STATE OF MICHIGAN
IN THE COURT OF APPEALS

(ON APPEAL FROM THE WAYNE COUNTY COURT)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

-v-

Court of Appeals Case No.
Wayne Circuit Case No. 2007-9589-FH

EDDIE BROWN,
Defendant/Appellant.

_______________________________________/

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_______________________________________/

DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

PROOF OF SERVICE

ORAL ARGUMENT REQUESTED

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TABLE OF CONTENTS

Index of Authorities i

Statement of Questions Presented iv

Statement of Appellate Jurisdiction vii

Statement of Facts 1

Argument 5

Conclusion and Relief Requested 16

INDEX OF AUTHORITIES

Caselaw

United States Supreme Court

Chimel v *California*, 395 US 752; 89 S Ct 2034; 23 L Ed 2d 685 (1969).......... 12, 13
Minnesota v Olson, 495 US 91; 110 S Ct 1684; 109 L Ed 2d 85 (1990)........... 7, 8
United States v Chadwick, 433 US 1; 97 5 Ct 2476; 53 L Ed 2d 538 (1977)....... 10
United States v *Ross*, 456 US 798, 825; 102 S Ct 2157; 72 L Ed2d 572 (1982)... 6

Federal Appellate

United States v Guidry, 534 F2d 1220, 1222-1223 (CA 6, 1976).................. 10

Michigan Supreme Court

In Re Forfeiture of $176,598, 443 Mich 261 (1993).................................. 6
In Re Forfeiture of $176,598, supra at 443 Mich 271................................ 8
People v *Blasius*, 435 Mich 573 (1990).. 6, 7
People v *Champion*, 452 Mich 92 (1996).. 12
People v *Oliver*, 417 Mich 366 (1983).. 7

Michigan Court of Appeals

People v *Anthony*, 120 Mich App 207 (1982).. 6, 8
People v *Beuschlein*, 245 Mich App 744, 749 (2001)................................ 6
People v *Cantanzarite*, 211 Mich App 573 (1995).................................... 12
People v *Castle*, 126 Mich App 203 (1983).. 6
People v *Dugan*, 102 Mich App 497 (1980)... 10
People v *Eaton*, 241 Mich App 459 (2000).. 12
People v *Gwinn,* 47 Mich App 134, 140 (1973).. 6
People v Harris, 95 Mich App 507, 510 (1980).. 10
People v Head, 211 Mich App 205 (1995)... 9, 10
People v *Little*, 78 Mich App 164 (1977).. 6, 11
People v Plantefaber, 91 Mich App 764, 770; 283 NW2d 846 (1979)............ 10
People v *Smith*, 191 Mich App 644 (1991).. 9
People v *Swint*, 225 Mich App 353 (1997).. 5
People v *VanAuker*, 111 Mich App 478 (1981)... 9
People v Wares, 129 Mich App 136, 141-142 (1983).................................. 10
People v Williams, 139 Mich App 104, 107-108 (1984).............................. 10
People v *Woodward*, 111 Mich App 528 (1980).. 9

Constitutional Authority

U S Const Amends IV, XIV ....
Mich Const of 1963, art 1, sec 11.................... 6

Michigan Statutes

MCLA 750.244F.. 1
MCLA 750.227B(A)... 1
MCLA 750.227B.. 4

STATEMENT OF QUESTIONS PRESENTED

Whether the Lower Court reversibly erred by denying Defendant's motion to suppress the weapon seized from his home where the Detroit Police did not have probable cause to believe that Defendant committed a crime and where exigent circumstances did not exist to justify a warrantless search of the attic-area of Defendant's home where the Police had already secured Defendant in a lower level area of the home and where the weapon seized in the warrantless search was not within Defendant's wingspan.

Defendant-Appellant answers, "yes".

Appellee answers, "no".

The trial court would answer, "no."

STATEMENT OF APPELLATE JURISDICTION

Defendant has filed this delayed application for leave to appeal from the lower court's order denying Defendant's motion to suppress, pursuant to MCR 7.205(F)(3).

