Kalal v. Circ. Ct. for Dane Cty.*, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110 ("Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.").

Moreover, there is overlap beyond sub. (1m)(f). Subsection (1m)(a) covers any "building or dwelling," and every other listed location can be used as a dwelling. Even "building" overlaps to some extent: this Court has found in another context that a mobile home is a "building." *State v. Kuntz*, 160 Wis. 2d 722, 740, 467 N.W.2d 531 (1991) ("We conclude that no rational jury could plausibly find that the structure in question was a mobile home without also finding that the structure was a building."). The notion of treating these as legal elements—so that jurors would have to agree on whether, for example, a defendant burglarized a trailer home or a building or a dwelling or a room within one of those—is nonsensical. Thus, as with the child-enticement statute, "[m]ultiple punishments for a single act" of burglary "would not be appropriate under this statute." *See Derango*, 236 Wid. 2d at 736, ¶21.

Further, beyond this definitional overlap (a single location can be both a dwelling *and* a boat), it is easy to

describe circumstances in which it would be unclear just what was burglarized. The Seventh Circuit gave the example of a computer stolen either from a house or from the RV parked outside of it. *Franklin*, 895 F.3d at 959. Also, in one of the Iowa cases cited in *Mathis*, jurors were permitted to disagree on whether the defendant burglarized a Yacht Club or an individual boat docked with the club, on the Mississippi River. 136 S. Ct. at 2249 (citing *State v. Duncan*, 312 N.W.2d 519, 520, 523 (Iowa 1981)). The Mississippi River, of course, also borders Wisconsin, so that precise situation could arise here. Certainly, legislators would not have intended for this sort of insubstantial factual dispute to result in acquittal.

Finally, in *Derango*, once this Court determined that the legislature intended to create a single offense, it asked whether this was constitutionally permissible—whether it would offend "fundamental fairness and rationality." 236 Wis. 2d at 737–38, ¶¶23–24. Here, holding that § 943.10(1m)'s location alternatives are means of committing a single offense is not fundamentally unfair or irrational. Indeed, holding otherwise would offend notions of fairness and rationality and almost certainly lead to double-jeopardy claims on appeal. A prosecutor cannot be permitted to charge a person who unlawfully enters a single houseboat on a single occasion with four felonious burglary offenses. *See Franklin*, 895 F.3d at 959.

## II. The federal courts' difficulty here is likely due to lack of familiarity with state case law, statutory style, and court documents.

The above application of state law is not unsettled or unclear. Some federal jurists in the Seventh and Eighth Circuits have gotten the issue wrong, but this is probably just related to their lack of familiarity with Wisconsin case law, our legislature's drafting style, and the format of our standardized circuit-court documents.

Starting with case law, federal judges are not generally familiar with Wisconsin cases. In the Seventh Circuit's now-vacated panel opinion, the only mention of *Derango* was in a footnote, in the context of agreeing with the Eighth Circuit that the panel could not discern whether *Derango* or another case, *Baldwin*, 101 Wis. 2d 441, governed this situation, leading it to disregard state case law. *Franklin*, 884 F.3d at 337 n.3. In contrast, this Court well knows that *Derango* describes the contemporary standard for determining whether something is an element or a means. *See, e.g., State v. Hendricks*, 2018 WI 15, ¶¶24–26, 379 Wis. 2d 549, 906 N.W.2d 666 (relying on *Derango*); *State v. Johnson*, 2001 WI 52, ¶¶11–13, 243 Wis. 2d 365, 627 N.W.2d 455 (same); *Dearborn*, 313 Wis. 2d at 778–91, ¶¶17–41 (same).

Further, this Court knows that *Baldwin* does not describe the contemporary standard. In *Baldwin*, the Court considered whether jurors in a second-degree sexual assault case had to agree whether the defendant "used" or "threatened" force. 101 Wis. 2d at 447–48. In the course of deciding this, the Court said that Wis. Stat. § 940.225(2)(a)'s "use" or "threat" alternatives were not distinct, and contrasted this with the alternatives among

the second-degree-sexual-assault subsections. *Baldwin*, 101 Wis. 2d at 449; *see also id.* at 449 n.5 (noting the subsections—in addition to use or threat of force: causation of injury, underage victim, etc.). The Eighth Circuit relied on this observation in *Baldwin* to find that Wisconsin treats itemized, subdivided alternatives as elements rather than means, *Lamb*, 847 F.3d at 932 & n.2.

There are at least three problems here. First, *Baldwin* does not say that second-degree sexual assault's subdivided alternatives are elements of distinct offenses, so one can't read much of anything into its comment about them. Second, *Baldwin* does not suggest that this elements/means question would turn on whether the alternatives are itemized. Indeed, state law is clear that the question does *not* turn on itemization. *Derango*, 236 Wis. 2d at 738, ¶25 (child enticement's itemized intent alternatives are means); *Manson*, 101 Wis. 2d at 427–28 (robbery's itemized "use" or "threat" alternatives are means). Third, *Baldwin*'s analysis was conducted under the old "conceptually distinct" constitutional standard for jury unanimity, which the Supreme Court has replaced with the "fundamental fairness" standard. *Derango*, 236 Wis. 2d at 736, ¶22 (noting that *Baldwin* was decided under abrogated law). So *Baldwin*'s discussion of second-degree sexual assault is not remotely helpful here.

It is not surprising that federal judges might think that itemization of statutory alternatives is meaningful: Wisconsin statutes are very frequently subdivided and itemized, but federal statutes are not. *See Edwards* Oral argument, *supra*, at 6:27–6:44 (Sykes, J.: "Take out the alphabetical subsections, just put it all in one big paragraph, the way federal statutes are arranged,

irritatingly, um and . . . we've got one burglary offense and a whole bunch of different ways of committing burglary.").

As an example, here are the federal robbery ("Hobbs Act" robbery) and state robbery statutes:

| 18 U.S.C. § 1951 | Wis. Stat. § 943.32(1) |
|---|---|
| Robbery is "the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining." | Robbery is the taking of property from the person or presence of the owner "by either of the following means":<br>"(a) By using force against the person of the owner with intent thereby to overcome his or her physical resistance or physical power of resistance to the taking or carrying away of the property; or<br>(b) By threatening the imminent use of force against the person of the owner or of another who is present with intent thereby to compel the owner to acquiesce in the taking or carrying away of the property." |

Both statutes cover use of force and threat of force: the federal statute does this in an undivided paragraph, Wisconsin in a subdivided paragraph. Yet even in Wisconsin, these are means, not elements; jurors need not agree whether a robber violated § 943.32(1)(a) or (1)(b). *Manson*, 101 Wis. 2d at 424–28.

Here are the federal and state enticement statutes:

| 18 U.S.C. § 2422 | Wis. Stat. § 948.07 |
|---|---|
| Child enticement is defined as knowingly enticing (or persuading or inducing or coercing) a minor "to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense." | Child enticement is defined as causing or attempting to cause a minor to go into certain places "with intent to commit any of the following acts":<br>"(1) Having sexual contact or sexual intercourse with the child in violation of s. 948.02, 948.085, or 948.095.<br>(2) Causing the child to engage in prostitution.<br>. . . .<br>(6) Giving or selling to the child a controlled substance or controlled substance analog in violation of ch. 961." |

In both jurisdictions, the intent element can be met with an intent to cause the minor to engage in prostitution or sexual contact (among other things). But as with robbery, the federal statute is undivided while the state statute is divided. And again, this difference is stylistic only—jurors need not unanimously agree on the prohibited intent. *Derango*, 236 Wis. 2d at 738, ¶25.

Similarly, the fact that our legislature subdivided and itemized the burglary statute's location alternatives is stylistic only. As discussed, the legislature did not intend for § 943.10(1m) to create six crimes. It simply drafted § 943.10(1m) in a-b-c fashion so that it would be easy to read and comprehend.

Finally, federal judges are also unfamiliar with Wisconsin's standardized circuit-court documents. The Seventh Circuit's now-vacated panel opinion thought it meaningful that the charging documents and judgments filed in Franklin's and Sahm's burglary cases referred to § 943.10(1m)(a)—to the alphabetical subsection. *Franklin*, 884 F.3d at 336. The panel thought that the prosecutor's decision to charge the appellants all the way out to the alphabetical subsection, and the judgments' reference to that subsection, indicated that the alphabetical subsection must be an element about which jurors would need to unanimously agree. *Id.*[14]

This is another area where federal and state criminal law is markedly different. Federal judges are used to a system in which the Fifth Amendment's grand-jury guarantee "requires that the allegations in the indictment and the proof at trial match." *United States v. Adkins*, 743 F.3d 176, 185 (7th Cir. 2014) (internal quotations omitted). In Wisconsin, in contrast, the precise language of charging documents is not critical. Charging documents can include matters that need not be proved at trial, and they can be amended at any time—even during trial. *Derango*, 236 Wis. 2d at 751–52, ¶¶48–51.

Further, in Wisconsin, charging documents and judgments usually (likely, *uniformly*) describe the charge out to the last statutory subsection, regardless of whether jurors would have to be unanimous about that subsection. To demonstrate this fact, appended to this

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[14] In its Seventh Circuit brief, the government filed two exemplar state judgments and one exemplar state information, in order to argue this point. The government's exemplars are now appended to this brief. App. 137–41.

brief are certified copies of informations and judgments from six cases that this Court recently decided that involved child enticement or robbery. App. 142–61 (certified documents from *State v. Sanders*, Waukesha County Case No. 13-CF-1206; *State v. Asboth*, Dodge County Case No. 12-CF-384; *State v. Hendricks*, Milwaukee County Case No. 11-CF-4101; *State v. Frey*, Florence County Case No. 09-CF-14.[15]

As discussed, the law is crystal clear that with child enticement, jurors need not be unanimous on the prohibited intent (the numerical subsections of § 948.07) because the intent alternatives are means, not elements. *Derango*, 236 Wis. 2d at 738, ¶25. And in a robbery case, jurors need not be unanimous on whether the defendant used or threatened force (the alphabetical subsections of § 943.32(1)), because those aren't elements either. *Manson*, 101 Wis. 2d at 424–28. Yet the appendix materials show that in child-enticement and robbery cases, circuit-court documents reference the statutory subsections (by number or letter and/or description) that this Court has expressly said are not elements of the offenses. *See* App. 142–61.

Thus, the fact that Franklin's and Sahm's circuit-court documents described their charges out to the last statutory subsection says absolutely nothing about the elements/means question presented here. It appears to be an accident of software design: prosecutors in this state produce charging documents with a standardized software program which presumably uses some sort of drop-down menu, and that program communicates

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[15] *See* Wis. Stat. § 909.02(4) (certified copies of public records are self-authenticating).

with the circuit courts' own software program.[16] So over-inclusive charging documents lead to over-inclusive judgments.

What's more, these circuit-court documents lead to over-inclusive appellate opinions. When this Court describes convictions for child enticement and robbery, it routinely describes the offenses with reference to statutory subsections that, again, the Court has expressly said are non-elemental. *State v. Sanders*, 2018 WI 51, ¶10, 381 Wis. 2d 522, 912 N.W.2d 16 (Mr. Sanders was charged with "child enticement contrary to Wis. Stat. § 948.07(1)"); *State v. Hendricks*, 2018 WI 15, ¶9, 379 Wis. 2d 549, 906 N.W.2d 666 (referring to "the charge of and plea to child enticement, which is a felony, under 948.07(1)"); *State v. Asboth*, 2017 WI 76, ¶7 & n.2, 376 Wis. 2d 644, 898 N.W.2d 541 (noting that Mr. Asboth was charged with armed robbery under "Wis. Stat. § 943.32(1)(b) and (2)"); *State v. Lepsch*, 2017 WI 27, ¶6, 374 Wis. 2d 98, 892 N.W.2d 682 (referring to the charge of "armed robbery with use of force, contrary to Wis. Stat. § 943.32(1)(a) and (2)"); *State v. Frey*, 2012 WI 99, ¶16, 343 Wis. 2d 358, 817 N.W.2d 436 (describing two counts of "Child Enticement, Wis. Stat. § 948.07(6)").[17]

It makes sense that this Court refers to, say, 948.07(1) (child enticement with sexual-contact intent) rather than, simply, 948.07 or child enticement, because that's what the circuit-court documents say. But this can't be construed as evidence that the intent

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[16] *See* PROTECT Case Management System, http://dait.state.wi.us/section.asp?linkid=11&locid=13; Consolidated Court Automation Programs, https://www.wicourts.gov/courts/resources/docs/ccap.pdf.

[17] Also see the circuit-court documents in the appendix.

alternatives are elements, since we know that they are not elements. *Derango*, 236 Wis. 2d at 738, ¶25. Thus, just as Franklin's and Sahm's circuit-court documents are irrelevant to the elements/means question presented here, so too are state appellate cases that often describe Wisconsin burglary's location subsection. *See Franklin*, 884 F.3d at 335 (vacated) (citing state cases that have described the offense in this way).

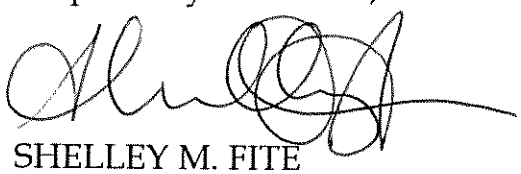
This all just shows why federal courts have found the elements/means question here confusing: (1) there is no state case right on point (yet), (2) the burglary statute's location alternatives are subdivided, (3) the appellants' state circuit-court documents referred to the location subsection, and (4) state appellate opinions often refer to the location subsection. But *Derango* clearly applies here and the last three points noted above are irrelevant. Under *Derango*, the burglary statute's location alternatives are not elements of distinct offenses about which jurors would have to unanimously agree. They are means of committing a single offense: burglary.

## CONCLUSION

The text, history, and function of Wis. Stat. § 943.10 all support the conclusion that the statute's location alternatives are means, not elements, and nothing militates against that conclusion. Thus the appellants, Dennis Franklin and Shane Sahm, respectfully ask this Court to answer the Seventh Circuit's certified question by holding that the location subsections of the Wisconsin burglary statute, Wis. Stat. § 943.10(1m)(a)–(f), "identify alternative means of committing burglary, for which a unanimous finding beyond a reasonable doubt is not necessary to convict."

Dated this 28th day of September, 2018.

Respectfully submitted,



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## CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 6,478 words.

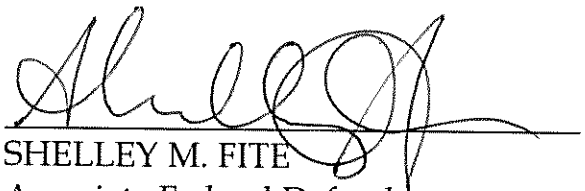
## CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 28th day of September, 2018.

Signed:



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# CERTIFICATION ON APPENDIX
## *(modified for this certified-question case)*[18]

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix *that substantially complies with § 809.19(2)(a), as appropriate in this certified-question case from the Seventh Circuit Federal Court of Appeals.*

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 28th day of September, 2018.

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[18] If the Court would like additional materials in the appendix, undersigned counsel would be happy to supplement and refile the appendix as ordered by the Court.

# APPENDIX

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# TO
# APPENDIX

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State court documents



[19] In *Sanders*, the certification appears on a separate cover page that is included with this appendix. This is in contrast to the other cases, in which the certification seal is simply affixed to the record documents.

895 F.3d 954
United States Court of Appeals, Seventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Dennis FRANKLIN & Shane Sahm, Defendants-Appellants.

Nos. 16-1580 & 16-1872
|
Submitted For Rehearing April 11, 2018
|
Decided July 17, 2018

Synopsis
**Background:** Defendants who pled guilty to possessing a firearm as a felon appealed from orders of the United States District Court for the Western District of Wisconsin, Nos. 3:14-CR-00128 & 3:15-CR-00110, James D. Peterson, Chief Judge, which found that both defendants had three prior burglary convictions that were violent felonies under the Armed Career Criminal Act (ACCA) and sentenced them both to mandatory minimum of 15 years in prison. The Court of Appeals, Hamilton, Circuit Judge, 884 F.3d 331, affirmed. Defendants filed petition for panel rehearing.

The Court of Appeals held that it would certify question to Wisconsin Supreme Court as to whether different location subsections of Wisconsin burglary statute identified alternative elements of burglary or whether they identified alternative means of committing burglary.

Petition granted and judgment vacated.

***955** Appeals from the United States District Court for the Western District of Wisconsin. Nos. 3:14-CR-00128 & 3:15-CR-00110—**James D. Peterson**, *Chief Judge*.

Attorneys and Law Firms

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Before Kanne and Hamilton, Circuit Judges. *

Opinion

Per Curiam.

The defendant-appellants' petition for panel rehearing is GRANTED, and the opinion and judgment issued February 26, 2018, are VACATED. Pursuant to Circuit Rule 52 and Wis. Stat. § 821.01, we request that the Wisconsin Supreme Court answer a question of Wisconsin law that should control our decision in these appeals of federal sentences under the Armed Career Criminal Act, 18 U.S.C. § 924(e). See generally 884 F.3d 331 (7th Cir. 2018) (panel opinion).

