STATE OF WISCONSIN: CIRCUIT COURT: RACINE COUNTY:

STATE OF WISCONSIN,

Plaintiff,

Case No. 2007CF000744

v.

DAMIEN BELL,

Defendant.

DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

NOW COMES the above-named defendant, Damien Bell ("Bell") by his attorney, Jeffrey W. Jensen, and hereby moves to suppress all evidence seized by police as a result of the warrantless arrest of Bell outside of 1107 St. Patrick Street on June 14, 2007.

AS GROUNDS, the undersigned shows to the court that the officers arrested Bell without a warrant and, at the time the arrest occurred, the officers lacked any reasonable suspicion that Bell had committed, was committing, or was about to commit a crime. For this reason the warrantless search of Bell was unreasonable.

This motion is further based upon the attached Memorandum of Law.

Dated at Milwaukee, Wisconsin, this _____ day of _____, 2007.

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MEMORANDUM OF LAW IN SUPPORT OF THE DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

INTRODUCTION

On June 14, 2007 Racine police obtained a warrant to search 1107 St. Patrick Street in Racine. The warrant authorized the officers to search, "any occupants associated with 1107 St. Patrick Street, lower, and common and storage areas, and any vehicles on or about the curtilage which may be directly associated with the occupants of that address." (warrant p. 1)

When the search time arrived at the residence Bell and two others were standing on the front lawn of the residence. As officers were exiting their squad cars Bell began to walk away heading in the direction of the backyard. Officers ordered Bell to stop but he continued- "hastening his pace" according to police reports. Officers chased Bell for a short distance before he fell on a concrete slab and was arrested. During the short chase the officer claims to have seen Bell do the proverbial "dropsie" of a bag of marijuana.

As will be set forth in more detail below, police had no reasonable to believe that Bell was an "occupant" of the premises to be searched; therefore, Bell was not a person who was a target of the search warrant. Additionally, the police had no reasonable

suspicion to believe that Bell was committing an offense merely because he walked away when the police pulled up. At that point the police had no legal authority to detain Bell and, therefore, even though Bell kept walking when the police ordered him to stop, this is not reasonable suspicion to detain him for obstructing an officer. Finally, "walking away" as police cars pull up is not, under the circumstances, the sort of "flight" that would permit the inference that Bell had a guilty conscience. Therefore, the police had no reasonable suspicion to detail Bell.

ARGUMENT

I. THE OFFICERS LACKED A REASONABLE SUSPICION TO BELIEVE THAT BELL WAS COMMITTING AN OFFENSE AND, THEREFORE, THEY LACKED AUTHORITY TO DETAIN HIM.

As a general rule, items seized during a period of illegal detention are inadmissible. *See* ***Florida v. Royer*****,** 460 U.S. 491, 501, 75 L. Ed. 2d 229, 103 S. Ct. 1319 (1983).

A police officer may stop and detain a person in a public place, for a reasonable period of time, when the officer reasonably suspects that the person has committed or may be committing a crime. Sec. 968.24, Stats.; ***Terry v. Ohio***, 392 U.S. 1, 30, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968). Reasonable suspicion depends on specific and articulable facts and rational inferences available from the facts. *See id*. at 21. It is a common-sense objective standard based on what a reasonable police officer would reasonably suspect given the officer's training and experience. ***State v. Waldner***, 206 Wis. 2d 51, 56, 556 N.W.2d 681, 684 (1996).

Sec. 946.41(1), Stats., provides that one who knowingly resists or obstructs an officer acting in an official capacity is guilty of a Class A misdemeanor. Resisting or obstructing under this section includes fleeing a *lawful* attempt to detain. *See* ***State v. Grobstick***, 200 Wis. 2d 242, 248-51, 546 N.W.2d 187, 189-90 (Ct. App. 1996).

In, ***Ybarra v. Illinois***, 444 U.S. 85, 62 L. Ed. 2d 238, 100 S. Ct. 338 (1979), the United States Supreme Court concluded that a search warrant of a bar and bartender

did not provide a proper basis to search others in the bar. The Court explained that the "'narrow scope' of the Terry exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked, even though that person happens to be on premises where an authorized narcotics search is taking place." ***Ybarra***, 444 U.S. at 93-94.

Thus, the detention of Bell in this case would be legal only if: (1) He fell within the purview of the warrant; or, (2) The police had some independent reasonable suspicion to detain him. Mere presence in the area where a search warrant is being executed is not sufficient, in and of itself, the create a reasonable suspicion to detain Bell.

A. Bell was not specifically listed in the search warrant.

The State may argue that the detention of Bell was legal because Bell was listed as one of the targets of the warrant. A careful reading of the warrant, though, establishes that this is not the case. The warrant permits the police to search, "any occupants associated with 1107 St. Patrick Street, lower, and common and storage areas, and any vehicles on or about the curtilage which may be directly associated with the occupants of that address."

"Occupant", given its technical meaning, includes only those persons who are physically within the dwelling (i.e. they "occupy" the dwelling); or, given its more broad meaning, a person who has some possessory interest in the dwelling (i.e. leaseholder, owner, etc.). There was no reason to believe that Bell, who was merely standing outside the dwelling, was any occupant.

Thus, Bell was not specifically a target of the search warrant.

B. At the time the police pulled up they had no legal authority to detain Bell and, therefore, it was not obstructing an officer for Bell to walk away.

The State may argue that, even if Bell was not a specific target of the search warrant, once he walked away after having been ordered by police to halt, there was a reasonable suspicion to believe that Bell was obstructing an officer by running away; or,

possibly, that Bell's flight at the sight of the squad cars was sufficient, under the circumstances, to constitute a reasonable suspicion to detain him.

This is not the case, though, because before the police may restrain a person's liberty (i.e. to "tackle" them) the officer must possess a reasonable suspicion that the person is committing an offense. It is not obstructing an officer to run away from the officer's command to "halt' because without a reasonable suspicion this is not a lawful police order. Moreover, although there are certain circumstances where flight at the sight of police officers could constitute a reasonable suspicion that was not the case here.

"[W]hether flight from a police officer justifies a warrantless investigative stop should be viewed in the context of the circumstances presented. We therefore hold that flight from the police can, dependent on the totality of circumstances present, justify a warrantless investigative stop. The relevant inquiry is whether the totality of the circumstances creates a reasonable suspicion that a person was committing, had committed, or was about to commit a crime." ***State v. Jackson***, 147 Wis. 2d 824, 833-834 (Wis. 1989). On this point, the Supreme Court has explained that the "hesitancy of a car to pass a police cruiser and a glance at the police by a passenger," a "startled look at the sight of a police officer," appearing nervous when a police car passed, looking away from police activity in the vicinity, pointing toward police, driving off at a normal speed or *quickening one's pace upon seeing the police* are not, standing alone, sufficient bases for an investigative stop. By contrast, such stops have been upheld when the individual made repeated efforts to avoid police contact, when he engaged in a combination of several different possibly furtive actions, and when the person engaged in a rather extreme means of avoidance such as high-speed flight. ***State v. Fields***, 2000 WI App 218 at P19.

Here, Bell did not make repeated efforts to avoid the police. Rather, he walked toward the rear of the house when the police pulled up. Not long after that Bell slipped on the concrete and it was at that point that the officers caught up to him. Significantly, Bell did not "throw down" any item prior to slipping (see preliminary hearing transcript). Thus, no additional suspicion was created by Bell throwing an item down while being

chased by police.

For these reasons the court should suppress all evidence seized as a result of the warrantless arrest and seizure of Bell.

Dated at Milwaukee, Wisconsin, this _____ day of _____, 2007.

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