STATEMENT OF FACTS EXPLAINING DELAY

At the time the lower court entered an order denying Defendant's motion to suppress the weapon seized in this matter on October 2, 2007, and subsequently entered a Judgment of Sentence on November 5, 2007, Defendant lacked sufficient funds to retain counsel and was only able to secure sufficient funds through his family some four months following the entry of the above-referenced orders. By the time Defendant retained the undersigned appellate counsel, Mr. Flynn was engaged in the drafting and preparation of a series of appeals in the following cases:

- COA Case No. 278876 Filed: 02/06/08
- COA Case No. 279870 Filed: 02/28/08
- COA Case No. 281153 Filed: 04/01/08
- COA Case No. 281154 Filed: 05/09/08
- COA Case No. 281152 Filed: 06/06/08

STATEMENT OF FACTS

In April 2007 Defendant-Appellant, Eddie Lee Brown, was charged by the Wayne County prosecutor with being a felon in possession of a firearm, MCLA 750.244F, and felony firearm, MCLA 750.227B(A). At the time the charges were brought, notice was provided to Brown of his habitual third status. The charges involved an alleged shooting incident on 04/19/2007 near 13978 Washburn in the City of Detroit. (PE p. 4)

A preliminary examination was held on May 25, 2007. Two City of Detroit Police officers testified at the exam. Officer Ronald Hopp testified that on 04/19/2007 he and his partners Mike Jackson and James McDonald were parked at the corner of Schoolcraft and Wyoming at 2:45 am when they heard several gun shots come from the direction of Washburn. (PE p. 5)

Hopp and his partners went directly to the location of the gun shots and heard another single shot from the rear of the location. Hopp exited his cruiser and went to the side of the home when he heard several other shots. (PE pp 5, 6) Toward the rear of the home, Hopp observed a man in the doorway of the balcony of the home. Hopp identified this individual as the Defendant, Eddie Brown. Hopp testified he observed Defendant with a long wooden barreled gun in his hand. (Id. at p. 6) Hopp testified no persons other than his partners were in the area. Hopp's partners made it inside the location and eventually Hopp entered the home and positively identified Defendant. PE p. 7) None of the other officers observed a suspect holding a rifle or other weapon.

Hopp observed Detroit Police Officer McDonald bring a rifle out of the home and he testified it was the weapon he saw in Brown's possession. At some point, Hopp went to the rear of the home and recovered some spent shell casings. (PE p. 8)

On cross examination, Hopp testified he could not observe Brown's home from his stationary initial position at Schoolcraft and Wyoming. (PE p. 9) Hopp testified it was one or two city blocks from their initial position to Washburn. Hopp testified once on Washburn, it was four or five, or as many as ten homes until they reached Brown's home, but Hopp was unsure of the distance. (PE p. 10) Hopp was not from that area, he was "from the eastside." (Id.)

Hopp described the back yard of the home as surrounded by a wooden fence. (PE pp. 13, 14) Hopp entered the yard through a "gate part" that was pushed down. A section of the wooden fence was "pushed down" and Hopp walked over it and into the back yard. (PE p. 15, 17) Before entering the back yard over the fence, Hopp observed an individual from the neighbor's driveway. Hopp recognized a photo of the back patio area of the subject residence. (PE pp. 22-24)

Hopp moved to the south side of the residence; a dump truck and some abandoned vehicles were in the yard. He did not speak with Mr. Brown. The last thing Officer Hopp did at the location was retrieve the shell casings. (PE pp. 25, 26)

Prior to retrieving the shell casings, however, he entered Brown's home where the Defendant was secured. Hopp searched a back bedroom. Brown was in the living room while Hopp searched the adjacent bedroom. Officers McDonald and Jackson were also present in the home. McDonald also searched the home; Hopp does not recall whether Jackson was searching the home or remained with Mr. Brown. (PE p. 27) While Hopp was in the home, other units from different districts arrived. (Id.)

More than 10 minutes elapsed prior to the search yielding the weapon. (PE p. 28-29) While Hopp recovered the shell casings, McDonald produced the weapon which Hopp subsequently identified as the one Brown held. (PE p. 29)

Officer James McDonald testified he was on duty with Officers Hopp and Leperire, along with Sargent Jackson. (PE p. 31) He confirmed the unit responded to gun shots heard. He described his role in the subsequent investigation; McDonald moved to the rear and was advised of Hopp's observations of the allegedly armed individual. Officer McDonald followed Sargent Jackson into the dwelling and conducted a search for a "long rifle." (PE p. 32) McDonald located the long rifle in the attic. (Id.)