The question concerns the location provisions of the Wisconsin burglary statute, which provides as follows:

> Whoever intentionally enters any of the following places without the consent of ***956** the person in lawful possession and with intent to steal or commit a felony in such place is guilty of a Class F felony:
>
> (a) Any building or dwelling; or
>
> (b) An enclosed railroad car; or
>
> (c) An enclosed portion of any ship or vessel; or
>
> (d) A locked enclosed cargo portion of a truck or trailer; or
>
> (e) A motor home or other motorized type of home or a trailer home, whether or not any person is living in any such home; or
>
> (f) A room within any of the above.

Wis. Stat. § 943.10(1m).

Our question, see below at 961, is whether the different location subsections (a)–(f) identify alternative *elements* of burglary or instead only identify alternative *means* of committing burglary. See, e.g., *State v. Hendricks*, 379

  

Wis.2d 549, 565–72, 906 N.W.2d 666, 673–77 (Wis. 2018) (deciding similar question under child enticement statute, Wis. Stat. § 948.07).

The question may seem obscure or even arcanely metaphysical, at least without a fair amount of background information about the federal Armed Career Criminal Act, its reference to burglary convictions, and several related cases. (See below.) But, despite the layers of federal sentencing precedent that frame this issue, this is at bottom a controlling question of *State* criminal law. The answer to this question controls not only the validity of these appellants' federal sentences; it also affects how Wisconsin juries must be instructed, what jurors must agree upon unanimously, and how double jeopardy protections may apply.

I. *The Armed Career Criminal Act*

The key substantive provision of the Armed Career Criminal Act states:

> In the case of a person who violates section 922(g) of this title [unlawful possession, receipt, shipment, or transportation of firearms] and has *three previous convictions* by any court referred to in section 922(g)(1) of this title for *a violent felony* or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years[.]

18 U.S.C. § 924(e)(1) (emphasis added).

The normal sentence for unlawful possession of a firearm under § 922(g) is a maximum of ten years in prison. See 18 U.S.C. § 924(a)(2). A defendant with three qualifying convictions for violent felonies, however, falls under the § 924(e) enhancement quoted above and faces a mandatory minimum of fifteen years in prison. See *United States v. Bennett*, 863 F.3d 679, 680 (7th Cir. 2017). The maximum becomes life in prison.

What qualifies as a conviction for a "violent felony" under § 924(e)? The statutory definition reads:

> the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year ... that—
>
> (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
>
> (ii) is *burglary*, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another[.]

18 U.S.C. § 924(e)(2)(B) (emphasis added).

A. *"Generic" Burglary and the "Categorical Method"*

So a felony conviction for "burglary" counts toward the three violent felonies that can trigger the severe sentences under the Armed Career Criminal Act.

***957** What counts as a "burglary"? The federal statute contains no specific definition. The Supreme Court of the United States addressed that problem in *Taylor v. United States*, 495 U.S. 575, 110 S.Ct. 2143, 109 L.Ed.2d 607 (1990). State burglary laws vary a great deal: some do not require unlawful entry; others extend the crime to vehicles and even vending machines. *Id.* at 590–91, 599, 110 S.Ct. 2143, and 580, 110 S.Ct. 2143, citing *United States v. Hill*, 863 F.2d 1575, 1582 n.5 (11th Cir. 1989). *Taylor* held that a State's label of "burglary" does not control. *Id.* at 590, 110 S.Ct. 2143. Instead, *Taylor* adopted a "generic" definition of burglary for purposes of § 924(e): "an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime." *Id.* at 598, 110 S.Ct. 2143.

*Taylor* also decided how federal courts should analyze a State's burglary statute, and that method can be counter-intuitive. *Taylor* held that courts must use a formal "categorical approach" that "look[s] only to the fact of conviction and the statutory definition of the prior offense." *Id.* at 602, 110 S.Ct. 2143. The categorical approach focuses on "the elements of the statute of conviction, not ... the facts of each defendant's conduct." *Id.* at 601, 110 S.Ct. 2143. Limiting the inquiry to statutory elements flows from the text of the Armed Career Criminal Act, which "refers to 'a person who ... has three previous *convictions*' for—not a person who has *committed*—three previous violent felonies or drug offenses." *Id.* at 600, 110 S.Ct. 2143 (emphasis added), quoting 18 U.S.C. 924(e)(1).

*Taylor* added, however, that the sentencing court could "go beyond the mere fact of conviction in a narrow range of cases where a jury was actually required to find all the elements of generic burglary"—such as entry of a building. In this narrow range of cases, the court may look to charging documents or jury instructions to determine the crime of conviction. *Id.* at 602, 110 S.Ct. 2143. This is known as the "modified categorical approach," which is at the heart of these appeals. We'll come back to it after explaining the facts of these appeals.

In these appeals, both appellants, Dennis Franklin and Shane Sahm, were sentenced for the federal crime of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). Both were sentenced as armed career criminals under 18 U.S.C. § 924(e). That raised the statutory sentencing range from a maximum of ten years in prison to a minimum of fifteen years in prison and a maximum of life in prison. The decisive prior convictions for both Franklin and Sahm were Wisconsin burglary convictions under Wis. Stat. § 943.10(1m).

There is no doubt that what Franklin and Sahm actually did to earn their prior convictions was burglarize buildings or structures, as prohibited by § 943.10(1m)(a). Their *actions* fit within the "generic burglary" definition adopted in *Taylor*—"an unlawful or unprivileged entry into, or remaining in, *a building or other structure*, with intent to commit a crime."

But under the categorical method adopted in *Taylor*, what counts is not what they actually did but the statutory definition of the crime. Taken as a whole, Wis. Stat. § 943.10(1m) is considerably broader than the "generic burglary" definition adopted in *Taylor*. The Wisconsin statute reaches burglaries of boats, trucks, and trailers, see *id.* at (c)–(e), but the *Taylor* definition does not. Thus, if we apply the "categorical" approach to the whole burglary statute, then Franklin and Sahm cannot be sentenced as armed career criminals under 18 U.S.C. § 924(e). See, e.g., ***958** *Descamps v. United States*, 570 U.S. 254, 261, 133 S.Ct. 2276, 186 L.Ed.2d 438 (2013) (conviction under California burglary statute that did not require unlawful entry did not count as violent felony under Armed Career Criminal Act, even where defendant admitted he had actually broken into and entered a building to commit a crime).

B. *"Divisibility" and the "Modified Categorical Approach"*

That reasoning takes us, in this field of federal statutory sentencing enhancements based on prior convictions, to the concepts of "divisibility" and the "modified categorical approach." The categorical approach is straightforward enough if the state statute of conviction contains only one set of elements defining a single crime. The sentencing court just compares that set to *Taylor*'s generic burglary to see if the elements match. The categorical approach is more difficult to apply if the statute in question is phrased alternatively, as many burglary statutes are—including Wisconsin's.

The Supreme Court has explained that alternatively phrased statutes come in two types: (1) those that list alternative *elements* (thus defining more than one crime within a single statute) and (2) those that list alternative *means* of committing an element of a single crime. See *Mathis v. United States*, —— U.S. ——, 136 S.Ct. 2243, 2249, 195 L.Ed.2d 604 (2016). If the statutory alternatives are different *elements*, then the statute is considered "divisible" in the sense that it divides into multiple crimes. *Mathis*, 136 S.Ct. at 2249. For that kind of statute, the federal court must "determine what crime, with what elements, a defendant was convicted of" before counting the conviction as a predicate under the Armed Career Criminal Act. *Id.*

This brings into play the "modified categorical approach" mentioned above. It permits the sentencing court to review "a limited class of documents (for example, the indictment, jury instructions, or plea agreement and colloquy)," but *only* for the limited purpose of determining whether the elements of the state crime of conviction match (or are narrower than) the elements of *Taylor*'s generic burglary. *Id.* at 2249, 2256. But the modified categorical approach has no role to play if an alternatively phrased statute describes different factual *means* of committing an element of a single crime. Recall that under *Taylor* the actual facts of the underlying case are off-limits. *Id.* at 2248. A statute of this latter type—one that lists alternative *means*—is indivisible. If its alternatives cover a broader swath of conduct than *Taylor*'s generic burglary, then the conviction does not qualify under the Act. *Id.* at 2251; see also *Van Cannon v. United States*, 890 F.3d 656, 662–63 (7th Cir. 2018).

*Mathis* addressed the Iowa burglary statute. Like the Wisconsin statute, the Iowa statute extended to boats and vehicles, so it was broader than the federal "generic" burglary. The Supreme Court held that the Iowa statute was not divisible and thus could not support Armed Career Criminal Act sentences. That decision was easy in *Mathis* because the Iowa Supreme Court had held that the different locations in the Iowa statute were alternative means that did not require jury unanimity. *Mathis*, 136 S.Ct. at 2256, citing *State v. Duncan*, 312 N.W.2d 519, 523 (Iowa 1981).

Subsection (1m)(a) of the Wisconsin burglary statute, covering burglaries of buildings or dwellings, fits within the federal generic burglary definition. In these appeals, the United States has argued that the Wisconsin burglary statute is divisible among the different subsections listing different locations that are protected against burglarious entry. Charging documents for ***959** both Franklin and Sahm show they were charged with and convicted under § 943.10(1m)(a) for burglarizing buildings or structures.

The government thus argues that their convictions fall within *Taylor*'s generic burglary definition and they were properly sentenced as armed career criminals. That argument is valid if—and only if—the Wisconsin burglary statute is divisible in the sense meant by *Mathis* and *Taylor*. And the divisibility question in turn depends on the elements/means distinction we've just described: Are the different locations listed in subsections (1m)(a)–(f) distinct legal *elements* (so the burglary statute actually defines multiple crimes), or are they different factual means of committing a single crime that has a locational element broad enough to cover all of the listed locations?

A couple of examples may illustrate the problem and its implications regarding jury unanimity, multiplicity, and double-jeopardy. First, suppose there is a factual question about just where a burglary took place. A homeowner-victim testifies that someone stole a computer, but he is not sure whether the stolen item was taken from the garage or the recreational vehicle parked outside in the driveway. See Wis. Stat. § 943.10(1m)(a) & (e). To convict for burglary, must the State prove, and must the jury decide, beyond a reasonable doubt whether it was the garage or the RV that was burglarized?

Or, to show the issues posed by overlaps among the different subsections, suppose a burglar enters the living quarters of a houseboat without consent and with the requisite intent to steal or commit a felony. Could a Wisconsin prosecutor charge him with four crimes: burglary in violation of subsection (1m)(a) (because the place he entered was a dwelling); burglary in violation of subsection (1m)(c) (because the place he entered was also a vessel); and two counts of burglary in violation of subsection (1m)(f) (because the place he entered was *both* a room within a dwelling *and* a room within a vessel)? Could a court sentence the burglar for more than one burglary? And how should the court instruct the jury in such a case? See, e.g., *State v. Anderson*, 219 Wis.2d 739, 580 N.W.2d 329 (Wis. 1998) (discussing problem of multiplicity).

II. *Elements or Means in Wisconsin? The Parties' Arguments*

In trying to follow the method laid out in *Mathis*, our panel opinion noted that we found no definitive holding from the Wisconsin Supreme Court or other state courts, nor did we find unmistakable signals in the statute itself, such as different punishments. 884 F.3d at 334–35. Without such clear signals, the choice between elements and means is more difficult. For the convenience of the Wisconsin Supreme Court, we summarize the arguments in the parties' briefs.

The defendants argue that the burglary statute is similar in relevant ways to the child enticement statute in *State v. Derango*, 236 Wis.2d 721, 613 N.W.2d 833 (Wis. 2000), which held that the different intentions in different subsections of Wis. Stat. § 948.07 were only different means of committing one crime, not different elements of different crimes. The defendants also rely on both the holding and reasoning of *United States v. Edwards*, 836 F.3d 831 (7th Cir. 2016), where we held that the first subsection of the Wisconsin burglary statute ("building or dwelling") was not internally divisible for similar purposes under the then-applicable U.S. Sentencing Guideline provision for armed career criminals, which applied to burglaries only of dwellings, not of other structures.

Based on *Derango*, the defendants also argue that the Wisconsin legislative drafting ***960** preference for using different subsections does not imply that the different subsections signal different elements and different crimes. The defendants also rely on our observation in *Edwards* that Wisconsin charging documents are not useful in distinguishing between means and elements. 836 F.3d at 837–38. Defendants point out that Wisconsin charging

  

documents often include non-essential factual details and can even be amended after trial to conform to the evidence, see *Derango*, 236 Wis.2d at 750–52, 613 N.W.2d at 847, which undermines the charging document's reliability in identifying the elements the prosecution must prove beyond a reasonable doubt. Defendants also point out that *State v. Hammer*, 216 Wis.2d 214, 220–21, 576 N.W.2d 285, 287 (Wis. App. 1997), held that a burglary defendant's intended felony is not an element, and the court observed that the language of the statute indicated more generally "that the crime here is one single offense with multiple modes of commission."

The United States argues that the panel opinion was correct and that the burglary statute clearly breaks out alternative location elements for burglary, at least one of which a jury must find unanimously and beyond a reasonable doubt. The statute refers to the entry into "any of the following places," which is not specific until a charging instrument or jury instruction identifies one of the following places from among the different subsections. The government argues that the Wisconsin Supreme Court's decision in *Derango* does not provide relevant guidance. The government reads *Derango* as specific to the child enticement statute because it relied on the nature of that crime, the role that intentions play (as distinct from locations in the burglary statute), and statute-specific legislative history. See 236 Wis.2d at 732–35, 613 N.W.2d at 838–39. The government also argues there is much less over-lap among the burglary location subsections than among the different intentions in the child-enticement statute.

With respect to *Edwards*, the government argues that case did not decide the elements v. means question for the different subsections of the burglary statute, and that charging documents from Wisconsin burglary cases in fact identify specific subsections and provide reliable guidance for the location charged, which tends to weigh in favor of treating the different subsections as alternative elements. The government also argues that Wisconsin's pattern jury instructions signal the different location subsections are different elements, requiring unanimous jury agreement on one location subsection. See Wis. J.I.—Crim. § 1424 n.2.

Regarding *Hammer*, the government notes the state court was addressing only the intended felony element, not the different location subsections. The government also argues that the legislative history of the burglary statute, in which the legislature broadened an earlier statute that covered only "any structure," supports treatment of the new, expanded alternatives as alternative elements. Along these lines, the government notes that the Wisconsin Supreme Court has held that the phrase "with intent to steal or commit a felony" creates two distinct crimes. *Champlain v. State*, 53 Wis.2d 751, 756 & n.4, 193 N.W.2d 868, 872 & n.4 (Wis. 1972), abrogated on other grounds, *State v. Petrone*, 161 Wis.2d 530, 550–58 & n.14, 468 N.W.2d 676, 683-86 & n.14 (Wis. 1991). (Defendants contend that *Champlain* is no longer good law even on the separate offense point, citing both *Derango*, 236 Wis.2d at 750–52, 613 N.W.2d at 847 and *Hammer*, 216 Wis.2d at 220, 576 N.W.2d at 287.)

III. *Our Request*

Like other federal courts, we often encounter questions of State law. In most ***961** cases we simply do our best to decide the cases before us without asking for help from the State courts. Here, however, two factors persuade us to ask the Wisconsin Supreme Court to step in.

First, the question of State law is a close one. Specific guidance from State law is limited, and both sides offer good reasons for interpreting the available signs in their favor. In our panel opinion, we agreed with the government, but the petition for rehearing argues that our analysis did not give sufficient weight to the Wisconsin Supreme Court's decision in *Derango*, among other points. Upon further consideration, we view the question of State law as closer than our panel opinion did. The Wisconsin courts have considered similar questions in the context of other statutes and the felonious intent requirement of burglary, see, e.g., *State v. Hendricks*, 379 Wis.2d 549, 565–72, 906 N.W.2d 666, 675–76 (Wis. 2018), but it is not clear which of the "competing cases" from these other contexts "should control the elements v. means question for the burglary statute" and its location subsections. 884 F.3d at 336 n.3. In the end, only the Wisconsin Supreme Court can decide this issue definitively.

Second, this issue of state law is important for both the federal and state court systems, and a wrong decision on our part could cause substantial uncertainty and confusion if the Wisconsin Supreme Court were to disagree with us in a later decision. The choice between elements and means is decisive for Franklin and Sahm's federal sentences, and a number of other federal

defendants may be affected directly. See also *United States v. Lamb*, 847 F.3d 928, 932 (8th Cir. 2017) (holding that Wisconsin burglary statute was divisible for purpose of Armed Career Criminal Act conviction for defendant in Minnesota), *cert. denied*, — U.S. —, 138 S.Ct. 1438, 200 L.Ed.2d 720 (2018).

