

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

SHAWN GOWDER,

Plaintiff,

v.

CITY OF CHICAGO, a municipal corporation,  
the CITY OF CHICAGO DEPARTMENT OF  
ADMINISTRATIVE HEARINGS, MUNICIPAL  
HEARINGS DIVISION, SCOTT V. BRUNER,  
Director of the City of Chicago Department of  
Administrative Hearings, the CITY OF CHICAGO  
DEPARTMENT OF POLICE, and JODY P. WEIS,  
Superintendent of the City of Chicago Department  
of Police,

Defendants.

No. 11-cv-1304

Judge Der-Yeghiayan

**JOINT MEMORANDUM REGARDING  
PLAINTIFF'S CONVICTION STATUS**

The parties, by their undersigned counsel, hereby submit this joint memorandum regarding plaintiff's conviction status pursuant to the Court's October 18, 2011 order.

At the status hearing on October 18, 2011, the Court indicated that the Circuit Court of Cook County's Certified Statement of Conviction [Docs. 18-1 and 26-4] is unclear as to whether plaintiff has a misdemeanor conviction, and if so, how that conviction procedurally came about. The Court's expressed concern was based upon the fact that the Certified Statement shows that plaintiff was charged with a Class 4 felony for violation of 720 ILCS 5/24-1(a)(10), and was convicted on that charge and sentenced to 1 year of probation on August 21, 1995. The Certified Statement further indicates that plaintiff's felony conviction was vacated on April 8, 2003, but no new information charging him with a misdemeanor was thereafter filed by the State. The Court

expressed concern at how plaintiff's conviction could have been vacated and plaintiff could have been convicted of a misdemeanor without a subsequent charging information being filed.

Attached hereto as group Exhibit 1 is a copy of the Notice of Motion and Petition to Vacate the Felony Conviction for Offense of Possession of a Firearm, filed by plaintiff's attorney in the Circuit Court of Cook County on April 8, 2003. As that petition states, the Illinois "Safe Neighborhood Act," also known as Public Act 88-680, was declared unconstitutional by the Illinois Supreme Court in *People v. Cervantes*, 723 N.E.2d 265, 270 (Ill. 1999). Public Act 88-680, which took effect January 1, 1995, increased the class of offense for a first time violation of 720 ILCS 5/24-1(a)(10) from a misdemeanor to a Class 4 felony. See 720 ILCS 5/24-1, Historical and Statutory Notes (West 2010). This amendment was in effect at the time Gowder was convicted and sentenced on August 21, 1995. However, when the Illinois Supreme Court ruled Public Act 88-680 unconstitutional in *Cervantes* in 1999, the effect was "to leave the law in force as it was before the adoption of the unconstitutional amendment." *People v. Lindsey*, 753 N.E.2d 1270, 1278 (Ill. App. 4<sup>th</sup> Dist. 2001). In *Lindsey*, the Illinois Appellate Court held that the ruling in *Cervantes* required that a felony conviction under the amended version of 720 ILCS 5/24-1, entered before the amendment was declared unconstitutional, must be reduced to a misdemeanor conviction. *Lindsey*, 753 N.E.2d at 1278.

Following the decisions in *Cervantes* and *Lindsey*, plaintiff filed his petition to vacate his felony conviction (Exh. 1). This petition was filed on April 8, 2003. The Circuit Court of Cook County, Illinois heard the petition on April 21, 2003, and entered an order stating that by operation of law, plaintiff's conviction was reduced from a felony to a misdemeanor; and that "[t]he Chicago Police Department and the Illinois State Police are directed to amend their respective criminal history reports on Shawn Gowder to reflect said changes without further

delay.” A copy of the Circuit Court of Cook County’s April 21, 2003 order (redacted to remove plaintiff’s personal identification information in accordance with this Court’s prior protective order herein) is attached hereto as Exhibit 2.