On cross examination, McDonald narrowed the squad's location to north-bound on Washburn from Schoolcraft. (PE p. 36) Like Hopp, McDonald was unfamiliar with the area, being assigned to the East Dist, East of the Chrysler Service Drive. He and Hopp were on police business relative to an unrelated arrest attempt. (PE p. 36) The shots were heard West of Wyoming but North of Schoolcraft. (Id.) They exited the vehicle on Washburn and heard shots close enough to believe the squad was under fire according to McDonald. (PE p. 37) The target residence had a six foot privacy fence to the north; although in disrepair, the fence was standing. (PE pp. 38, 45) McDonald, however, changed his testimony, stating he took the south of the residence and Hopp took the north. McDonald qualified his testimony by reiterating that he was not normally assigned to that area. (PE p. 38) McDonald stayed on the south side of the home and did not observe the north side. (Id.) When the residence was secured by Sargent Jackson, McDonald entered the home. Defendant was detained in the process of the sweep; he was the only one present within the home. (PE p. 39)

McDonald also testified on cross-exam that he never entered the back yard; nor could he observe the balcony in the back yard; he was the only one on the south side of the home. (PE p. 40)

Upon his entry to the home, McDonald testified many officers were in the home; the weapon was not within Brown's reach or "wingspan"; McDonald propped a "bedpost" against the wall and utilized it like a ladder to gain entry into the attic. It was not possible to reach the attic from the back porch. (PE p. 42) McDonald, checked the whole attic. He testified, "[f]inally, I went to the front of the attic – the front of the house. It was a blanket and the rifle was sitting right there." (PE p. 43). McDonald did not have a search warrant. The rifle was fifteen feet from the entrance of the attic. (PE p. 46)

McDonald testified the residence could not be seen from either Schoolcraft or Wyoming; it was dark enough on the south side that he investigated the scene with the aid of his flashlight; he could not recall light coming from the north side of the residence. (PE p. 44)

Defendant was bound over to circuit court and assigned to Wayne Circuit Judge Annette Berry. Defendant moved to quash the information and suppress the long gun; Judge Berry denied the motion. Brown subsequently pled guilty, preserving his right to appeal the lower court's 4th Amendment search and seizure ruling. See 10/02/2008 Settlement Offer & Acceptance, attached hereto at **Exhibit A**. Judge Berry denied Defendant's subsequent motions for delayed sentence and/or motion to withdraw plea, and sentenced Brown on 11/05/2008 to two-years per MCLA 750.227B. See Judgment

of Sentence, attached hereto at **Exhibit B**. Defendant now appeals Judge Berry's order denying his motion to suppress and his judgment of sentence.

LEGAL ARGUMENT

Standard of Review.

Constitutional issues are reviewed de novo. *People* v *Swint*, 225 Mich App 353 (1997).

Preservation of Issue.

This issue was preserved by the entry of a conditional plea on 10/02/2008. Some of the key facts in this case are undisputed. On 04/19/2007, Detroit Police officers entered Defendant's residence without a signed warrant authorized by a local Magistrate prior to the officers' entry and without Defendant's consent. Subsequent to their entry of the building, Brown was secured by the officers inside the residence. (PE 27) The weapon recovered from the home was not within Brown's reach, nor in plain sight but rather, was stowed in the attic of the dwelling. (PE 43, 46) The police had to climb into the attic to recover the weapon. The issue of whether this search violated Defendant's 4th Amendment rights was expressly preserved on the conditional plea form, in conjunction with Defendant's motion to quash the information and to suppress the evidence seized from the home.

Legal Analysis.

The sole issue presented in this case is whether the law enforcement personnel had established an exception to the warrant requirement to enter a person's home, to wit: exigent circumstances.

Both the U.S. and Michigan Constitutions guarantee the right against unreasonable searches and seizures. U S Const Amends IV, XIV; Mich Const of 1963, art 1, sec 11. As a general rule, evidence obtained in violation of these amendments is inadmissible as substantive evidence in criminal proceedings. This is a protection against arbitrary police conduct basic to our fundamental right to be free from unreasonable searches and seizures.

