

In the matter of the review  
of the decision of the  
Superintendent of the Maryland  
State Police denying the  
handgun permit to Stephen  
E. Uhrig, 1300 Boyd Road,  
Street, Maryland 21154

\* Before the  
\* Handgun Permit Review Board  
\* Case No. 04-4035  
\* (MSP No. 438-60558)

\* \* \* \* \*

## DECISION OF THE HANDGUN PERMIT REVIEW BOARD

### Statement of the Case

The applicant, **Stephen E. Uhrig**, submitted an application to the Maryland State Police for the renewal of his handgun permit. On June 30, 2004, the Superintendent of the Maryland State Police disapproved the handgun permit application concluding that the applicant was prohibited by federal law from possessing a firearm. The applicant has appealed from that decision to the Handgun Permit Review Board (Board).

On March 16, 2005, the Board held a hearing on the matter. Present at the hearing were the following Board Members: Rolinda S. Collinson, Chair, Charles M. Thomas, Jr., Donald G. Beach, and William J. Kunkel. Present for the Maryland State Police was: Cpl. Michael Cusimano. Also present were the applicant: Stephen E. Uhrig, his attorney, John J. Condliffe, and two witnesses for the applicant

Testimony at the hearing was received from Tfc. Michael Cusimano; Stephen E. Uhrig; and the two witnesses for the applicant.

### Background

The MSP has issued handgun permits to the applicant in the past in connection with his security business. When the applicant submitted his last renewal application, the State Police disapproved the application concluding that because of a 1982 conviction on a common law battery charge, the applicant was prohibited from possessing a firearm **under federal law. The State Police concluded that the applicant was convicted of a common law crime punishable by the possibility of incarceration for more than two years and, thus, the applicant was prohibited by federal law from possessing a firearm** in light of an opinion by the United States Court of Appeals for the Fourth Circuit in *U.S. v. Coleman*, 158 F.3d 199 (4th Cir. 1998).

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CLERK OF CIRCUIT CT  
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### Findings of Fact

Based upon the testimony and evidence presented to the Board, the following findings of fact are made:

The Board finds that the applicant owns a security business, **SWS Security**, which provides specialized and highly regulated surveillance equipment and assistance to federal and state agencies. In the past, the MSP determined that the applicant had met the qualifications for a handgun permit as required by the Maryland handgun permit law. The applicant was found to be a stable individual of good character, with a good and substantial reason to wear, carry, or transport a handgun in connection with his security business. In light of these qualifications, the applicant had been issued prior handgun permits to carry a handgun for personal protection in connection with his business situation. The applicant's good character and continued need for the handgun permit are not in question in this appeal.

The Board finds that while investigating the applicant's last handgun permit renewal application, the MSP determined that the applicant had been convicted in 1982 of common law battery. **The Board finds that on 7/9/82, the applicant was found guilty of battery** in the District Court of Maryland; **sentenced to 90 days, suspended; and placed on probation for two years.** The Board finds that the applicant has been convicted of a common law crime punishable by the possibility of incarceration for more than two years and, thus, **the applicant is prohibited by federal law from possessing a firearm**

### Conclusions of Law

Based on its findings of fact, the Board concludes that the applicant's conviction of battery, a common law misdemeanor, is a conviction under 18 USC, Section 922 (g), and in light of an opinion by the United States Court of Appeals for the Fourth Circuit in *U.S. v. Coleman*, 158 F.3d 199 (4th Cir. 1998), the applicant is prohibited by federal law from possessing a firearm.

Title 18, Section 922 (g) of the United States Code provides that, "it shall be unlawful for any person who has been convicted...of a crime punishable by imprisonment for a term exceeding one year to...possess in or affecting commerce any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." Federal law defines the term "crime punishable by imprisonment for a term exceeding one year" to include State misdemeanors that upon conviction could carry more than a two year sentence.

As provided in the *Coleman* decision, the Board has no discretion to consider the actual time served when a statute refers to criminal activity "punishable by imprisonment for a term exceeding one year." The determining factor as to whether a misdemeanor constitutes a disqualifying offense is whether the crime is punishable by more than two years imprisonment.

The Board notes that a situation similar to Mr. Uhrig's came before the Board in the appeal of Don Arnold. In that case, the Board reversed the Superintendent of the MSP and found that Mr. Arnold was not prohibited under federal law from possessing a firearm. The Board's decision was reversed on appeal to the Circuit Court for Baltimore County. A copy of Judge Fader's decision in the Arnold appeal is attached hereto and incorporated herein for reference.

Order

By unanimous vote, the Board affirms the action of the Superintendent of the Maryland State Police.



Rolinda S. Collinson, Chair

Date: March 23, 2005