The Certified Statement of Conviction/Disposition generated by the Circuit Court of Cook County contains an entry for April 8, 2003 – the day plaintiff’s petition to vacate was filed – stating “Special Order Vacate Felony Conviction.” The Certified Statement’s next entry, however, states “hearing date assigned 04/21/03” The Certified Statement then contains the entry for April 21, 2003 stating “Special Order of 8-21-1995 is reduced from a felony to a mis[]emeanor. Off call.” Since plaintiff’s notice of motion and petition to vacate were filed on April 8, 2003 and scheduled for hearing on April 21, 2003, and the order reducing plaintiff’s conviction class was entered on April 21, 2003, it appears that the Clerk of the Circuit Court of Cook County erroneously designated the petition to vacate as a “special order” in the Certified Statement. No order vacating plaintiff’s felony conviction was entered on April 8, 2003, and the Circuit Court’s April 21, 2003 order demonstrates that the conviction was reduced by operation of law from a felony to a misdemeanor.

Respectfully submitted,

s/Stephen A. Kolodziej

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312-781-1970  
[skolodziej@brennerlawfirm.com](mailto:skolodziej@brennerlawfirm.com)

*Counsel for Plaintiff*

s/Rebecca Alfert Hirsch

Rebecca Alfert Hirsch  
Assistant Corporation Counsel  
30 North LaSalle Street, Suite 1230  
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312-742-0260  
[rebecca.alfert@cityofchicago.org](mailto:rebecca.alfert@cityofchicago.org)

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I, Stephen A. Kolodziej, an attorney, hereby certify that on November 17, 2011, service of the foregoing document is being made in accordance with the General Order on Electronic Case Filing to the following:

Rebecca Alfert Hirsch  
Andrew W. Worsack  
Assistant Corporation Counsel  
30 N. LaSalle Street, Suite 1230  
Chicago, IL 60602

s/ Stephen A. Kolodziej  
Stephen A. Kolodziej  
Brenner Ford Monroe & Scott, Ltd.  
33 N. Dearborn, Suite 300  
Chicago, Illinois 60602  
(312) 781-1970  
[skolodziej@brennerlawfirm.com](mailto:skolodziej@brennerlawfirm.com)

## **EXHIBIT LIST**

1. Notice of Motion and Petition to Vacate the Felony Conviction for Offense of Possession of a Firearm, Case No. 95 CR 0257101, filed April 8, 2003
2. Order of Circuit Court of Cook County, Illinois, Case No. 95 CR 0257101, entered April 21, 2003

# **EXHIBIT 1**

STATE OF ILLINOIS     )  
                              )     SS  
COUNTY OF COOK        )

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT-CRIMINAL DIVISION

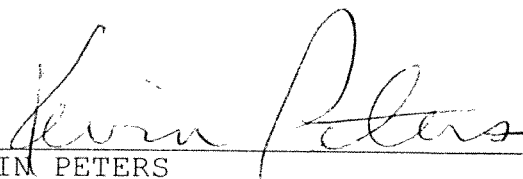
PEOPLE OF THE STATE OF ILLINOIS,     )  
    Plaintiff,                             )  
  )  
vs.   )     No. 95 CR 0257101  
  )  
SHAWN GOWDER,                             )  
    Defendant.                             )

NOTICE OF MOTION

TO: State's Attorney's Office  
    Assistants in Courtroom 101 - Chef Judge  
    12<sup>th</sup> Floor  
    2650 S. California  
    Chicago, IL 60608

PLEASE TAKE NOTICE that on April 8, 2003, I filed with the Clerk of the Circuit Court, Criminal Division **PETITION TO VACATE THE FELONY CONVICTION FOR OFFENSE OF POSSESSION OF A FIREARM**, copies of which are attached.

PLEASE TAKE FURTHER NOTICE that on April 21, 2003, I will appear before the Chief Judge Paul Beibel, Jr., Room 101, 2650 S. California, Chicago, Illinois at 10:00 a.m., and then and there present the attached motion.

  
\_\_\_\_\_  
KEVIN PETERS  
ATTORNEY FOR GOWDER  
542 S. Dearborn, Suite 750  
Chicago, IL 60605  
312-697-0022

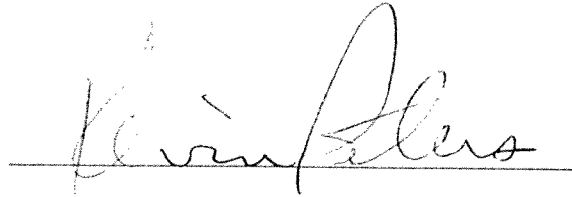
MARGARET SCHADT  
FILED  
APR 11 2003

DOUGLAS BROWN  
CLERK OF CIRCUIT COURT

CERTIFICATE OF SERVICE

I CERTIFY that I have hand delivered a copy of this Notice to Counsel for the Defendants at the address set forth above.