A search conducted without a warrant is unreasonable per se unless the search was conducted pursuant to an established exception to the warrant requirement. See *United States* v *Ross*, 456 US 798, 825; 102 S Ct 2157; 72 L Ed2d 572 (1982) and *People* v *Beuschlein*, 245 Mich App 744, 749 (2001). In the event of a warrantless search of a dwelling, the prosecutor bears the burden of demonstrating that the search and seizure fell within the scope of one of the recognized narrow exceptions. *People* v *Castle*, 126 Mich App 203 (1983).

One such established exception is when the police are faced with "exigent circumstances". This recognized exception provides that police may enter a dwelling without a warrant: 1) if the officers possess probable cause to believe that a crime was recently committed on the premises, and 2) probable cause to believe that the premises contains evidence or perpetrators of the suspected crime. *Id.*, at pp. 749-50. For the purpose of such analysis, ***probable cause*** has been defined as a state of mind which stems

from some fact, circumstance or information which would create an honest belief in the mind of a reasonably prudent person, *People* v *Gwinn,* 47 Mich App 134, 140 (1973).

The officers also must establish the existence of an actual emergency on the basis of specific and objective facts indicating that immediate action is required in order to: 1) protect the police officers or other persons; 2) present the loss or destruction of evidence; or 3) present the escape of the suspect. Each case must be judged on the facts and circumstances considered on the basis of the officers' state of mind at the time of entry. *People* v *Blasius*, 435 Mich 573 (1990); *People* v *Anthony*, 120 Mich App 207 (1982); and *People* v *Little*, 78 Mich App 164 (1977).

The Michigan Supreme Court has repeatedly held that the exigent circumstances exception still requires reasonableness and probable cause. *In Re Forfeiture of $176,598*, 443 Mich 261 (1993) Pursuant to *People* v *Oliver*, 417 Mich 366 (1983), the Supreme Court identified several factors that must be examined when determining whether exigent circumstances are present to justify a warrantless search:

1. Whether a serious offense, particularly a crime of violence, has occurred.
2. Whether the suspect is reasonably believed to be armed.
3. Whether there is a clear showing of probable cause.
4. Whether a strong reason exists to believe the suspect is in the premises being entered.
5. Whether there is a likelihood that the suspect will escape if not swiftly apprehended.
6. Whether the entry is forceful or peaceful.
7. Whether the entry is at night.

8. Whether the destruction of evidence may be prevented.

9. Whether the safety of law enforcement personnel is at issue.

10. Whether the safety or citizens is at issue.

11. Whether the ability to secure a warrant is present.

The *Blasius* Court, *supra*, noted that the specific exigencies that justify entries without warrants have been gradually defined by the United States Supreme Court over a forty-five year period. In the seminal case of *Minnesota v Olson*, 495 US 91; 110 S Ct 1684; 109 L Ed 2d 85 (1990), the Court listed several circumstances that had been cited by the Minnesota Supreme Court as justifying entry of a residence without a warrant, i.e., the hot pursuit of a fleeing felon, to present the imminent destruction of evidence, to preclude a suspect's escape, and where there is a risk of danger to police or other inside or outside a dwelling. The Minnesota high court also said that, in the absence of hot pursuit, there must be probable cause to believe that at least one of the other three circumstances exists, and that the gravity of the crime and the likelihood that a suspect is armed should be considered. The *Olson* Court said that the Minnesota high court had applied the correct standards in determining whether exigent circumstances existed.

This Michigan Supreme Court provided explanation of the exigent circumstances exception in *In Re Forfeiture of $176,598, supra* at 443 Mich 271:

> Pursuant to the exigent circumstances exception, we hold that the police may enter a dwelling without a warrant if the officers possess probable cause to believe that a crime was recently committed on the premises and probable cause to believe that the premises contain evidence or perpetrators of the suspected crime. The police must further establish the existence of an actual emergency on the basis of specific and objective facts indicating that immediate action is necessary to (1) present the imminent destruction of evidence, (2) protect the police officers or others, or (3) present the escape of a suspect. If the police discover evidence of a

crime following the entry without a, warrant, that evidence may be admissible.