The answer to this question may also have significant practical effects for at least some of the nearly 2,000 burglary prosecutions in Wisconsin state courts every year. Those implications include the following. How should a jury be instructed in a burglary trial? What facts must the prosecution prove beyond a reasonable doubt about the place the defendant entered unlawfully and with felonious purpose? What must the jury agree on unanimously about the place? The general rule is that a jury must agree unanimously on each element of the charged crime, but not on particular means. The answer also has implications for questions of multiplicity and double-jeopardy protections, which depend on the elements of the crimes in question. See *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932). And the answer to the elements v. means question will have practical consequences for prosecutors deciding how to charge a suspect and for defense counsel advising clients about potential defenses and plea negotiations.

Pursuant to Wis. Stat. § 821.01 and our Circuit Rule 52, we therefore request the Wisconsin Supreme Court to answer the following question as a matter of Wisconsin law:

> Whether the different location subsections of the Wisconsin burglary statute, Wis. Stat. § 943.10(1m)(a)–(f), identify alternative elements of burglary, one of which a jury must unanimously find beyond a reasonable doubt to convict, or whether they identify alternative means of committing burglary, for which a unanimous finding beyond a reasonable doubt is not necessary to convict?

We invite the Wisconsin Supreme Court to revise the question if it judges that to be appropriate. The facts of these two federal ***962** cases are set forth in our panel opinion, 884 F.3d 331 (7th Cir. 2018), and in the district court's sentencing transcripts. We also submit to the Wisconsin Supreme Court the briefs and records in both of these appeals.

While we await a response from the Wisconsin Supreme Court, we will keep these appeals pending in our court, subject to the pending petition for rehearing en banc.

**All Citations**

895 F.3d 954

Footnotes

* Circuit Judge Posner heard argument but retired on September 2, 2017, and did not participate in the decision of this case. A quorum of the panel continues to hear and decide the case under 28 U.S.C. § 46(d).

End of Document

884 F.3d 331
United States Court of Appeals, Seventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Dennis FRANKLIN & Shane Sahm, Defendants-Appellants.

Nos. 16-1580 & 16-1872
|
Argued April 25, 2017
|
Decided February 26, 2018

**Synopsis**
**Background:** Defendants who pled guilty to possessing a firearm as a felon appealed from orders of the United States District Court for the Western District of Wisconsin, Nos. 3:14-CR-00128 & 3:15-CR-00110, James D. Peterson, Chief Judge, which found that both defendants had three prior burglary convictions that were violent felonies under the Armed Career Criminal Act (ACCA) and sentenced them both to mandatory minimum of 15 years in prison.

The Court of Appeals, Hamilton, Circuit Judge, held that defendants' prior convictions for burglary of building or dwelling were predicate violent felonies under the ACCA.

Affirmed.

***332** Appeals from the United States District Court for the Western District of Wisconsin. Nos. 3:14-CR-00128 & 3:15-CR-00110—**James D. Peterson**, *Chief Judge*.

**Attorneys and Law Firms**

Laura A. Przybylinski Finn, Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Madison, WI, for Plaintiff-Appellee.

Shelley M. Fite, Attorney, FEDERAL DEFENDER SERVICES OF WISCONSIN, INC., Madison, WI, Defendant-Appellant.

Before Posner,* Kanne, and Hamilton, Circuit Judges.

**Opinion**

Hamilton, Circuit Judge.

These consolidated appeals represent another application of the "categorical approach" for applying recidivist statutes. The specific question in these appeals is whether convictions under a portion of the Wisconsin burglary statute, Wis. Stat. § 943.10(1m)(a), qualify as convictions for violent felonies under the federal Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(1). The outcome of these appeals depends on whether the Wisconsin statute is "divisible" or not, which depends in turn on the sometimes slippery distinction between a crime's "elements" and "means." In short, if the burglary statute is divisible, then we must affirm; if it is not divisible, we must reverse. We find that the statute is divisible, so we affirm.

I. *Factual and Procedural Background*

Both defendants in these consolidated appeals, Dennis Franklin and Shane Sahm, pleaded guilty to possessing a firearm as a felon. See 18 U.S.C. § 922(g)(1). The district court found that both men had three prior burglary convictions that were violent felonies under the ACCA. The court therefore sentenced them both to the mandatory minimum of fifteen years in prison. See § 924(e)(1). On appeal, Franklin and Sahm contend that their prior convictions for burglary in Wisconsin are not violent felonies under the ACCA so their sentences could be no more than ten years in prison.

Franklin was convicted of being a felon in possession of a firearm. On Thanksgiving Day in 2014, Madison police responded to a report of a residential burglary in progress and arrested Franklin at the scene. When searching the area, police found a gun that Franklin had hidden nearby. Franklin pleaded guilty to possessing a gun unlawfully. See 18 U.S.C. § 922(g)(1).

A probation officer recommended in the presentence report that Franklin be sentenced as an armed career criminal. See 18 U.S.C. § 924(e). The report explained

that he had at least three convictions for violent felonies under the statute: armed burglary in 1994, two burglaries and an attempted ***333** burglary in 2001, and burglary in 2003, all in Wisconsin. Franklin argued that he should not be sentenced as an armed career criminal because Wisconsin's burglary statute is broader than the generic crime of burglary under the ACCA. The district court ruled that Franklin was an armed career criminal and imposed the mandatory minimum 180-month sentence.

Sahm's story is similar. He stole three guns and sold them. Sahm too was a convicted felon, and he was also charged with and pleaded guilty to possessing a firearm as a felon. See 18 U.S.C. § 922(g)(1). Sahm had three relevant prior convictions: burglary in 1997, and two burglaries in 2008, all in Wisconsin for burglarizing "a building or dwelling." See Wis. Stat. § 943.10(1m)(a). Sahm argued that his burglary convictions were not for "generic burglary" and thus should not count as violent felonies under the ACCA. The district court disagreed and imposed the mandatory minimum 180-month sentence.

II. *Analysis*

The framework for our analysis is familiar because of the volume of similar cases. Under the ACCA, a conviction for "burglary" counts as a violent felony. 18 U.S.C. § 924(e)(2)(B)(ii). In *Taylor v. United States*, 495 U.S. 575, 598, 110 S.Ct. 2143, 109 L.Ed.2d 607 (1990), the Supreme Court held that the federal statute requires a conviction for "generic burglary," which is defined, regardless of labels under state law, as "an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime." In evaluating a conviction under the ACCA definition, *Taylor* further explained, a sentencing court must use the "categorical approach," which focuses on the elements of the statutory offense, not the particular facts of the defendant's crime. *Id.* at 601–02, 110 S.Ct. 2143. Thus, if a state burglary statute is broader than "generic burglary" by applying, for example, to unlawful entries into vehicles as well as buildings or structures, then a conviction does not count under the ACCA definition even if the defendant in fact committed the prior offense by unlawfully entering a building. E.g., *Mathis v. United States*, 579 U.S. ——, 136 S.Ct. 2243, 2250, 195 L.Ed.2d 604 (2016); see also *Descamps v. United States*, 570 U.S. 254, 261, 133 S.Ct. 2276, 186 L.Ed.2d 438 (2013) (conviction under California burglary statute that did not require unlawful entry did not count as violent felony under ACCA).

So we look to the Wisconsin burglary statute. It provides as follows:

> Whoever intentionally enters any of the following places without the consent of the person in lawful possession and with intent to steal or commit a felony in such place is guilty of a Class F felony:
>
> (a) Any building or dwelling; or
>
> (b) An enclosed railroad car; or
>
> (c) An enclosed portion of any ship or vessel; or
>
> (d) A locked enclosed cargo portion of a truck or trailer; or
>
> (e) A motor home or other motorized type of home or a trailer home, whether or not any person is living in any such home; or
>
> (f) A room within any of the above. [1]

Because the Wisconsin statute extends to several types of vehicles, it is broader than "generic burglary" under *Taylor* and the ACCA. That does not end the inquiry, though. If the statute is "divisible" ***334** among portions that are within the scope of generic burglary and those that are outside it, then the sentencing court may apply the "modified categorical approach." That allows the court to look at court records to determine whether the defendant was convicted under a portion of the statute within the scope of generic burglary. *Shepard v. United States*, 544 U.S. 13, 125 S.Ct. 1254, 161 L.Ed.2d 205 (2005). If he was, then the conviction may count as a violent felony under the ACCA.

That's how the notion of divisibility takes center stage in these appeals. So how do we decide divisibility? The key is to figure out whether the different locations in the Wisconsin statute signal different elements and thus different crimes (equals divisible) or are merely different means for committing the same crime (equals not divisible).

The most extensive guidance from the Supreme Court on this question appears in *Mathis v. United States*, 579 U.S. ——, 136 S.Ct. 2243, 2248, 195 L.Ed.2d 604 (2016). "Elements" are a crime's "constituent parts," which a jury must find beyond a reasonable doubt or a defendant must

admit when pleading guilty. "Means" are extraneous to the crime's constituent parts; they are different factual scenarios that do not create legal consequences. *Id.* A crime counts as "burglary" and thus as a violent felony under the ACCA if its elements—not the means of satisfying the elements—are the same as or narrower than the generic definition of burglary. *Id.* We review *de novo* whether a prior conviction qualifies as a violent felony. *United States v. Duncan*, 833 F.3d 751, 753 (7th Cir. 2016).

*Mathis* explains that some signals for determining whether a statute lists separate offense elements or alternative means of fulfilling an element are obvious. First, any ruling from the state supreme court on the means v. elements question is dispositive, as it was in *Mathis* itself. 136 S.Ct. at 2256. In this case, though, the Supreme Court of Wisconsin has not addressed the issue.

Second, the statute on its face may resolve the issue. For example, if the alternatives carry different punishments, they are elements of different crimes, *id.*, but that is not the case here. On the other hand, if the statute "offer[s] illustrative examples," then it lists means of committing the crime. *Id.* (internal quotation marks omitted). The Wisconsin burglary statute does not use such language. The statute could also "itself identify which things must be charged (and so are elements) and which need not be (and so are means)." *Id.*

Third, if the question is still unresolved, a court may "peek" at "the record of a prior conviction itself"—such as indictments and jury instructions. *Id.* at 2256–57. If the documents charge the alternatives collectively, they may be means, but if they charge one alternative to the exclusion of others, they are likely elements. *Id.*

We recently applied *Mathis* to just one subsection of Wisconsin's burglary statute in *United States v. Edwards*, 836 F.3d 831, 838 (7th Cir. 2016), where we held that a prior burglary conviction for violating § 943.10(1m)(a), the first subsection, did not count as a "crime of violence" under the Sentencing Guidelines. See U.S.S.G. § 4B1.2(a). At the time, the Guidelines included burglary only of a "dwelling," not burglary of other buildings, as a crime of violence. (In this way, the old guideline definition differed from the generic burglary definition used under the ACCA.) The first subsection of the Wisconsin statute, which covers burglary of "any building or dwelling," is too broad to qualify as a crime of violence under the older guideline ***335** definition unless the subsection itself is divisible.

We held in *Edwards* that subsection (a) is not divisible, explaining that the structure of the entire burglary statute and the phrasing of the subsections indicate that any particular subsection is not divisible. See 836 F.3d at 837–38. That holding in *Edwards* does not answer the question before us. First, subsection (a) covering burglary of "any building or dwelling" fits within the definition of generic burglary under the ACCA, which refers to "a building or other structure." Second, the issue here is whether the Wisconsin burglary statute *as a whole* is divisible among its subsections, not whether a particular subsection itself is divisible.

In the absence of a definitive holding from the Wisconsin Supreme Court, we start, as we did in *Edwards*, with the statute's text and structure. In the statute, all burglary crimes are classified as "Class F" felonies, meaning that the subsections carry the same punishment and thus are not necessarily distinct elements. The statute opens by defining those crimes as entering without consent "any of the following places" and with intent either to steal or commit a felony, and then has six subsections enumerating locations. These subsections cover dwellings, railroad cars, ships, mobile homes, and cargo portions of trucks. The last subsection, § 943.10(1m)(f), is a little different, covering "a room within any of the above" locations, so it overlaps each of the other subsections.

We put aside subsection (f) for these appeals since they present no issue under it. We conclude that the remaining subsections in § 943.10(1m) are distinct and divisible. Each subsection can be delineated from the others (i.e., buildings, railroad cars, ships, motor homes, cargo portions of trucks). The alternatives within each subsection overlap a great deal (i.e., building v. dwelling, ship v. vessel, truck v. trailer, motor home v. trailer home). As a result, we are not concerned as we were in *Edwards* that a prosecutor could charge two burglary counts under different subsections for one act. One might conceive of *some* overlap between subsections at the margins—for example, a houseboat could be both a dwelling and a ship. But we think that the defendants overstate the concern about double-charging. No subsection duplicates another in principle. And the greater variety among the subsections, as compared to within each of them, satisfies us that the subsections signal distinct locations that are

intended to be enumerated alternative elements rather than mere "illustrative examples."

As compared to the Iowa burglary statute in *Mathis*, the Wisconsin burglary statute's structure reinforces our conclusion. The Iowa statute applies to burglarizing an "occupied structure" and defines that term in a separate section. See Iowa Code §§ 713.1, 702.12. By contrast, the Wisconsin statute does not use a generic term for the locational element; instead, it enumerates each potential location. This enumeration means that Wisconsin prosecutors usually charge a specific subsection for each burglary offense—something that would be impossible under the Iowa statute. And indeed Wisconsin courts nearly always report the subsection under which the defendant was charged or convicted. See, e.g., *State v. Scruggs*, 373 Wis.2d 312, 891 N.W.2d 786, 789 (2017); *State v. Hall*, 53 Wis.2d 719, 193 N.W.2d 653, 654 (1972); *State v. Champlain*, 307 Wis.2d 232, 744 N.W.2d 889, 899 (App. 2007); but see, e.g., *State v. Lichty*, 344 Wis.2d 733, 823 N.W.2d 830, 832 (App. 2012) (referring to entire section where appeal involved other issues); *State v. Searcy*, 288 Wis.2d 804, 709 N.W.2d 497, 503 (App. 2005) (same). ***336** Wisconsin's pattern jury instructions also tell trial judges that the location (the stand-in term being "building") "must be modified" to reflect which place a defendant burglarized. See Wis. Jury Instructions—Crim. § 1424 & n.2. That form of instruction treats the location as an element.

Another way of considering the problem is to focus on the requirement that all jurors agree on elements, but not necessarily on means. See *Richardson v. United States*, 526 U.S. 813, 817, 119 S.Ct. 1707, 143 L.Ed.2d 985 (1999); *Descamps*, 570 U.S. at 286, 133 S.Ct. 2276 (Alito, J., dissenting) ("[I]n determining whether the entry of a building and the entry of a vessel are elements or means, the critical question is whether a jury would have to agree on the nature of the place that a defendant entered."). We have trouble imagining a case in which a jury could convict a Wisconsin defendant of burglary where six jurors were convinced that the defendant burglarized a retail store (a "building" under subsection (a) ) while the other six were convinced that he burglarized a motor home parked behind the store (under subsection (e) ). But unless a covered location is an element of the crime, as we believe it is, jurors would not need to agree on the nature of the burglarized location, at least among the different subsections.

In *Edwards* we expressed skepticism about *Mathis's* third step of "peeking" at the *Shepard* documents, at least for Wisconsin convictions. We explained that under Wisconsin law the complaint and the information often allege additional facts that do not need to be proved to the jury. *Edwards*, 836 F.3d at 837–38. We also said that plea colloquies may not be helpful because they may contain unessential factual detail, included only to help the defendant understand the charges. *Id.* at 838. But we did not lay down an inflexible rule forbidding a court from consulting these documents. We merely urged caution in individual cases. The documents that we have reviewed in this case all tell us that the different subparts were charged and identified specifically in each case, which is consistent with the other signals we have discussed that the locations in different subsections are elements of separate crimes. [2]

Our conclusion that the subsections of the Wisconsin burglary statute are elements of different crimes is consistent with the Eighth Circuit's recent conclusion that the Wisconsin burglary statute is a "textbook example" of a statute with different crimes and elements, not just different means. *United States v. Lamb*, 847 F.3d 928, 932 (8th Cir. 2017), petition for cert. filed, No. 17-5152 (July 12, 2017), quoting *United States v. Jones*, No. 04-362, 2016 WL 4186929, at *3 (D. Minn. Aug. 8, 2016). The Eighth Circuit recognized, as we have, that the Wisconsin precedent and practice of reporting the subsection under which a defendant is convicted supports the conclusion that the subsections are distinct elements. *Lamb*, 847 F.3d at 932. [3]

***337** To sum up, we apply *Mathis* to hold that subsection (a) of the Wisconsin burglary statute, § 943.10(1m) is divisible from the other subsections. Because it is divisible, the district court properly used the modified categorical approach to determine that Franklin and Sahm's burglary convictions under § 943.10(1m)(a) for burglaries of buildings or dwellings fell within the definition of generic burglary adopted in *Taylor*. Their prior burglary convictions count as violent felonies under the ACCA. The judgments of the district court are

AFFIRMED.

