

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY

STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 03-CF-006562
Honorable Timothy Dugan

LARRY BRAZIL

Defendant.

MOTION TO SUPPRESS EVIDENCE

The defendant, Larry Brazil, by his attorneys, The Shellow Group, will, subject to jurisdictional objections, on the 6th day of January, 2004 at 1:30 p.m., move this Court for an order excluding all evidence of illegal drugs, drug use and drug dealing which were seized on November 13, 2003 at Larry Brazil's residence, 2221 N. 44th Street. This motion is brought pursuant to § 971.31(2) and (5) Wis. Stats., on the grounds that the evidence was seized in violation of the defendant's rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections one, two and nine of the Wisconsin Constitution; and *Chimel v. California*, 395 U.S. 752 (1969), *Terry v. Ohio*, 392 U.S. 1 (1968), *Katz v. United States*, 389 U.S. 347 (1967) and *Mapp v. Ohio*, 367 U.S. 643 (1961).

Further, the defendant moves for exclusion from use as evidence all derivative evidence – including, but not limited to the statement taken by police from Mr. Brazil. *See, Taylor v. Alabama*, 457 U.S. 687 (1982); *Dunaway v. New York*, 442 U.S. 200 (1979); *Brown v. Illinois*, 422 U.S. 590 (1975); *Davis v. Mississippi*, 394 U.S. 721 (1969); *Wong Sun v. United States*, 371 U.S. 471 (1963); *State v. Harris*, 199 Wis. 2d 227, 544 N.W.2d 545 (1996); *State v.*

Brady, 130 Wis. 2d 443, 388 N.W.2d 151 (1986); *State v. Smith*, 131 Wis. 2d 220, 388 N.W.2d 601 (1986); *State v. Flynn*, 92 Wis. 2d 427, 285 N.W.2d 710 (1979).

Specifically, the defendant asserts that he did not give consent to the entry of his apartment or to the search of his apartment and the police officers did not have a warrant to enter or search his property.

A basic principle of fourth amendment law is that searches and seizures inside the home without a warrant are presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 586 (1980). One of the established exceptions to the warrant and probable cause requirement is a search conducted pursuant to consent. *Schneekloth v. Bustamonte*, 412 U.S. 218, 219 (1973). In this case, the officers claim that they came to Mr. Brazil's open door and asked him if they could speak to him. He then closed the door. The officers claim that, after asking him to open the door he then let them into his apartment and consented to a search of the apartment. Mr. Brazil disputes these facts and asserts that he did not give consent for the officers to enter his apartment or to search his apartment.

The defendant requests an evidentiary hearing where the state must prove the lawfulness and admissibility of all statements allegedly made by the defendant.

Dated at Milwaukee, Wisconsin this ____ day of December, 2003.

Respectfully submitted,

THE SHELLOW GROUP

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