In setting this standard, the several factors in the *Forfeiture* case were comprehensive, justifying the initial intrusion into the dwelling involved in that case. These factors are not present in the case at bar. On the present facts, the prosecutor did not meet their burden, as discussed below.

In *Anthony, supra*, this Court reversed a conviction, ruling that the police could not justify the warrantless search of defendant's premises on the basis of exigent circumstances. Anthony was charged with armed robbery. While police were investigating the scene of the alleged crime, they were informed by a civilian where the defendant resided. The civilian stated he had seen Anthony with other individuals run from the scene of the crime carrying clothing within a short time period after the commission of the crime. This individual led police to Anthony's residence. When the police knocked on the door and identified themselves, they heard running and men talking inside the dwelling. Receiving no response from within, the officers forced open the door. Once inside, the police found Anthony inside trying to hide; they seized him and evidence from the dwelling. This Court held the search unreasonable finding that the trial court erred in failing to suppress the evidenced seized from the defendant's dwelling. The same result should apply in the instant matter.

In citing *People* v *Woodward*, 111 Mich App 528 (1980) and *People* v *VanAuker*, 111 Mich App 478 (1981), the *Anthony* panel of this Court indicated the term "exigent" does not mean expedient. In all of these cases, the officers had secured the premises, as in the instant case. Thus, to justify entry without a warrant, exigent circumstances were

required. Once a suspect is detained, the exigency is removed and a warrant must be secured in order to conduct a further search.

In *Woodward, supra*, the additional fact of the officers hearing someone running was insufficient to justify the warrantless entry. This was also one of the circumstances present in *Anthony, supra*, and thus informs the instant analysis. Similarly, in *People* v *Smith*, 191 Mich App 644 (1991), police entry into the defendant's house after an assault led them to believe that another victim might be inside the apartment because of a bloody crime scene. The prosecutor's assertion of the exigent circumstances exception to the warrant requirement failed. In *Smith*, the prosecution failed to justify the intrusion. Also consider *People v Head*, 211 Mich App 205 (1995), the prosecutor asserted destruction of evidence as the basis of exigent circumstances. In *Head*, however, a number of the *Oliver* factors were present making the warrantless entry justified. Those factors are not present in the instant case.

In *Head*, for example, the affiant was an experienced police officer assigned to the Narcotics Enforcement Team (NET), who represented that a house had been under investigation as a drug sales location for approximately three months. He swore that an unnamed cooperating person made two controlled cocaine purchases at the house prior to issuance of the warrant. The second purchase had been within the previous forty-eight hours of the warrant. Finally, in vouching for the reliability of the informant, the affiant asserted that the informant had made statements regarding drug involvement which were against the party's penal interests.

This Court ruled long ago that controlled purchases of cocaine are sufficient to establish probable cause to issue a search warrant. See *People v Wares*, 129 Mich App

136, 141-142 (1983) and *People v Williams*, 139 Mich App 104, 107-108 (1984). Furthermore, the reliability of the informant's statements was demonstrated by two successful controlled purchases. The information in the affidavit was not stale. Consequently, the trial judge in *Head* did not err by admitting evidence obtained pursuant to the warrant. Those or similar circumstances do not exist in the matter at bar.

People v *Dugan*, 102 Mich App 497 (1980), addresses the scope of the exigent circumstances exception. This Court ruled that the police conducted an illegal search of the defendant's premises without first obtaining a search warrant:

> "The 'exigent circumstances' exception provides that when the police have probable cause to believe that a search of a certain place will produce specific evidence of that crime (the foundation requirements for issuance of a search warrant), there is no need for a warrant if the police also have probable cause to believe that an immediate warrantless search is necessary in order to (1) protect the officers or others, (2) present the loss or destruction of evidence, or (3) prevent the escape of the accused. *People v Harris*, 95 Mich App 507, 510 (1980). See *United States v Chadwick*, 433 US 1; 97 5 Ct 2476; 53 L Ed 2d 538 (1977); *People v Plantefaber*, 91 Mich App 764, 770; 283 NW2d 846 (1979). The rationale of the exception is clear; when the police have a probable cause necessary to secure a warrant, but circumstances make it impossible for them to obtain the warrant in time, then it is 'reasonable' under the fourth Amendment to conduct a search and to seize evidence or contraband. See *United States v Guidry*, 534 F2d 1220, 1222-1223 (CA 6, 1976)."