**All Citations**

884 F.3d 331

Footnotes

* Circuit Judge Posner retired on September 2, 2017, and did not participate in the decision of this case, which is being resolved by a quorum of the panel under 28 U.S.C. § 46(d).

1 In 2004 the Wisconsin burglary statute was renumbered, changing from Wis. Stat. § 943.10(1)(a)–(f) to § 943.10(1m)(a)–(f), but the language remained the same. We use the current numbering to refer to both versions.

2 The parties have debated at some length the legislative history of amendments to the burglary statute, see generally Minutes of Wis. Legislative Council, Criminal Code Advisory Comm., June 5, 1954, at 15–16 & July 23–24, 1954, at 7, 9, 11, but we find no reliable signals concerning the issue before us.

3 In *Lamb* the Eighth Circuit cited a decision from the Supreme Court of Wisconsin on a sexual-assault statute. That Wisconsin decision described one subsection of the statute as significantly different from the others, and the Eighth Circuit saw this description as "strong evidence" that the Supreme Court of Wisconsin would also consider the burglary subsections as elements. 847 F.3d at 932, citing *State v. Baldwin*, 101 Wis.2d 441, 304 N.W.2d 742, 747 (1981). The *Lamb* court cited in a footnote another Supreme Court of Wisconsin decision finding that a child-enticement statute's subsections were part of "one offense with multiple modes of commission." 847 F.3d at 932 n.2, quoting *State v. Derango*, 236 Wis.2d 721, 613 N.W.2d 833, 839 (2000). The Eighth Circuit thought that it had "no rational way" to conclude which of these competing cases should control the elements v. means question for the burglary statute. 847 F.3d at 932 n.2. Like the Eighth Circuit, we cannot predict how the Supreme Court of Wisconsin would reconcile these two opposing cases concerning unrelated statutes, so we have not considered them in our analysis.

# United States District Court

## Western District of Wisconsin

UNITED STATES OF AMERICA

V.

DENNIS M. FRANKLIN

**JUDGMENT IN A CRIMINAL CASE**
(for offenses committed on or after November 1, 1987)

**Case Number:** 0758 3:14CR00128-001

**Defendant's Attorney:** Peter Moyers

The defendant, Dennis M. Franklin, pleaded guilty to Count 1 of the indictment.

The defendant has been advised of his right to appeal.

**ACCORDINGLY**, the court has adjudicated defendant guilty of the following offense(s):

| Title & Section | Nature of Offense | Date Offense Concluded | Count Number(s) |
|---|---|---|---|
| 18 U.S.C. §§ 922(g)(1) and 924(e) | Felon in Possession of Firearm, a Class A Felony | November 27, 2014 | 1 |

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

**IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.**

| | |
|---|---|
| **Defendant's Date of Birth:** | May 17, 1971 |
| **Defendant's USM No.:** | 08953-090 |
| **Defendant's Residence Address:** | c/o Sauk County Jail<br>1300 Lange Court<br>Baraboo, WI 53913 |
| **Defendant's Mailing Address:** | c/o Dodge Correctional Institution<br>P.O. Box 661<br>Waupun, WI 53963 |

March 1, 2016
Date of Imposition of Judgment

/s/ James D. Peterson

James D. Peterson
District Judge

March 3, 2016
Date Signed:

# IMPRISONMENT

As to Count 1 of the indictment, it is adjudged that the defendant is committed to the custody of the Bureau of Prisons for a term of 15 years. Pursuant to the U.S. Supreme Court ruling in *Setser v. United States*, 132 S. Ct. 1463 (2012), I order that the federal sentence is to run concurrent with the remainder of the sentences imposed in Dane County Circuit Court Case Nos. 15CF78 and 04CF81, and in any sentence imposed in the pending Jefferson County Circuit Court Case No. 13CF21. The defendant's federal sentence begins today.

I recommend that the defendant receive the opportunity to participate in substance abuse treatment and educational and vocational training. I also recommend that the defendant be afforded prerelease placement in a residential reentry center with work release privileges.

The U.S. Probation Office is to notify local law enforcement agencies, and the state attorney general, of defendant's release to the community.

## RETURN

**I have executed this judgment as follows:**

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy Marshal

# SUPERVISED RELEASE

A term of supervised release is not required by statute. The term of imprisonment is to be followed by a five-year term of supervised release. The defendant is subject to conditions 2 through 9 and 12 through 16. Neither party has raised any objections to the proposals.

Pursuant to the Sentencing Reform Act of 1984, the primary goals of supervised release are to assist defendants' transition into the community after a term of imprisonment and to provide rehabilitation. Supervision in this case will provide the defendant with needed correctional programming, including rehabilitative programs, to assist with community reintegration; afford adequate deterrence to further criminal conduct; and to protect the public from further crimes perpetrated by the defendant.

The defendant is a 44-year-old man who qualifies as an armed career criminal. He has spent the majority of his adulthood in custody or on supervision. The defendant began abusing drugs at age 18. Despite participating in substance abuse treatment, he has been unable to remain sober. The defendant reportedly suffers from depression; however, medical records do not appear to identify any mental health treatment needs. He has sporadic employment history and may have been supporting himself and his drug addiction through residential burglaries. The defendant was on extended supervision with the DOC at the time of the instant offense. The defendant has a history of non-complaint behavior while on supervision. He has accumulated convictions for operating while intoxicated, resisting or obstructing an officer (four occasions), armed burglary, two counts of burglary of a building or dwelling as a party to a crime, attempted burglary of a building or dwelling, disorderly conduct, burglary of a building or dwelling, theft of movable property special facts, possession of a firearm, and burglary arm self with a dangerous weapon. Witnesses identified the defendant as someone who preferred to carry a loaded firearm during residential burglaries. He has been identified as being involved in street gangs. The defendant owes a large amount of child support.

If, when the defendant is released from confinement to begin his term of supervised release, either the defendant or the supervising probation officer believes that any of the conditions imposed today are no longer appropriate, either one may petition the Court for review.

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Defendant is to abide by the statutory mandatory conditions.

**Statutory Mandatory Conditions**

Defendant shall report to the probation office in the district to which defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

Defendant shall not commit another federal, state, or local crime.

Defendant shall not illegally possess a controlled substance.

If defendant has been convicted of a felony, defendant shall not possess a firearm, destructive device, or other dangerous weapon while on supervised release.

Defendant shall cooperate with the collection of DNA by the U.S. Justice Department and/or the U.S. Probation and Pretrial Services Office as required by Public Law 108-405.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Financial Penalties sheet of this judgment.

---

Defendant shall comply with the standard and special conditions that have been adopted by this court.

**Standard Conditions of Supervision**

~~1) Defendant shall not leave the judicial district in which defendant is being supervised without the permission of the Court or probation officer;~~

2) Defendant is to report to the probation office as directed by the Court or probation officer and shall submit a complete written report within the first five days of each month, answer inquiries by the probation officer, and follow the officer's instructions. The monthly report and the answer to inquiries shall be truthful in all respects unless a fully truthful statement would tend to incriminate defendant, in violation of defendant's constitutional rights, in which case defendant has the right to remain silent;

3) Defendant shall maintain lawful employment, seek lawful employment, or enroll and participate in a course of study or vocational training that will equip defendant for suitable employment, unless excused by the probation officer or the Court;

4) Defendant shall notify the probation officer within seventy-two hours of any change in residence, employer, or any change in job classification;

5) Defendant shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

6) Defendant shall not visit places where defendant knows or has reason to believe controlled substances are illegally sold, used, distributed, or administered;

7) Defendant shall not meet, communicate, or spend time with any persons defendant knows to be engaged in criminal activity or planning to engage in criminal activity;

8) Defendant shall permit a probation officer to visit defendant at home, work, or elsewhere at any reasonable time and shall permit confiscation of any contraband observed in plain view by the probation officer;

9) Defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

~~10) Defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court;~~

~~11) As directed by the probation officer, defendant shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics. The probation officer may also take steps to confirm defendant's compliance with this notification requirement or provide such notifications directly to third parties.~~

**Special Conditions of Release**

12. Provide the supervising U.S. probation officer any and all requested financial information, including copies of state and federal tax returns;

13. Submit person, property, residence, papers, vehicle, or office to a search conducted by a U.S. probation officer at a reasonable time and manner, whenever the probation officer has reasonable suspicion of contraband or of the violation of a condition of release relating to substance abuse or illegal activities; failure to submit to a search may be a ground for revocation; defendant shall warn any other residents that the premises defendant is occupying may be subject to searches pursuant to this condition;

14. Participate in substance abuse treatment. If defendant is eligible for funding from any source to cover the cost of treatment, defendant is to make reasonable efforts to obtain such funding. Participation in treatment does not require payment by defendant unless it is clear defendant can afford it. Defendant shall submit to drug testing beginning within 15 days of defendant's release and 60 drug tests annually thereafter. The probation office may utilize the Administrative Office of the U.S. Courts' phased collection process;

15. Do not to use alcohol to excess. (Excess is defined as alcohol use so extensive that it interferes with defendant's responsibilities to family or employer, or it impairs defendant to any degree while driving or on the job.); and

16. Not meet, communicate or spend time with any persons known by defendant to be a member of or affiliate of any known street gang.

ACKNOWLEDGMENT OF CONDITIONS

I have read or have had read to me the conditions of supervision set forth in this judgment, and I fully understand them. I have been provided a copy of them. I understand that upon finding a violation of probation or supervised release, the Court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

_____ _____
Defendant Date

_____ _____
U.S. Probation Officer Date

# CRIMINAL MONETARY PENALTIES

Defendant shall pay the following total financial penalties in accordance with the schedule of payments set forth below.

| Count | Assessment | Fine | Restitution |
|---|---|---|---|
| 1 | $100.00 | $0.00 | $0.00 |
| **Total** | $100.00 | $0.00 | $0.00 |

It is adjudged that the defendant is to pay a $100.00 criminal assessment penalty to the Clerk of Court for the Western District of Wisconsin immediately following sentencing.

The defendant does not have the means to pay a fine under § 5E1.2(c) without impairing his ability to support himself and his family upon release from custody.

# SCHEDULE OF PAYMENTS

Payments shall be applied in the following order:

(1) assessment;
(2) restitution;
(3) fine principal;
(4) cost of prosecution;
(5) interest;
(6) penalties.

The total fine and other monetary penalties shall be due in full immediately unless otherwise stated elsewhere.

Unless the court has expressly ordered otherwise in the special instructions above, if the judgment imposes a period of imprisonment, payment of monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court, unless otherwise directed by the court, the probation officer, or the United States Attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

In the event of a civil settlement between victim and defendant, defendant must provide evidence of such payments or settlement to the Court, U.S. Probation office, and U.S. Attorney's office so that defendant's account can be credited.

# United States District Court

## Western District of Wisconsin

UNITED STATES OF AMERICA

V.

SHANE SAHM

**JUDGMENT IN A CRIMINAL CASE**
(for offenses committed on or after November 1, 1987)

**Case Number:** 0758 3:15CR00110-001

**Defendant's Attorney:** Joseph Aragorn Bugni

The defendant, Shane Sahm, pleaded guilty to Count 1 of the indictment.

The defendant has been advised of his right to appeal.

**ACCORDINGLY**, the court has adjudicated defendant guilty of the following offense(s):

| Title & Section | Nature of Offense | Date Offense Concluded | Count Number(s) |
|---|---|---|---|
| 18 U.S.C. §§ 922(g) and 924(e) | Felon in Possession of Firearm, a Class A Felony | May 4, 2015 | 1 |

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

**IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.**

| | |
|---|---|
| **Defendant's Date of Birth:** | May 12, 1979 |
| **Defendant's USM No.:** | 09169-090 |
| **Defendant's Residence Address:** | c/o Sauk County Jail<br>1300 Lange Court<br>Baraboo, WI 53913 |
| **Defendant's Mailing Address:** | Same as above. |

April 14, 2016
Date of Imposition of Judgment

/s/ James D. Peterson

James D. Peterson
District Judge

April 18, 2016
Date Signed:

# IMPRISONMENT

As to Count 1 of the indictment, it is adjudged that the defendant is committed to the custody of the Bureau of Prisons for a term of 14 years and 41 days, as I am reducing his term of imprisonment by the 324 days he has served in primary state custody. This will satisfy the requirement that the defendant serve a total period of 15 years incarceration. The defendant is in primary state custody. Pursuant to the U.S. Supreme Court ruling in *Setser v. United States*, 132 S. Ct. 1463 (2012), I order that the federal sentence is to run concurrent with any sentences imposed in Eau Claire County, Wisconsin, Circuit Court Case Nos. 14CF494, 14CT472, 15CF08, 15CF201, 15CF406, 15CF405, 15CF404, 15CF438, and 15CF536; and Chippewa County, Wisconsin, Circuit Court Case Nos. 15CF329 and 15CF328. The defendant's federal sentence begins today.

I recommend that the defendant receive the opportunity to participate in substance abuse and mental health treatment and educational and vocational training. I also recommend that the defendant be afforded prerelease placement in a residential reentry center with work release privileges.

The U.S. Probation Office is to notify local law enforcement agencies, and the state attorney general, of defendant's release to the community.

## RETURN

**I have executed this judgment as follows:**

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy Marshal

# SUPERVISED RELEASE

A term of supervised release is not required by statute. The term of imprisonment is to be followed by a five-year term of supervised release subject to the standard conditions. In light of the nature of the offense and the defendant's personal history, I adopt conditions 2 through 9, and 11 through 16, proposed and justified in the presentence report. Neither party has raised any objections to the proposals.

Although the instant offense is not drug-related, the defendant has a history of drug use. The mandatory drug testing as set forth at 18 U.S.C. § 3583(d) is not waived. This will be explained further when imposing the special conditions of supervised release.

Pursuant to the Sentencing Reform Act of 1984, the primary goals of supervised release are to assist defendants' transition into the community after a term of imprisonment and to provide rehabilitation. Supervision in this case will provide the defendant with needed correctional programming, including rehabilitative programs, to assist with community reintegration; afford adequate deterrence to further criminal conduct; and to protect the public from further crimes perpetrated by the defendant.

The defendant is a 36-year-old man who qualifies as an armed career criminal. He has spent the majority of his adulthood in custody or on supervision. He began abusing drugs as an adolescent. He reportedly suffers from mental health disorders. He was on conditions of bond in a number of cases at the time that he committed the instant offense. The defendant has sporadic employment history and was supporting himself and his drug addiction through residential burglaries and thefts. The defendant has outstanding child support obligations. He has a history of non-compliant behavior while on work release from jail and while on state supervision. He has accumulated adult convictions for theft or retail theft (three occasions); criminal trespass to dwelling; burglary of a building or dwelling (three occasions); criminal damage to property; operating after revocation (six occasions); operating while intoxicated (three occasions); disorderly conduct (three occasions); battery (two occasions); and resisting or obstructing an officer (five occasions). The defendant stole the three firearms from a man who had posted cash bond on one of the defendant's pending cases. The defendant has a history of aggressive conduct towards girlfriends and others.

If, when the defendant is released from confinement to begin his term of supervised release, either the defendant or the supervising probation officer believes that any of the conditions imposed today are no longer appropriate, either one may petition the Court for review.

---

Defendant is to abide by the statutory mandatory conditions.

**Statutory Mandatory Conditions**

Defendant shall report to the probation office in the district to which defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

Defendant shall not commit another federal, state, or local crime.

Defendant shall not illegally possess a controlled substance.

If defendant has been convicted of a felony, defendant shall not possess a firearm, destructive device, or other dangerous weapon while on supervised release.

Defendant shall cooperate with the collection of DNA by the U.S. Justice Department and/or the U.S. Probation and Pretrial Services Office as required by Public Law 108-405.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Financial Penalties sheet of this judgment.

---

Defendant shall comply with the standard and special conditions that have been adopted by this court.

**Standard Conditions of Supervision**

~~1) Defendant shall not leave the judicial district in which defendant is being supervised without the permission of the Court or probation officer;~~

2) Defendant is to report to the probation office as directed by the Court or probation officer and shall submit a complete written report within the first five days of each month, answer inquiries by the probation officer, and follow the officer's instructions. The monthly report and the answer to inquiries shall be truthful in all respects unless a fully truthful statement would tend to incriminate defendant, in violation of defendant's constitutional rights, in which case defendant has the right to remain silent;

3) Defendant shall maintain lawful employment, seek lawful employment, or enroll and participate in a course of study or vocational training that will equip defendant for suitable employment, unless excused by the probation officer or the Court;

4) Defendant shall notify the probation officer within seventy-two hours of any change in residence, employer, or any change in job classification;

5) Defendant shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

6) Defendant shall not visit places where defendant knows or has reason to believe controlled substances are illegally sold, used, distributed, or administered;

7) Defendant shall not meet, communicate, or spend time with any persons defendant knows to be engaged in criminal activity or planning to engage in criminal activity;

8) Defendant shall permit a probation officer to visit defendant at home, work, or elsewhere at any reasonable time and shall permit confiscation of any contraband observed in plain view by the probation officer;

9) Defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

~~10) Defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court;~~

11) As directed by the probation officer, defendant shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics. The probation officer may also take steps to confirm defendant's compliance with this notification requirement or provide such notifications directly to third parties.