DATED at Chicago, Illinois, April 8, 2003.

A handwritten signature in cursive script, appearing to read "Kevin Peters", is written over a horizontal line.

SUBSCRIBED AND SWORN TO  
before me this 8<sup>th</sup> day  
of April, 2003.

\_\_\_\_\_  
NOTARY PUBLIC



STATE OF ILLINOIS     )  
                                      )     SS  
COUNTY OF COOK        )

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT-CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,     )  
    Plaintiff,                             )  
  )  
vs.   )     No. 95 CR 0257101  
  )  
SHAWN GOWDER,                            )  
    Defendant.                            )

**PETITION TO VACATE THE FELONY CONVICTION  
FOR OFFENSE OF POSSESSION OF A FIREARM**

NOW COMES the Defendant, SHAWN GOWDER, by and through his attorney, KEVIN PETERS, and respectfully requests that this Court vacate the felony conviction for the offense of Unlawful Use of a Weapon previously entered in August of 1995 by the Honorable Judge Richard Neville; and reduce the conviction to a misdemeanor, as a felony conviction would be void pursuant to the laws of the State of Illinois.

In support thereof, counsel states:

1. Shawn Gowder was charged with Felony Unlawful Possession of a Firearm (Uuw) under Case number 95 CR 0257101.
2. Mr. Gowder was convicted of the offense of Uuw after a bench trial before the Honorable Judge Richard Neville on August 21, 1995.
3. Shawn Gowder was sentenced as a felon. He was sentenced to 12 months probation.
4. The Illinois Supreme Court's ruling in People v.

Cervantes, struck down the "Safe Neighborhood Act" (also known as Public Acts 88-680); said Act had made possession of a Firearm a felony. The Supreme Court's decision to find the Safe Neighborhood Act unconstitutional leaves the Former Illinois Revised Statutes, chapter 38, Section 24-1 to control under these circumstances. Section 24-1 made a First Gun offense a misdemeanor.

5. Shawn Gowder's felony conviction is void by operation of law.

6. This Court should reduce the previously entered felony conviction for Unlawful Possession of a Firearm to a misdemeanor and since he successfully completed probation, sentence him to supervision thereby allowing him to expunge the misdemeanor conviction.

7. Mr. Gowder has been gainfully employed since 1995.

8. Mr. Gowder had no convictions before the arrest and conviction in this case.

9. Mr. Gowder has not been convicted of any offense since the conviction in this case.

Respectfully Submitted,



Kevin Peters

ATTORNEY FOR DEFENDANT

542 S. Dearborn, Suite 750

Chicago, IL 60605

312-697-0022

Atty. ID 51862

# **EXHIBIT 2**

Disposed  
11/17/11

STATE OF ILLINOIS     )  
                              )     SS  
COUNTY OF COOK        )

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT-CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,     )  
    Plaintiff,                             )  
  )  
vs.   )     No. 95 CR 0257101  
  )  
SHAWN GOWDER,                            )  
    Defendant.                            )

ORDER

THIS MATTER coming on to be heard on SHAWN GOWDER'S Petition To Vacate The Felony Conviction For Offense Of Possession Of A Firearm, all Parties being present and this Court having jurisdiction over the Parties and subject matter:

IT IS HEREBY ORDERED THAT:

1. SHAWN GOWDER'S conviction for UUC entered on August 21, 1995, in the above-captioned case is by operation of law reduced from a Felony to a **Misdemeanor**.
2. Mr. Gowder successfully completed probation.
3. Mr. Gowder's IR# is
4. Mr. Gowder's SID# is
5. The Chicago Police Department and the Illinois State Police are directed to amend their respective criminal history reports on Shawn Gowder to reflect said changes without further delay.

DATED: 4-21-03

SIGNED: 

Kevin Peters  
Attorney for Shawn Gowder  
542 S. Dearborn, Suite 750  
Chicago, IL 60605  
312-697-0022  
Attorney I.D. #51862

RECEIVED  
CLERK OF COURT  
NOV 21 2011  
JANICE JACKSON  
CLERK OF COURT