**Special Conditions of Release**

12. Provide the supervising U.S. probation officer any and all requested financial information, including copies of state and federal tax returns;

13. Submit person, property, residence, papers, vehicle, or office to a search conducted by a U.S. probation officer at a reasonable time and manner, whenever the probation officer has reasonable suspicion of contraband or of the violation of a condition of release relating to substance abuse or illegal activities; failure to submit to a search may be a ground for revocation; defendant shall warn any other residents that the premises defendant is occupying may be subject to searches pursuant to this condition;

14. Participate in mental health referral, assessment and treatment as approved by the supervising U.S. probation officer and comply with all rules, regulations and recommendations of the mental health agency or its representative to the extent approved by the supervising U.S. probation officer. If defendant is eligible for funding from any source to cover the cost of treatment, defendant is to make reasonable efforts to obtain such funding. Participation in treatment does not require payment by defendant unless it is clear defendant can afford it;

15. Participate in substance abuse treatment. If defendant is eligible for funding from any source to cover the cost of treatment, defendant is to make reasonable efforts to obtain such funding. Participation in treatment does not require payment by defendant unless it is clear defendant can afford it. Defendant shall submit to drug testing beginning within 15 days of defendant's release and 60 drug tests annually thereafter. The probation office may utilize the Administrative Office of the U.S. Courts' phased collection process; and

16. Abstain from the use of alcohol.

ACKNOWLEDGMENT OF CONDITIONS

I have read or have had read to me the conditions of supervision set forth in this judgment, and I fully understand them. I have been provided a copy of them. I understand that upon finding a violation of probation or supervised release, the Court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

_____ _____
Defendant Date

_____ _____
U.S. Probation Officer Date

# CRIMINAL MONETARY PENALTIES

Defendant shall pay the following total financial penalties in accordance with the schedule of payments set forth below.

| Count | Assessment | Fine | Restitution |
|---|---|---|---|
| 1 | $100.00 | $0.00 | $0.00 |
| **Total** | $100.00 | $0.00 | $0.00 |

It is adjudged that the defendant is to pay a $100.00 criminal assessment penalty to the Clerk of Court for the Western District of Wisconsin immediately following sentencing.

The defendant does not have the means to pay a fine under § 5E1.2(c) without impairing his ability to support himself upon release from custody.

# SCHEDULE OF PAYMENTS

Payments shall be applied in the following order:

(1) assessment;
(2) restitution;
(3) fine principal;
(4) cost of prosecution;
(5) interest;
(6) penalties.

The total fine and other monetary penalties shall be due in full immediately unless otherwise stated elsewhere.

Unless the court has expressly ordered otherwise in the special instructions above, if the judgment imposes a period of imprisonment, payment of monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court, unless otherwise directed by the court, the probation officer, or the United States Attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

In the event of a civil settlement between victim and defendant, defendant must provide evidence of such payments or settlement to the Court, U.S. Probation office, and U.S. Attorney's office so that defendant's account can be credited.

MEETING OF THE CRIMINAL CODE ADVISORY COMMITTEE

Municipal Courtroom
Safety Building, Milwaukee
June 3, 4th, and 5th, 1954

June 3, 1954

PRESENT: Assemblyman Reiland; Judges Boileau, Goodland and Steffes; Messrs. Platz, Gorsegner, Remington, Collins, Donley, Farr, Schlosser, Tibbs, Bardwell (alternate for Krenzke), and Haberman (alternate for Previant).

ABSENT: Senator Franke, Assemblyman Marotz, Judge Gleason, Judge Loeffler, and Mr. Hughes.

The meeting was called to order by the chairman, Judge Boileau. A quorum was present. The hour was 10 A.M.

The first matter discussed was the proposed amendment to the indeterminate sentence law, copies of which were distributed by Mr. Platz at the last meeting. The proposed amendment explained that sec. 353.27 (2) (b) of the statutes now provides that where the statute defining the crime does not prescribe the place of imprisonment, a sentence to the state prison shall be for a minimum of one year, and that sec. 359.07 stats. provides that all sentences to the state prison shall be for one year or more. Judge Goodland said he knew of no statute that provides for less than one year at the state prison, with the exception of sec. 343.17. Mr. Platz said that the code provided no minimums at all except in the case of first degree and second degree murder, with the idea that this section then determines the minimum. In answer to the question "what is the state prison?", he said it is defined as the state prison at Waupun, the reformatory at Green Bay and the home for women at Taycheedah. Mr. Platz said that if the proposed amendment is not adopted, the sentences will still have the same identical force and effect, but the court will have to go on imposing a minimum.

Mr. Platz moved that an amendment be adopted as follows:

1. Amend page 257 of Bill 100, A, lines 19-23, to read as follows: "You are hereby sentenced to the state prison at hard labor for an indeterminate term of * * * not more than ... (the maximum as fixed by the court) years."
2. Amend page 258 of Bill 100, A, lines 18-22, to read as follows: "You are hereby sentenced to the Wisconsin state reformatory (or to the Wisconsin home for women) for an indeterminate term of * * * not more than ... (the maximum as fixed by the court) years."
3. Amend 57.06 (1) appropriately to make convicts at the state prison eligible for parole after serving the minimum "term prescribed by statute for the offense (which shall be one year unless a greater minimum is prescribed by the statute defining the crime)" or one-half

The chairman and Mr. Tibbs said that it was their understanding that any terms used in the sections so far adopted were to be interpreted under the law as it exists today, and that there has been no reliance on any future definitions.

Mr. Remington: As I remember the thing, it only consists of two or three situations, for instance, there can be a general handling of the problem of attempt, of accessories, of privilege. Lawful authority is privilege today.

- - - -

The chairman next read Section 343.10 of the code, relating to burglary. Mr. Remington said that in the country at large, there are 30 or 35 legislatively defined different factors involved here. The set-up in the code is there is an aggravated provision in 343.11. The only change is in the enumeration of the aggravating factors-- if it is a dwelling, if it is night-time, if it is a bank, if it is a trust company, and other aggravating factors. He said the code retains burglary, as he understood it, and limits the aggravating factors to the armed situation and use of force.

The chairman asked the purpose of the last clause, "even though the person in lawful possession of the structure would have objected to the entry had he known the actor's purpose in entering". Mr. Remington thought the situation would be the same if the clause were out.

Mr. Gorsegner moved that, in 343.10 (2), the last half of line 7, and all of lines 8 and 9 be stricken. Mr. Donley seconded the motion, and the motion was carried.

Reference was made at this point to the definition of "structure" on page 17 of the code, which it was felt should be read. "Structure" is there defined as any enclosed building or tent, any inclosed vehicle (whether self-propelled or not) or any room within any of them.

Judge Goodland then moved that subsection (2) of section 343.10 be amended by striking out the words "a business place or other" and by substituting therefor the word "any". The motion was seconded by Mr. Collins, and was carried.

Judge Goodland asked whether it was desired to include automobiles inasmuch as the law changes the offense from a misdemeanor to a felony.

Mr. Farr moved to amend (1) of 343.10 by adding the words "except a passenger automobile" after the word "structure". The motion was seconded by Mr. Platz.

The chairman then suggested this amendment: "(1) Whoever enters any enclosed building or any room therein or any enclosed vehicle other than a passenger automobile without the consent of the person in lawful possession and with intent to steal or commit a felony therein may be imprisoned not more than 10 years."

Mr. Farr withdrew his motion in favor of the suggestion of the chairman, which was then made a motion by Mr. Tibbs. Mr. Farr seconded the motion of Mr. Tibbs. (Mr. Donley moved to amend such motion by striking "any enclosed vehicle" because he did not want to have semi-trailers included under the burglary statutes. There was no second to his motion.) Mr. Tibbs' motion to amend subsection (1) of 343.10, seconded by Mr. Farr, was carried.

Mr. Donley then moved that the drafting of the section with reference to burglary and the whole thereof be referred to the same committee that is drafting the arson provisions, for report back to the next meeting. There was no second to his motion.

The chairman then read subs. (2) of 343.10, as amended: "Entry into any structure open to the general public is not burglary if the entry takes place during the time when the general public is invited." It was suggested that the word "burglary" be changed to read "entry under this section". Another suggestion was that the word "burglary" should be changed to "unlawful".

Judge Goodland also suggested that instead of the words "passenger automobile" in subsection (1) of 343.10, previously approved, the term "unlocked automobile" be used. Mr. Tibbs said, "With your agreement, I would like to move to reconsider that last motion to permit an amendment to separate the stealing of an automobile from the other provisions." There was no second to the motion.

Judge Steffes moved to amend subsection (2) to read: "Entry into any structure open to the general public is not without consent if the entry takes place during the time when the general public is invited." There was no second.

The chairman then suggested that the Technical Staff be requested to draft a new provision in lieu of this burglary section in the alternative, (1) to incorporate the suggestions of Judge Steffes, and (2) to provide that unlawful entry of a motor vehicle shall be separately stated as a separate crime rather than burglary. There was no objection to this suggestion.

After further suggestion of the date of the next meeting, a motion was made to rescind the motion of June 4 for a meeting on July 16 and 17th and it was moved by Mr. Donley, and seconded by Judge Steffes, that the next meeting of the committee be held on July 23 and 24th, 1954, at 9:00 A.M., in the Municipal Courtroom in the City of Milwaukee.

There being no objection, the meeting adjourned.

# WISCONSIN LEGISLATIVE COUNCIL

## MEETING OF THE CRIMINAL CODE ADVISORY COMMITTEE

Municipal Courtroom
Safety Building, Milwaukee

July 23, 1954

PRESENT: Senator Franke, Assemblyman Marotz, Mr. Grady (alternate for Assemblyman Reiland), Judges Boileau, Goodland and Steffes, Messrs. Platz, Remington, Collins, Donley, Farr, Schlosser, Tibbs, Bardwell (alternate for Krenzke), Schroeder (alternate for Hughes), and Haberman (alternate for Previant).

ABSENT: Judge Gleason, Judge Loeffler, and Mr. Gorsegner.

The meeting was called to order by the chairman, Judge Boileau. A quorum was present.

The chairman felt the matter ought to be brought to the attention of the committee as to whether or not the committee was proceeding in the right manner, in view of the fact that one member of the committee had seen fit to take the committee to task severely at the district attorneys' meeting at Eagle River. He said he felt the committee had been proceeding in accordance with the directions of the Legislature, to-wit: "The criminal code advisory committee is created to study Volume 5 of the Legislative Council's 1953 report and propose amendments to the code based thereon--bill 100, A, --for submission to the 1955 Legislature."

He said the newspaper had reported a statement of Mr. Platz that there had been undue wrangling at the committee meetings, and that the code was in the hands of the enemy. He said he did not consider himself an enemy of the code, and he did not see how the code could be studied without hearing what everyone had to say about it. The draftsmen of the code, of course, have had the advantage of the other members of the committee.

The district attorneys' association, he said, had been asked to support the code and to induce candidates for the Legislature and members of the Legislature to support the code, apparently in its original form without any consideration given to the amendments proposed and approved by the advisory committee, many of which amendments have been approved by the district attorneys' own representatives on the committee. He felt the district attorneys were mislead if they voted to endorse the code without knowing what the advisory committee has done, especially since the Legislature asked the committee to do the work that the committee has been doing. If that is not the responsibility of the committee, he felt a vote ought to be taken as to whether or not the committee should continue.

Mr. Platz thought it might be desirable to redraft this provision and report back to the committee on it.

The chairman said that, without objection, the Technical Staff would be requested to prepare Subs. (4) to be an addition to §343.01 which will incorporate in substance the similar provisions of present §355.31 of the Code. There was no objection.

The Technical Staff presented its redraft of 343.10 relating to burglary (dated 7/23/54). Mr. Platz felt the redraft was too restrictive, and should be considered in connection with the redraft of 343.115. He said if the redraft were adopted, the present law would be changed.

Mr. Donley moved that the Technical Staff's redraft of 343.10 be adopted. Mr. Haberman seconded the motion, and the motion was carried.

Mr. Bardwell then moved that the first sentence thereof be amended by adding the words "dwelling" and "or dwelling" after the two words "building." The motion was seconded by Mr. Collins, and was carried.

Therefore, at the end of the morning session, it had been determined that 343.10 should read as follows:

> "343.10 BURGLARY. (1) Whoever intentionally enters any building, dwelling, or any room within a building or dwelling without the consent of the person in lawful possession and with intent to steal or commit a felony therein may be imprisoned not more than 10 years.
>
> "(2) Entry into a building or a room which is open to the general public is not without consent if the entry takes place during the time when the general public is invited."

(However, further amendments were made in the afternoon session and in the July 24 morning session--see minutes.)

Afternoon Session

Attendance was the same as at the morning session, except that Judge Steffes, Mr. Schroeder, and Mr. Haberman were absent.

The committee considered the Technical Staff's redraft dated 7/23/54 of §343.115 of the Code.

Mr. Tibbs moved the adoption of 343.115 as drafted, with the word "designated" in Subsection (2) changed to "designed". Mr. Farr seconded the motion.

Mr. Collins moved that Subs. (2) of 343.115 be approved to read: "(2) As used in this section, 'vehicle' means any device, whether self-propelled or not, which is designed for moving persons or property, whether such device is operated on land, rails, water or in the air." The motion was seconded by Mr. Remington and was carried.

(HOWEVER, see directions for redraft--minutes July 24 session.)

Discussion reverted to 343.10, as adopted at the morning session, and the chairman said that somehow it would be necessary to include semi-trailers and trucks therein, or the enclosed parts of any vehicle.

Mr. Collins moved that 343.10 be amended to read as follows:

"343.10 BURGLARY. (1) Whoever intentionally enters any building, dwelling, enclosed railroad car or the enclosed portion of any ship or vessel, or any room therein, without the consent of the person in lawful possession and with intent to steal or commit a felony therein may be imprisoned not more than 10 years.

"(2) Entry into such a place during the time when it is open to the general public is not without consent."

The motion was seconded by Mr. Platz and was carried.

Mr. Bardwell moved that Subs. (2) as above approved be amended to read:

"(2) Entry into such a place during the time when it is open to the general public is with consent."

Mr. Tibbs seconded the motion, and the motion was carried.

(HOWEVER, see further amendment of July 24 and directions for redraft--minutes July 24 session.)

Mr. Tibbs asked that the minutes show that the effect of 343.115 as approved is to change the present law to make a misdemeanor of entry into locked vehicles, whereas the present law refers only to breaking or entry into ships or railroad cars; and that 343.10 as approved is deemed to be an extension of the present law excepting in so far as it makes an entry into a vehicle a crime even though it does not involve a breaking.

Section 343.11 of the Code was discussed next. The chairman read its provisions.

By unanimous consent, the word "actor" in Subs. (1), (2) and (3) was changed to "person."

Mr. Donley moved that 343.11 of the Code be amended by adding after the words "Whoever commits burglary" the words "in violation of §343.10." The motion was seconded by Mr. Remington and was carried.

Mr. Haberman moved that 343.11 of the Code, as amended by the Donley amendment and with the use of the word "person" rather than "actor", and retaining the word "structure," be approved. Mr. Farr seconded the motion.

Mr. Donley moved as an amendment to the Haberman motion that the penalty be not more than 15 years, but there was no second to his motion.

Mr. Tibbs called attention to the fact that this is an extension of the present law. Presently breaking into a house at night calls for a 15-year penalty, and under the new law a man entering a box car with a gun in his pocket gets a 20-year sentence.

Mr. Collins moved to amend Mr. Haberman's motion to change the words "burglarized structure" to burglarized enclosure," in lines 4 and 6.

Mr. Donley seconded the motion, but felt that the matter should be laid over to the morning session.

Mr. Haberman moved that when the committee recesses on July 24, it recess to August 19 at 9 a.m. in the Municipal Courtroom in the City of Milwaukee, being a Thursday, and that the committee hold sessions also on August 20 and until noon on August 21.

Mr. Donley seconded the motion, and the motion was carried.

Mr. Platz moved that the Saturday, July 24, session should adjourn at one o'clock. Mr. Collins seconded the motion, and the motion was carried.

Mr. Donley moved that the committee recess until Saturday morning at 9 o'clock.

July 24, 1954

PRESENT: Senator Franke, Assemblyman Marotz, Mr. Grady (alternate for Assemblyman Reiland), Judges Boileau, Goodland and Steffes, Messrs. Platz, Remington, Collins, Farr, Schlosser, Tibbs, Bardwell (alternate for Krenzke), Schroeder (alternate for Hughes), and Haberman (alternate for Previant).

ABSENT: Judge Gleason, Judge Loeffler, Mr. Gorsegner and Mr. Donley.

The chairman announced that there was pending before the committee a motion by Mr. Haberman and an amendment thereto by Mr. Collins relating to §343.11 of the Code, but that, without objection, discussion could revert

to 343.10 and 343.115 as approved July 23. There was no objection.

Mr. Collins moved to amend §343.10 (1) of the Code, as approved on July 23, by adding after the words "or any room therein" the words: "or any locked enclosed cargo portionof truck or trailer;" subsection (2) to remain the same.

Judge Goodland seconded the motion.

Mr. Platz, Mr. Schlosser and Judge Goodland suggested that it might be better now if the section were set up in a-b-c fashion.

Mr. Collins moved that §343.10 of the Code as previously approved and with the addition of the words "or any locked enclosed cargo portion of truck or trailer" be referred to the Technical Staff to be redrafted in (a), (b), (c) fashion.

The motion was seconded by Judge Goodland, and was carried.

Section 343.115 as approved July 23 was read to the committee.

Mr. Bardwell suggested that anyone who violates that section while armed ahould be guilty of a felony.

Thereupon it was unanimously agreed, and the chairman so ordered, that this entire matter of burglary be referred to the Technical Staff with the request that it submit a redraft with four subdivisions, as follows:

(1) Burglary of building, dwelling, enclosed railroad car or the enclosed portion or any ship or vessel, or any room therein, or any locked enclosed cargo portion of truck, trailer, or semi-trailer.

(2) Entry into a locked vehicle excepting a passenger car or the locked cab of a truck.

(3) Entry into unlocked vehicle or locked passenger cars or locked cabs of truck.

(4) Aggravated burglary. If any of these burglaries under (1) and (2) are committed while armed, it should be a serious offense.

The chairman suggested that the report of the Subcommittee on Arson be considered next.

Section 343.01 was discussed briefly in the form prepared by the subcommittee, and it was recalled that the section had been thoroughly discussed on July 23 so no further action was necessary.

WISCONSIN LEGISLATIVE COUNCIL

# MEETING OF THE CRIMINAL CODE ADVISORY COMMITTEE

Municipal Courtroom
Safety Building, Milwaukee

September 16, 17, and 18, 1954

September 16, 1954

PRESENT: Senator Franke, Assemblymen Marotz and Grady (alternate for Assemblyman Reiland); Judges Boileau, Goodland, Loeffler, Steffes, and Schlichting (as alternate for Judge Gleason); Messrs. Platz, Remington, Collins, Tibbs, Bardwell (alternate for Krenzke), Schroeder (alternate for Farr), and Haberman (alternate for Previant).

ABSENT: Messrs. Gorsegner, Donley, Schlosser, and Hughes.

* * * *

The meeting was called to order by the chairman, Judge Boileau, at 9:50 a.m. A quorum was present.

343.01 of the Code. This section of the code was approved at the July meeting, ept for subsection (4) providing for joinder of number of offenses. There also question as to whether the provisions of subs. (4) should be incorporated as a part of 343.01 or as sec. 355.32. The drafting committee submitted a new draft of said subs. (4), and discussion took place concerning omission of the words "without specifying any particulars" and the last clause of said draft.

Mr. Bardwell moved that said subs. (4) be amended by deletion of the two clauses, so that said subsection will read: "In any case of criminal damage involving more than one act of criminal damage but prosecuted as a single crime, it is sufficient to allege generally criminal damage to property committed between certain dates. On the trial, evidence may be given of any such criminal damage committed on or between the dates alleged." Mr. Tibbs seconded the motion, and the motion was carried.

Judge Goodland moved that said approved subsection be placed in the code as subsection (4) of section 343.01, rather than as a part of Chapter 355. Mr. Grady seconded the motion, and the motion was carried.

343.10 of the Code. The drafting committee submitted a draft of this section a-b-c fashion as it had been requested to do, as well as an alternative ft; and said committee pointed out that the a-b-c version did not cover unlocked buses and airplanes.

Mr. Schroeder moved that sec. 343.10 of the code, as drafted in a-b-c fashion be approved, excluding the unlocked busses and airplanes. Mr. Tibbs seconded the motion and the motion was carried.

343.11 of the Code. Mr. Bardwell said that it should be called to the attention of the committee that the draft submitted by the technical staff involves a change in the law, which in his opinion is a desirable social change. Mr. Tibbs said the change involved extension of armed burglary from dwellings, banks and trust companies, to other burglarized premises.

Mr. Bardwell moved that such extension be made by approval of the technical staff's draft of 343.11. Mr. Platz seconded the motion, and the motion was carried.

343.115 of the Code. The technical staff submitted two drafts of this section. Mr. Platz raised a question as to what part of the vehicle must be locked, and referred the committee to the original language on page 108 of the code, subs. (2) of 343.14.

Mr. Bardwell moved that 343.115 of the code read: "Whoever intentionally enters the locked and enclosed portion or compartment of the vehicle of another with intent to steal therefrom may be fined not more than $1000 or imprisoned not more than one year in the county jail or both." Mr. Remington seconded the motion, and the motion was carried.

Without objection, the chairman said that subsection (2) of 343.115, as drafted, was approved, reading: "(2) As used in this section 'vehicle' means any device, whether self-propelled or not, which is designed for moving persons or property, whether such device is operated on land, rails, water or in the air."

343.12 of the Code. The drafting committee submitted a draft of this section in accordance with previous instructions. The use of the word "suitable" rather than "designed and adapted" was discussed. The consensus was that the language of the present statute should be followed.

Mr. Collins moved that the draft of 343.12 of the Code be approved to read: "POSSESSION OF BURGLARIOUS TOOLS. Whoever has in his possession any device or instrumentality designed and adapted for use in breaking into any depository designed for the safekeeping of any valuables or into any building or room, with intent to use such device or instrumentality to break into a depository, building or room, and to steal therefrom, may be fined not more than $1,000 or imprisoned not more than 10 years or both."

343.13 of the Code. The technical staff presented a memo on changes made in the present law by this section of the code, relating to criminal trespass to land.

State of Wisconsin vs. Shane B. Sahm

# Judgment of Conviction

Sentence to Wisconsin State Prisons and Extended Supervision

Date of Birth: 05-12-1979

Case No.: 2008CF000174

The defendant was found guilty of the following crime(s):

| Ct. | Description | Violation | Plea | Severity | Date(s) Committed | Trial To | Date(s) Convicted |
|---|---|---|---|---|---|---|---|
| 2 | Burglary-Building or Dwelling | 943.10(1m)(a) | Guilty | Felony F | 03-16-2008 | | 05-28-2008 |
| 3 | Burglary-Building or Dwelling | 943.10(1m)(a) | Guilty | Felony F | 03-02-2008 | | 05-28-2008 |

**IT IS ADJUDGED** that the defendant is guilty as convicted and sentenced as follows:

05-28-2008 : On count 2 defendant is confined to prison for 1 year, 6 months followed by a period of 5 years extended supervision for a total length of sentence of 6 years, 6 months.

Concurrent with/Consecutive to/Comments: Defendant IS eligible for Challenge Incarceration and Earned Release Programs Jail Credit: 73 Days Counts 1 and 4-11 dismissed/read-in as well as uncharged ECPD Case # 06-5984

05-28-2008 : On count 3 defendant is confined to prison for 1 year, 6 months followed by a period of 5 years extended supervision for a total length of sentence of 6 years, 6 months.

Concurrent with/Consecutive to/Comments: Concurrent to Count 2

| Ct. | Sent. Date | Sentence | Length | Concurrent with/Consecutive to/Comments | Agency |
|---|---|---|---|---|---|

**Conditions of Sentence or Probation**

**Obligations:** (Total amounts only)

| Fine | Court Costs | Attorney Fees | Restitution | Other | Mandatory Victim/Wit. Surcharge | 5% Rest. Surcharge | DNA Anal. Surcharge |
|---|---|---|---|---|---|---|---|
| | | | TBD | | | | |

State of Wisconsin vs. Shane B. Sahm

**Judgment of Conviction**
Sentence to Wisconsin State Prisons and Extended Supervision

Date of Birth: 05-12-1979

Case No.: 2008CF000174

**Conditions of Extended Supervision:**

**Obligations:** (Total amounts only)

| Fine | Court Costs | Attorney Fees | Restitution | Other | Mandatory Victim/Wit. Surcharge | 5% Rest. Surcharge | DNA Anal. Surcharge |
|---|---|---|---|---|---|---|---|
| | 40.00 | | TBD | | 170.00 | | |

| Ct. | Condition | Agency/Program | Comments |
|---|---|---|---|
| 2 | Costs | Department of Corrections | |
| 2 | Employment / School | | Maintain full-time employment/school or combination |
| 2 | Prohibitions | | No association with drug dealers/users<br>No possession or consumption of alcohol or illegal drugs<br>No entry into any bars or taverns |
| 2 | Other | | Successfully complete Drug Court Program is accepted once he returns from prison<br>Obtain driver's license<br>Provide DNA sample but does not need to pay fee |
| 2 | Restitution | Department of Corrections | plus 10% restitution surcharge. |
| 3 | Costs | | |

**IT IS ADJUDGED** that **73** days sentence credit are due pursuant to § 973.155, Wisconsin Statutes

**IT IS ORDERED** that the Sheriff execute this sentence.

Paul Lenz, Judge
Gary J Schuster, District Attorney
Mary M Liedtke, Defense Attorney

BY THE COURT:

Kathryn A Nelson
Court Official

May 29, 2008
Date

STATE OF WISCONSIN | CIRCUIT COURT BRANCH II | EAU CLAIRE COUNTY

STATE OF WISCONSIN,

Plaintiff

v.

Case No. 97CF56 C

SHANE B. SAHM,

Defendant.

INFORMATION

I, Meri C. Larson, Eau Claire County Assistant District Attorney, respectfully inform the Court that on September 18, 1996, in the City and County of Eau Claire, Wisconsin, the defendant did:

COUNT ONE: BURGLARY

feloniously and intentionally enter a dwelling of Bonita L. Larson, without said person's consent and with intent to steal, contrary to Section 943.10(1)(a) of the Wisconsin Statutes.

MAXIMUM PENALTY: Upon conviction of this charge, a Class C Felony, the maximum possible penalty is a fine of not more than $10,000 or imprisonment for not more than 10 years, or both.

Dated this 14th day of March, 1997.

Meri C. Larson

Meri C. Larson
Assistant District Attorney

MCL #1006680 /dmw

cc: Attorney Dana Smetana

FILED
CIRCUIT COURT
EAU CLAIRE COUNTY
MAR 14 1997
DIANA J. MILLER
CLERK OF CIRCUIT COURT

STATE OF WISCONSIN CIRCUIT COURT BRANCH 2 EAU CLAIRE COUNTY

State vs Shane B. Sahm

# JUDGMENT OF CONVICTION

Sentence Withheld, Probation Ordered

Date of Birth: 05-12-1979

Case No.: 97CF000056

The ☒ Court ☐ Jury found the defendant guilty of the following crime(s):

| Ct. | Crime(s) | Wis Stat. Violated | Plea | Fel. or Misd. | Date(s) Crime Committed |
|---|---|---|---|---|---|
| 1 | Burglary-Building or Dwelling | 943.10(1)(a) | Guilty | FC | 09-18-1996 |

**IT IS ADJUDGED** that the defendant is convicted on **03-13-1997** as found guilty and is sentenced as follows:

| Ct. | Sent. Date | Sentence | Length | Concurrent with/Consecutive to/Comments | Agency |
|---|---|---|---|---|---|
| 1 | 05-08-1997 | Withheld, Probation Ordered | 5 YR | | DOC |

**Conditions of Sentence/Probation**

**Obligations:** (Total amounts only)

| Fine | Court Costs | Attorney Fees | Restitution | Other | Mandatory Victim/Wit. Surcharge | 5% Rest. Surcharge | DNA Anal. Surcharge |
|---|---|---|---|---|---|---|---|
| | 20.00 | | | | 70.00 | | |

**Conditions**

| Ct. | Condition | Length | Agency/Program | Begin Date | Begin Time | Comments |
|---|---|---|---|---|---|---|
| 1 | Jail Time | 4 MO | | 05-19-1997 | | |

**Miscellaneous Conditions:**

| Ct. | Condition | Agency/Program | Comments |
|---|---|---|---|
| 1 | Costs | | |
| 1 | Work Release / Huber Law | | Huber if employed and for school. |
| 1 | Employment / School | | Defendant to complete his G.E.D. or high school diploma. Defendant to maintain fulltime work, school or both. |
| 1 | Other | | Sentence credit pur. 973.155 to be determined.<br>RESTITUTION: T.B.D. |

STATE OF WISCONSIN CIRCUIT COURT BRANCH 2 EAU CLAIRE COUNTY

State vs Shane B. Sahm

# JUDGMENT OF CONVICTION

Sentence Withheld, Probation Ordered

Date of Birth: 05-12-1979

Case No.: 97CF000056

**IT IS ADJUDGED** that 0 days sentence credit are due pursuant to § 973.155 Wisconsin Statutes.

**IT IS ORDERED** that the Sheriff execute this sentence.

BY THE COURT:

Eric J Wahl, Judge

Dana Miller Smetana, Defense Attorney

Circuit Court Judge/Clerk/Deputy Clerk

5-8-97

Date

CLERK OF CIRCUIT COURT'S OFFICE

WAUKESH

GINA M. COLLETTI
*Clerk of Circuit Court*

515 W. Moreland Blv
Waukesha,

Phone: (262) 548-7484
Fax: (262) 896-8228

I, Gina M. Colletti, Clerk of the Circuit Court of the County of Waukesha, the State of Wisconsin, the said Circuit Court being a court of record and having a seal, do hereby certify that the annexed has been compared by me with the original:

| | |
|---|---|
| Case #: | 2013 CM 0967 |
| Re: | STATE OF WISCONSIN V. SHAUN M SANDERS |
| DOB: | 05 31 1994 |
| Item(s): | INFORMATION |
| | JUDGMENT OF CONVICTION |

and that the same is a true copy of the original and of the whole thereof, as the same now remains on file and of record in my custody in said Circuit Court.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Circuit Court at the City of Waukesha, in said county and state, this date of September 19, 2018.

Gina M. Colletti
Clerk of Circuit Court

By: Nicci Gnech
Deputy Clerk of Circuit Court

Prepared by: E.C.

**State of Wisconsin** **Circuit Court** **Waukesha County**

STATE OF WISCONSIN

Plaintiff,

-VS-

DA Case No.: 2013WK001700
Assigned DA/ADA: Brian J Juech
Agency Case No.: 13-000378
Court Case No.: 2013CM000967

Charles R Sanders III
W180n8627 Town Hall Rd
Menomonee Falls, WI 53051
DOB: 04/26/1993
Sex/Race: M/W
Eye Color: Green
Hair Color: Brown
Height: 5 ft 7 in
Weight: 120 lbs
Alias:



**Shaun M Sanders**
W180n8627 Town Hall Rd
Menomonee Falls, WI 53051
DOB: 05/31/1994
Sex/Race: M/W
Eye Color: Blue
Hair Color: Brown
Height: 5 ft 9 in
Weight: 130 lbs
Alias:

Court Case No.: 2013CF001206

**INFORMATION**

Defendants,

I, BRAD D. SCHIMEL, District Attorney for Waukesha County, Wisconsin, hereby inform the Court that:

**Count 1: REPEATED SEXUAL ASSAULT OF A CHILD** (As to defendant Shaun M Sanders)

The above-named defendant between the approximate time period of September 26, 2003 and June 5, 2006, Waukesha County, Wisconsin, did commit repeated sexual assaults involving the same child, H.A.S., DOB 09/26/1996 where at least three of the assaults were violations of sec. 948.02 (1) Wis. Stats., contrary to sec. 948.025(1)(a), 939.50(3)(b) Wis. Stats., a Class B Felony, and upon conviction may be sentenced to a term of imprisonment not to exceed sixty (60) years.

**Count 2: REPEATED SEXUAL ASSAULT OF A CHILD** (As to defendant Shaun M Sanders)

10/10/2013

The above-named defendant between the approximate time period of September 26, 2008 and September 25, 2012, at W156 N8480 Pilgrim Road, in the Village of Menomonee Falls, Waukesha County, Wisconsin, did commit repeated sexual assaults involving the same child, H.A.S., DOB 09/26/1996 where at least three of the assaults were violations of sec. 948.02(1) or (2) Wis. Stats., contrary to sec. 948.025(1)(e), 939.50(3)(c) Wis. Stats., a Class C Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars ($100,000), or imprisoned not more than forty (40) years, or both.

**Count 3: INCEST** (As to defendant Shaun M Sanders)

The above-named defendant between the approximate time period of September 26, 2008 and September 25, 2012, at W156 N8480 Pilgrim Road, in the Village of Menomonee Falls, Waukesha County, Wisconsin, did have sexual contact with a child he knows is related by blood or adoption, to a degree of kinship closer than second cousin, H.A.S., DOB 09/26/1996, contrary to sec. 948.06(1), 939.50(3)(c) Wis. Stats., a Class C Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars ($100,000), or imprisoned not more than forty (40) years, or both.

**Count 4: CHILD ENTICEMENT** (As to defendant Shaun M Sanders)

The above-named defendant between the approximate time period of September 26, 2008 and September 25, 2012, at W156 N8480 Pilgrim Road, in the Village of Menomonee Falls, Waukesha County, Wisconsin, with intent to have sexual contact with the child in violation of Section 948.02, Wis. Stats. , did attempt to cause a child, H.A.S., DOB 09/26/1996, who had not attained the age of 18 years to go into a room, contrary to sec. 948.07(1), 939.50(3)(d) Wis. Stats., a Class D Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars ($100,000), or imprisoned not more than twenty five (25) years, or both.

**Count 5: MISDEMEANOR INTIMIDATION OF A VICTIM** (As to defendant Charles R Sanders III)

The above-named defendant on or about Tuesday, March 05, 2013, at W142 N8101 Merrimac Drive, in the Village of Menomonee Falls, Waukesha County, Wisconsin, knowingly and maliciously did attempt to dissuade H.A.S., who has been the victim of a crime, from making a report of the victimization to a law enforcement agent, contrary to sec. 940.44(1), 939.51(3)(a) Wis. Stats., a Class A Misdemeanor, and upon conviction may be fined not more than Ten Thousand Dollars ($10,000), or imprisoned not more than nine (9) months, or both.

**Count 6: MISDEMEANOR INTIMIDATION OF A VICTIM** (As to defendant Charles R Sanders III)

The above-named defendant on or about Tuesday, March 05, 2013, at W142 N8101 Merrimac Drive, in the Village of Menomonee Falls, Waukesha County, Wisconsin, knowingly and maliciously did attempt to dissuade H.A.S., who has been the victim of a crime, from making a report of the victimization to a law enforcement agent, contrary to sec. 940.44(1), 939.51(3)(a) Wis. Stats., a Class A Misdemeanor, and upon conviction may be fined not more than Ten Thousand Dollars ($10,000), or imprisoned not more than nine (9) months, or both.

Dated this 25th day of October, 2013, at the City of Waukesha, Wisconsin.

Asst. District Attorney for
Waukesha County, Wisconsin
State Bar # 1069894

STATE OF WISCONSIN | CIRCUIT COURT BRANCH 2 | WAUKESHA COUNTY | *For Official Use Only*

State of Wisconsin vs. Shaun M Sanders

**Judgment of Conviction**

Sentence Imposed & Stayed, Probation Ordered

FILED
04-04-2014
Clerk of Circuit Court
Waukesha County

Date of Birth: 05-31-1994

Case No. 2013CF001206

The defendant was found guilty of the following crime(s):

| Ct. | Description | Violation | Plea | Severity | Date(s) Committed | Trial To | Date(s) Convicted |
|---|---|---|---|---|---|---|---|
| 2 | Repeated Sexual Assault of Same Child (At Least 3 Violations of 1st or 2nd Degree Sexual Assault) | 948.025(1)(e) | Not Guilty | Felony C | 09-26-2008 between the approximate time period of September 26, 2008 and September 25, 2012 | Jury | 01-29-2014 |
| 3 | Incest with Child | 948.06(1) | Not Guilty | Felony C | 09-26-2008 between the approximate time period of September 26, 2008 and September 25, 2012 | Jury | 01-29-2014 |
| 4 | Child Enticement-Sexual Contact | 948.07(1) | Not Guilty | Felony D | 09-26-2008 between the approximate time period of September 26, 2008 and September 25, 2012 | Jury | 01-29-2014 |

**IT IS ADJUDGED** that the defendant is guilty as convicted and sentenced as follows:

| Ct. | Sent. Date | Sentence | Length | Agency | Comments |
|---|---|---|---|---|---|
| 2 | 03-31-2014 | Probation, sent imposed | 6 YR | Department of Corrections | |
| 3 | 03-31-2014 | Probation, sent imposed | 6 YR | Department of Corrections | |
| 4 | 03-31-2014 | Probation, sent imposed | 6 YR | Department of Corrections | |

| | Sentence(s) Stayed | | Comments | Sent. Credit |
|---|---|---|---|---|
| 2 | Initial Confinement | 3 YR | Defendant IS NOT eligible for Challenge Incarceration Program.<br>Defendant IS NOT eligible for Substance Abuse Program. | |
| 2 | Extended Supervision | 3 YR | The Conditions for Extended Supervision are the same as the Conditions for Probation. | |
| 3 | Initial Confinement | 2 YR | Defendant IS NOT eligible for Challenge Incarceration Program.<br>Defendant IS NOT eligible for Substance Abuse Program.<br>Consecutive to: Count 2, if revoked. | |
| 3 | Extended Supervision | 2 YR | The Conditions for Extended Supervision are the same as the Conditions for Probation. | |

*For Official Use Only*

State of Wisconsin vs. Shaun M Sanders

**Judgment of Conviction**

Sentence Imposed & Stayed, Probation Ordered



Date of Birth: 05-31-1994

Case No. 2013CF001206

| | Sentence(s) Stayed | | Comments | Sent. Credit |
|---|---|---|---|---|
| 4 | Initial Confinement | 2 YR | Defendant IS NOT eligible for Challenge Incarceration Program.<br>Defendant IS NOT eligible for Substance Abuse Program.<br>Consecutive to: Count 2 but CONCURRENT with Count 3, if revoked. | |
| 4 | Extended Supervision | 2 YR | The Conditions for Extended Supervision are the same as the Conditions for Probation. | |

**Sentence Concurrent With/Consecutive Information:**

| Ct. | Sentence | Type | Concurrent with/Consecutive To Comments |
|---|---|---|---|
| 2 | Probation, sent imposed | Concurrent | Counts 3 & 4. |
| 3 | Probation, sent imposed | Concurrent | Counts 2 & 4. |
| 4 | Probation, sent imposed | Concurrent | Counts 2 & 3. |

STATE OF WISCONSIN | CIRCUIT COURT BRANCH 2 | WAUKESHA COUNTY | *For Official Use Only*

State of Wisconsin vs. Shaun M Sanders

**Judgment of Conviction**

Sentence Imposed & Stayed, Probation Ordered

**FILED**
**04-04-2014**
**Clerk of Circuit Court**
**Waukesha County**

Date of Birth: 05-31-1994

Case No. 2013CF001206

**Conditions of Sentence or Probation**

**Obligations:** (Total amounts only)

| Fine | Court Costs | Attorney Fees | ☐ Joint and Several Restitution | Other | Mandatory Victim/Wit. Surcharge | 5% Rest. Surcharge | DNA Anal. Surcharge |
|---|---|---|---|---|---|---|---|
| | 20.00 | | | 8.00 | 85.00 | | 250.00 |

**Conditions**

| Ct. | Condition | Length | Agency/Program | Begin Date | Begin Time | Comments |
|---|---|---|---|---|---|---|
| 2 | Jail time | 6 MO | | 04-01-2014 | 12:00 pm | Non working hours with Standard Release Conditions. Defendant to report to the Huber Facility by 12:00 p.m. on 04-01-2014. |

| Ct. | Condition | Agency/Program | Comments |
|---|---|---|---|
| 2 | Restitution | | Restitution set at zero ($0). |
| 2 | Costs | | To be paid as a Condition of Probation. |
| 2 | Employment / School | | If Probation/Extended Supervision is revoked and/or a prison term ordered, outstanding financial obligations shall be collected pursuant to statutory provisions, including deductions from inmate prison monies. If discharged with outstanding financial obligations, a civil judgment shall be entered against the defendant and in favor of restitution victims and government entities for outstanding financial obligations. Collections may include income assignment. Maintain employment and/or combination of schooling. |
| 2 | Other | | Follow through with any treatment and/or counseling recommended by Agent. No contact with the vicitm unless she consents and for purposes of treatment only. Provide DNA sample. Comply with Sex Offender Registration Program as required by law. |
| 3 | Other | | Same Conditions for Probation apply as to Count 2. |
| 3 | Costs | | Costs are waived. |
| 4 | Other | | Same Conditions for Probation apply as to Count 2. |
| 4 | Costs | | Costs are waived. |

**Pursuant to §973.01(3g) and (3m) Wisconsin Statutes, the court determines the following:**

The Defendant is ☐ is not ☒ eligible for the Challenge Incarceration Program.

The Defendant is ☐ is not ☒ eligible for the Substance Abuse Program.

**IT IS ADJUDGED** that **0** days sentence credit are due pursuant to §973.155, Wisconsin Statutes

**IT IS ORDERED** that the Sheriff shall deliver the defendant into the custody of the Department.

STATE OF WISCONSIN | CIRCUIT COURT BRANCH 2 | WAUKESHA COUNTY | *For Official Use Only*

State of Wisconsin vs. Shaun M Sanders

**Judgment of Conviction**

Sentence Imposed & Stayed, Probation Ordered

Date of Birth: 05-31-1994

Case No. 2013CF001206

**FILED**
**04-04-2014**
**Clerk of Circuit Court**
**Waukesha County**

**BY THE COURT:**

**Distribution:**

Jennifer R Dorow, Judge
Brian J. Juech, District Attorney
Paul Bugenhagen Jr, Defense Attorney
Dept. of Corrections
Huber

Electronically signed by Jennifer R. Dorow
Circuit Court Judge/Clerk/Deputy Clerk

April 4, 2014
Date

STATE OF WISCONSIN | CIRCUIT COURT | DODGE COUNTY

STATE OF WISCONSIN

FILED

Plaintiff,

-VS- IN THE CIRCUIT COURT

MAR 11 2013

Dodge County WI
Lynn M. Hron
Clerk of Courts

Kenneth M. Asboth Jr.
Dodge County Jail
216 W Center Street
Juneau, WI 53039

Defendant,

DA Case No.: 2012DD002950
Assigned DA/ADA: Kurt F. Klomberg
Agency Case No.: BDPD-12-2323
Court Case No.: 2012CF000384

**INFORMATION**

I, Kurt F. Klomberg, District Attorney for Dodge County, Wisconsin, hereby inform the Court as follows:

**Count 1: ARMED ROBBERY WITH THREAT OF FORCE, REPEATER**

The above-named defendant on or about Saturday, October 13, 2012, in the City of Beaver Dam, Dodge County, Wisconsin, with intent to steal, did take property from the person or presence of the owner, Associated Bank, by threatening imminent use of force against the owner , with intent thereby to compel the owner to acquiesce to the taking or carrying away of the property, and accomplished by use or threat of use of an article used or fashioned to lead the victim reasonably to believe it was a dangerous weapon, contrary to sec. 943.32(1)(b) and (2), 939.50(3)(c), 939.62(1)(c) Wis. Stats., a Class C Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars ($100,000), or imprisoned not more than forty (40) years, or both.

And further, invoking the provisions of sec. 939.62(1)(c) Wis. Stats., because the defendant is a repeater, having been convicted of three counts of Issuance of Worthless Checks on 7/18/2011 for offenses committed on 7/20/10 & 9/6/10 & 9/7/10 in Dodge County Case No. 11CM198, which conviction(s) remain of record and unreversed, the maximum term of imprisonment for the underlying crime may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 6 years if the prior conviction was for a felony.

**Count 2: THEFT FROM PERSON, USE OF A DANGEROUS WEAPON, REPEATER**

The above-named defendant on or about Saturday, October 13, 2012, in the City of Beaver Dam, Dodge County, Wisconsin, did intentionally take and carry away movable property of another, from the person of another or from a corpse, without the other's consent and with intent to deprive the owner permanently of possession of such property, contrary to sec. 943.20(1)(a) and (3)(e), 939.50(3)(g), 939.63(1)(b), 939.62(1)(b) Wis. Stats , a Class G Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars ($25,000), or imprisoned not more than ten (10) years, or both.

And further, invoking the provisions of sec. 939.63(1)(b) Wis. Stats., because the defendant committed this offense while threatening to use a dangerous weapon, the maximum term of imprisonment for the felony may be increased by not more than 5 years.

And further, invoking the provisions of sec. 939.62(1)(b) Wis. Stats., because the defendant is a repeater, having been convicted of three counts of Issuance of Worthless Checks on 7/18/2011 for offenses committed on 7/20/10 & 9/6/10 & 9/7/10 in Dodge County Case No. 11CM198, which conviction(s) remain of record and unreversed, the maximum term of imprisonment for the underlying crime may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 4 years if the prior conviction was for a felony.

Dated this 11 day of March, 201

Kurt F. Klomberg #1042159
District Attorney

Dodge County Justice Facility
210 W. Center Street
Juneau, WI 53039
(920) 386-3610

STATE OF WISCONSIN CIRCUIT COURT OF DODGE COUNTY
THIS DOCUMENT IS A FULL, TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE
CERTIFIED BY CLERK OF CIRCUIT COURT

DATE Sept 18, 2018

BY Kelly K. McMillan
Dep. Clerk

Dodge County Wisconsin **SEAL** Circuit Court

STATE OF WISCONSIN | CIRCUIT COURT BRANCH 2 | DODGE COUNTY | *For Official Use Only*

State of Wisconsin vs. Kenneth M. Asboth Jr.

**Judgment of Conviction**
Amended
Sentence to Wisconsin State Prisons and Extended Supervision
Case No. 2012CF000384

FILED
05-14-2015
Clerk of Circuit Court
Dodge County, WI

Date of Birth: 12-19-1969

The defendant was found guilty of the following crime(s):

| Ct. | Description | Violation | Plea | Severity | Date(s) Committed | Trial To | Date(s) Convicted |
|---|---|---|---|---|---|---|---|
| 1 | Armed Robbery with Threat of Force | 943.32(2) | No Contest | Felony C | 10-13-2012 | | 03-28-2014 |

**IT IS ADJUDGED** that the defendant is guilty as convicted and sentenced as follows:

| Ct. | Sent. Date | Sentence | Length | Agency | Comments |
|---|---|---|---|---|---|
| 1 | 03-16-2015 | State Prison w/ Ext. Supervision | 20 YR | Department of Corrections | AMENDED 5/5/15 GRANTING 430 DAYS PRESENTENCE CREDIT |

**Total Bifurcated Sentence Time**

| Confinement Period Ct. | Years | Months | Days | Comments | Extended Supervision Years | Months | Days | Total Length of Sentence Years | Months | Days |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 10 | 0 | 0 | | 10 | 0 | 0 | 20 | 0 | 0 |

**Conditions of Extended Supervision:**

**Obligations:** (Total amounts only)

| Fine | Court Costs | Attorney Fees | ☐ Joint and Several Restitution | Other | Mandatory Victim/Wit. Surcharge | 5% Rest. Surcharge | DNA Anal. Surcharge |
|---|---|---|---|---|---|---|---|
| | 163.00 | | 1,300.00 | 143.00 | 92.00 | 97.40 | 250.00 |

| Ct. | Condition | Agency/Program | Comments |
|---|---|---|---|
| 1 | Restitution | | The DOC shall deduct restitution and other court ordered financial obligations from the Defendant's prison income at a rate of 25% of the Defendant's income. |
| 1 | Costs | | |
| 1 | Psych Treatment | | Shall undergo and follow through with any counseling as directed by agent |
| 1 | Prohibitions | | Shall have no contact or communication with victims and may not go within 500 feet of their homes; Defendant shall not possess any weapons. Defendant shall not consume alcohol or other intoxicants. Defendant must maintain absolute sobriety and shall report to agent with any prescribed drugs |
| 1 | Other | | Shall submit a DNA sample |

**Pursuant to §973.01(3g) and (3m) Wisconsin Statutes, the court determines the following:**

The Defendant is ☐ is not ☒ eligible for the Challenge Incarceration Program.

The Defendant is ☐ is not ☒ eligible for the Substance Abuse Program.

**IT IS ADJUDGED** that **430** days sentence credit are due pursuant to §973.155, Wisconsin Statutes

**IT IS ORDERED** that the Sheriff shall deliver the defendant into the custody of the Department.

STATE OF WISCONSIN | CIRCUIT COURT BRANCH 2 | DODGE COUNTY | *For Official Use Only*

State of Wisconsin vs. Kenneth M. Asboth Jr.

**Judgment of Conviction**
Amended
Sentence to Wisconsin State Prisons and Extended Supervision
Case No. 2012CF000384

FILED
05-14-2015
Clerk of Circuit Court
Dodge County, WI

Date of Birth: 12-19-1969

BY THE COURT:

Distribution:

John R. Storck, Judge
Kurt Frederich Klomberg, State of Wisconsin
Meg Colleen O'Marro, Defense Attorney
DOC
Defendant
**AMENDED TO SHOW PRESENTENCE CREDIT**

Electronically signed by Dawn E. Luck
Circuit Court Judge/Clerk/Deputy Clerk

May 14, 2015
Date

STATE OF WISCONSIN CIRCUIT COURT OF DODGE COUNTY
THIS DOCUMENT IS A FULL, TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE
CERTIFIED BY CLERK OF CIRCUIT COURT

DATE Sept 18, 2018
BY Kelly K McMillan
Deputy Clerk

Dodge County Wisconsin **SEAL** Circuit Court

45

STATE OF WISCONSIN | CIRCUIT COURT CRIMINAL DIVISION | MILWAUKEE COUNTY

# AMENDED INFORMATION

STATE OF WISCONSIN

Plaintiff,

vs.

DA Case No.:2011ML020967

Complaining Witness:

Hendricks, Shannon Olance
3726 East Grange Avenue
Cudahy, WI 53110
DOB: 08/07/1980

Court Case No.: 2011CF004101

Defendant,

I, JOHN T. CHISHOLM, DISTRICT ATTORNEY FOR MILWAUKEE COUNTY, WISCONSIN, HEREBY INFORM THE COURT, THAT:

**Count 1: CHILD ENTICEMENT (SEXUAL CONTACT OR INTERCOURSE)**

The above-named defendant on or about Wednesday, August 24, 2011, at 5400 South Swift Avenue, in the City of Cudahy, Milwaukee County, Wisconsin, with intent to have sexual contact in violation of s. 948.02 with TMB, DOB 09/19/1996, a child who had not attained the age of 18 years, did cause that child to go into a secluded place, contrary to sec. 948.07(1), 939.50(3)(d) Wis. Stats.

Upon conviction for this offense, a Class D Felony, the defendant may be fined not more than One Hundred Thousand Dollars ($100,000), or imprisoned not more than twenty five (25) years, or both.

JOHN T. CHISHOLM, DISTRICT ATTORNEY

1-10-12

DATED

Jon Neuleib
Assistant District Attorney
1072016

STATE OF WISCONSIN }
MILWAUKEE COUNTY } SS.

I, the undersigned Clerk of the Circuit Court of Milwaukee County, Wisconsin do hereby certify that I have compared this document with the original on file and that the same is a full, true and correct copy of said original and of the whole thereof, as the same remains of record in my office.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said court this SEP 19 20[illegible]
date

JOHN BARRETT
Clerk of Circuit Court

STATE OF WISCONSIN | CIRCUIT COURT BRANCH 12 | MILWAUKEE COUNTY

*For Official Use Only*

State of Wisconsin vs. Shannon Olance Hendricks

Date of Birth: 08-07-1980

**Judgment of Conviction**
Amended
Sentence to Wisconsin State Prisons and Extended Supervision
Case No. 2011CF004101

FILED
09-25-2014
John Barrett
Clerk of Circuit Court

List Aliases: AKA Shannon O Lance Hendricks

The defendant was found guilty of the following crime(s):

| Ct. | Description | Violation | Plea | Severity | Date(s) Committed | Trial To | Date(s) Convicted |
|---|---|---|---|---|---|---|---|
| 1 | Child Enticement-Sexual Contact | 948.07(1) | Guilty | Felony D | 08-24-2011 | | 01-10-2012 |

**IT IS ADJUDGED** that the defendant is guilty as convicted and sentenced as follows:

| Ct. | Sent. Date | Sentence | Length | Agency | Comments |
|---|---|---|---|---|---|
| 1 | 02-28-2013 | State Prison w/ Ext. Supervision | 6 YR 3 MO | | ****Sept.22,2014/.Judge Konkol/DECISION & ORDER (1)Defendant is entitled to a TOTAL of 144 days of sentence credit; (2) Initial confinement is commuted to two (2) years & three (3) months on this case & (3) DNA surcharge VACATED.*** |

**Total Bifurcated Sentence Time**

| | Confinement Period | | | | Extended Supervision | | | Total Length of Sentence | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Ct. | Years | Months | Days | Comments | Years | Months | Days | Years | Months | Days |
| 1 | 2 | 3 | 0 | | 4 | 0 | 0 | 6 | 3 | 0 |

| Ct. | Sent. Date | Sentence | Length | Agency | Comments |
|---|---|---|---|---|---|
| 1 | 02-28-2013 | Costs | | | Provide DNA sample and pay surcharge, if already done this is waived. Pay applicable costs, surcharges, victim/witness surcharges. DOC to collect from 25% of funds pe rSec. 973.05(4)(b) and as a condition of Extended Supervision. Any unpaid balance to convert to civil judgment, and still remains due and owing....09/22/14 DECISION & ORDER. Court VACATES DNA surcharge. |
| 1 | 02-28-2013 | Firearms/Weapons Restrict | | | Defendant advised as a convicted felon he may never possess a firearm or body armor; his voting privileges are suspended and he may not vote in any election until his civil rights are restored. Also advised of child sex offender working with children restrictions. |

**Sentence Concurrent With/Consecutive Information:**

| Ct. | Sentence | Type | Concurrent with/Consecutive To Comments |
|---|---|---|---|
| 1 | State prison | Concurrent | Concurrent with current revocation. |

STATE OF WISCONSIN CIRCUIT COURT BRANCH 12 MILWAUKEE COUNTY

*For Official Use Only*

State of Wisconsin vs. Shannon Olance Hendricks

**Judgment of Conviction**
Amended
Sentence to Wisconsin State Prisons and Extended Supervision
Case No. 2011CF004101

FILED
09-25-2014
John Barrett
Clerk of Circuit Court

Date of Birth: 08-07-1980

**Conditions of Extended Supervision:**

| Ct. | Condition | Length | Agency/Program | Begin Date | Begin Time | Comments |
|---|---|---|---|---|---|---|
| 1 | Community Service 250 HR | | | | | |

| Ct. | Condition | Agency/Program | Comments |
|---|---|---|---|
| 1 | Employment / School | | Seek/maintain fulltime employment. |
| 1 | Psych Treatment | | Mental health evaluation. Take all prescribed medication. |
| 1 | Prohibitions | | No further violations of the law rising to the level of probable cause.<br>No contact with the victim without the approval of DOC and the victim. |
| 1 | Other | | Attend treatment and counseling programs as determined by agent.<br>Register and comply with the sex offender registry.<br>Obtain/comply with sex offender treatment (as needed by DOC).<br>Pay all supervision fees.<br>Restitution set at zero.<br>Attend a parenting class in custody or on Extended supervision. |
| 1 | Alcohol assessment | | AODA assessment. Comply with any treatment. Random urine screens and drug testing. |

**Conditions of Sentence or Probation**

**Obligations:** (Total amounts only)

| Fine | Court Costs | Attorney Fees | ☐ Joint and Several Restitution | Other | Mandatory Victim/Wit. Surcharge | 5% Rest. Surcharge | DNA Anal. Surcharge |
|---|---|---|---|---|---|---|---|
| | 163.00 | | | 13.00 | 92.00 | | |

**Pursuant to §973.01(3g) and (3m) Wisconsin Statutes, the court determines the following:**

The Defendant is ☐ is not ☒ eligible for the Challenge Incarceration Program.

The Defendant is ☐ is not ☒ eligible for the Substance Abuse Program.

**IT IS ADJUDGED** that 144 days sentence credit are due pursuant to §973.155, Wisconsin Statutes

**IT IS ORDERED** that the Sheriff shall deliver the defendant into the custody of the Department.

**Distribution:**

David Borowski-12, Judge
Jennifer Lynn Williams, District Attorney
Gregg H Novack, Defense Attorney

CIRCUIT COURT MILWAUKEE CO. WISCONSIN SEAL

**BY THE COURT:**

Electronically signed by John Barrett
Circuit Court Judge/Clerk/Deputy Clerk

September 25, 2014
Date

**State of Wisconsin** **Circuit Court** **Florence County**

STATE OF WISCONSIN

Plaintiff,

Court Case No.: 2009CF000014
DA Case No.: 2009FR000083

-VS-

Michael L Frey
7227 Johns Road
Niagara, WI 54151
DOB: 01/17/1966
Sex/Race: M/W
Alias:

FILED
NUMBER 09CF14

APR 30 2009

PAULA CORAGGIO-Clerk of Court
Florence County, WI

Defendant,

**INFORMATION**

**Count 1: SECOND DEGREE SEXUAL ASSAULT**

The above-named defendant on or about February 9, 2009 at an unknown time, in the Town of Aurora, Florence County, Wisconsin, by use of violence, did have sexual intercourse, with A.R.B. (DOB: 2-16-92), without the consent of that person, contrary to sec. 940.225(2)(a), 939.50(3)(c), 973.047(1f), 973.046(1g) Wis. Stats.

Upon conviction for this offense, a Class C Felony, the defendant may be fined not more than One Hundred Thousand Dollars ($100,000), or imprisoned not more than forty (40) years, or both.

And the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.
And the court may impose a deoxyribonucleic acid analysis surcharge of $250.

**Count 2: SECOND DEGREE SEXUAL ASSAULT**

The above-named defendant on or about March 30, 2009 at an unknown time, in the Town of Aurora, Florence County, Wisconsin, did have sexual contact with a person, M.A.G. DOB: 1-16-93, who was under the influence of an intoxicant to a degree which rendered that person incapable of giving consent, and the defendant had the purpose to have sexual contact with the person while the person was incapable of giving consent, contrary to sec. 940.225(2)(cm), 939.50(3)(c), 973.047(1f), 973.046(1g) Wis. Stats.

4/29/2009

Upon conviction for this offense, an attempt to commit a Class C Felony, the defendant may be fined not more than One Hundred Thousand Dollars ($100,000), or imprisoned not more than forty (40) years, or both.

And the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.
And the court may impose a deoxyribonucleic acid analysis surcharge of $250.

**Count 3: CHILD ENTICEMENT**

The above-named defendant on or about February 9, 2009 at an unknown time, in the Town of Aurora, Florence County, Wisconsin, with intent to deliver a controlled substance, did cause a child under the age of 18, A.R.B., DOB 2-16-92, to go into a building, contrary to sec. 948.07(6), 939.50(3)(d), 973.047(1f), 973.046(1g) Wis. Stats.

Upon conviction for this offense, a Class D Felony, the defendant may be fined not more than One Hundred Thousand Dollars ($100,000), or imprisoned not more than twenty five (25) years, or both.

And the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.
And the court may impose a deoxyribonucleic acid analysis surcharge of $250.

**Count 4: CHILD ENTICEMENT**

The above-named defendant on or about March 30, 2009 at an unknown time, in the Town of Aurora, Florence County, Wisconsin, with intent to deliver a controlled substance, did cause a child under the age of 18, M.A.G., DOB 1-16-93, to go into a building, contrary to sec. 948.07(6), 939.50(3)(d), 973.047(1f), 973.046(1g) Wis. Stats.

Upon conviction for this offense, a Class D Felony, the defendant may be fined not more than One Hundred Thousand Dollars ($100,000), or imprisoned not more than twenty five (25) years, or both.

And the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.
And the court may impose a deoxyribonucleic acid analysis surcharge of $250.

**Count 5: MANUFACTURE/DELIVER THC (TETRAHYDROCANNABINOLS) (<=200 G)**

The above-named defendant on or about February 9, 2009 at an unknown time, in the Town of Aurora, Florence County, Wisconsin, did deliver a controlled substance, to-wit:

Tetrahydrocannabinols, in an amount of not more than 200 grams or 4 plants, contrary to sec. 961.41(1)(h)1, 939.50(3)(i), 973.047(1f), 973.046(1g) Wis. Stats.

Upon conviction for this offense, a Class I Felony, the defendant may be fined not more than Ten Thousand Dollars ($10,000), or imprisoned not more than three (3) years and six (6) months, or both.

And the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.
And the court may impose a deoxyribonucleic acid analysis surcharge of $250.

**Count 6: MANUFACTURE/DELIVER THC (TETRAHYDROCANNABINOLS) (<=200 G)**

The above-named defendant on or about March 30, 2009 at an unknown time, in the Town of Aurora, Florence County, Wisconsin, did deliver a controlled substance, to-wit: Tetrahydrocannabinols, in an amount of not more than 200 grams or 4 plants, contrary to sec. 961.41(1)(h)1, 939.50(3)(i), 973.046(1g), 973.047(1f) Wis. Stats.

Upon conviction for this offense, a Class I Felony, the defendant may be fined not more than Ten Thousand Dollars ($10,000), or imprisoned not more than three (3) years and six (6) months, or both.

And the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.
And the court may impose a deoxyribonucleic acid analysis surcharge of $250.

District Attorney

State Bar No. 1012319

Date: April 30, 2009

State of Wisconsin
County of Florence
I, Clerk of the Circuit Court for said County hereby certify that I have compared this document with the original on file, of which I am the legal custodian and it is a true copy of said original.
Witness my signature this 18 day of September 2010
Deputy

STATE OF WISCONSIN | CIRCUIT COURT BRANCH 1 | FLORENCE COUNTY

For Official Use Only

FILED
NOV 11 2009
PAULA CORRIVEAU-Clerk of Court
Florence County, WI

State of Wisconsin vs. Michael L Frey

Date of Birth: 01-17-1966

# Judgment of Conviction

Sentence to Wisconsin State Prisons and Extended Supervision

Case No.: 2009CF000014 NUMBER 09CF14

The defendant was found guilty of the following crime(s):

| Ct. | Description | Violation | Plea | Severity | Date(s) Committed | Trial To | Date(s) Convicted |
|---|---|---|---|---|---|---|---|
| 2 | 2nd Deg. Sex Assault-Intoxicated Victim | 940.225(2)(cm) | No Contest | Felony C | 03-30-2009 on or about March 30, 2009 aaut | | 09-02-2009 |
| 5 | Manufacture/Deliver THC (<=200g) | 961.41(1)(h)1 | No Contest | Felony I | 02-09-2009 on or about February 9, 2009 aaut | | 09-02-2009 |
| 6 | Manufacture/Deliver THC (<=200g) | 961.41(1)(h)1 | No Contest | Felony I | 03-30-2009 on or about March 30, 2009 aaut | | 09-02-2009 |

**IT IS ADJUDGED** that the defendant is guilty as convicted and sentenced as follows:

| Ct. | Sent. Date | Sentence | Length | Agency | Comments |
|---|---|---|---|---|---|
| 2 | 11-10-2009 | State prison | 20 YR | | |
| 5 | 11-10-2009 | State prison | 2 YR | | |
| 6 | 11-10-2009 | State prison | 2 YR | | |

**Total Bifurcated Sentence Time**

| Confinement Period | | | | | Extended Supervision | | | Total Length of Sentence | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Ct. | Years | Months | Days | Comments | Years | Months | Days | Years | Months | Days |
| 2 | 20 | 0 | 0 | | 5 | 0 | 0 | 25 | 0 | 0 |
| 5 | 2 | 0 | 0 | | 1 | 0 | 0 | 3 | 0 | 0 |
| 6 | 2 | 0 | 0 | | 1 | 0 | 0 | 3 | 0 | 0 |

| Ct. | Sent. Date | Sentence | Length | Agency | Comments |
|---|---|---|---|---|---|
| 2 | 11-10-2009 | Forfeiture / Fine | | | |
| 2 | 11-10-2009 | Costs | | | |
| 5 | 11-10-2009 | Forfeiture / Fine | | | |
| 6 | 11-10-2009 | Forfeiture / Fine | | | |

**Sentence Concurrent With/Consecutive Information:**

| Ct. | Sentence | Type | Concurrent with/Consecutive To Comments |
|---|---|---|---|
| 5 | State prison | Consecutive | to time being served in count #2 |
| 5 | Extended Supervision | Consecutive | to extended supervision in count #2 |
| 6 | State prison | Consecutive | time being served in counts #2 & 5 |
| 6 | Extended Supervision | Consecutive | to extended supervision in counts #2 & 5. |

**Conditions of Sentence or Probation**

**Obligations:** (Total amounts only)

| Fine | Court Costs | Attorney Fees | ☐ Joint and Several Restitution | Other | Mandatory Victim/Wit. Surcharge | 5% Rest. Surcharge | DNA Anal. Surcharge |
|---|---|---|---|---|---|---|---|
| 30.00 | 60.00 | | | 24.00 | 255.00 | | 250.00 |

STATE OF WISCONSIN | CIRCUIT COURT BRANCH 1 | FLORENCE COUNTY | *For Official Use Only*

State of Wisconsin vs. Michael L Frey

**Judgment of Conviction**

Sentence to Wisconsin State Prisons and Extended Supervision

Date of Birth: 01-17-1966

Case No.: 2009CF000014

**Pursuant to §973.01(3g) and (3m) Wisconsin Statutes, the court determines the following:**

The Defendant is ☐ is not ☒ eligible for the Challenge Incarceration Program.

The Defendant is ☐ is not ☒ eligible for the Earned Release Program.

**IT IS ADJUDGED** that **210** days sentence credit are due pursuant to § 973.155, Wisconsin Statutes

**IT IS ORDERED** that the Sheriff shall deliver the defendant into the custody of the Department.

BY THE COURT:

**Distribution:**

Leon D. Stenz, Judge
Douglas Drexler, District Attorney
Sam Filippo, Defense Attorney
Probation & Parole
Florence Co Sheriff's Dept.

Paula Corraggio
Circuit Court Judge/Clerk/Deputy Clerk

November 11, 2009
Date

State of Wisconsin
County of Florence
I, Clerk of the Circuit Court for said County hereby certify that I have compared this document with the original on file, of which I am the legal custodian and it is a true copy of said original.
Witness my signature this 18 day of September 20 18
BS Deputy