In the instant case, once the police had seized Defendant, it was not, "impossible for them to obtain the warrant in time." *Dugan, supra.*

In the instant case, the Detroit Police did not have probable cause to believe a crime was recently committed at 13978 Washburn. The officers arrived at the area of Mr. Brown's home after hearing shots fired from the general vicinity of his home. (PE 5,6) The police did not receive a dispatch or other report that criminal activity was occurring at Brown's specific address. The police did not observe Brown fire any shots.

After the police made a warrantless entry into Brown's home, their subsequent search of his yard yielded shell casings. (PE 25, 26) As such, the recovery of the shell casings cannot be considered in the probable cause analysis used by the prosecutor below to justify entry into Brown's home. See *Little, supra,* 78 Mich App 164.

In this case, the prosecutor attempts to utilize the fact that shots were fired to create the sense of an emergency situation. No such exigent circumstances existed, however. Officer Hopp merely observed Brown standing on the porch of his home holding a weapon. Hopp's observation did not provide probable cause to form a reasonable belief that a crime had been committed by Brown. As such, the Detroit Police did not have probable cause to believe that evidence of the perpetration of a crime would be located at the 13978 Washburn address.

Even if this Court disagrees and determines that the Detroit Police did have probable cause to believe that Brown was involved with the discharge of the weapon, they failed to establish any exigent circumstances justifying their entry into the home prior to securing a warrant. Numerous officers were on the scene who could have secured Brown's home while other officers secured a warrant from a magistrate. There was no need for immediate police action for several reasons. First, a weapon, unlike drugs, is not easily destroyed or disposed of. Second, the police did not allege that Brown was wielding the weapon at them or others in a threatening manner. Third, there was no evidence that Brown could have left his home without being apprehended by the Detroit Police.

A reasonable observer or police officer could easily have concluded that Brown, hearing shots, went to investigate, taking his gun with him in doing so. The police had no

reason to believe that Brown was involved in the commission of a crime. Thus, the warrantless police entry into Brown's home was not justified. The people did not satisfy their burden that the warrantless entry fell within the narrow scope of the exigent circumstances exception to the warrant requirement.

A search of a suspect's residence is unreasonable (and thus illegal) where it extends beyond the suspect's person, and beyond the area from which the suspect might have a weapon. *Chimel* v *California*, 395 US 752; 89 S Ct 2034; 23 L Ed 2d 685 (1969). Accord, *People* v *Champion*, 452 Mich 92 (1996); *People* v *Eaton*, 241 Mich App 459 (2000); *People* v *Cantanzarite*, 211 Mich App 573 (1995).

In *Chimel*, the officers did have a warrant to arrest the defendant. The officers waited at his home until he returned from work. When the defendant returned from work, he was served with the arrest warrant and the police asked his permission to "look around" his house. Defendant did not consent and the officers nevertheless conducted a "search incident to arrest". The officers did not obtain a search warrant. The officers conducted a warrantless search of the entire home and attic, recovering numerous items introduced as evidence against him at trial.

The *Chimel* Court centered its focus on the question of whether the warrantless search of the petitioner's entire residence can be constitutionally justified as incident to that particular arrest. *Chimel, supra*, 395 US at 755. The Court recognized that "[t]he decisions of this Court bearing upon that question have been far from consistent, as even the most cursory review makes evident." *Id.*

After considering the admittedly imprecise precedent created through previous opinions, the Court looked to its then recent decision in *Terry v. Ohio,* 392 US 1; 88 S. Ct

1868; 20 Led2d 889 (1968). The Court stated that in "*Terry* [citation omitted], we emphasized that the police must, whenever practicable, obtain advance judicial approval of searches and seizures trough the warrant procedure, [*Terry*], at 20; 88 S Ct at 1879, and that the scope of a search must be strictly tied to and justified by the circumstances which rendered its initiation permissible." *Id.* at 19; 88 S Ct at 1878. The search in *Terry* was reasonable because it was "no more than a protective search for weapons." *Id.* at 29; 88 S Ct at 1884[1].

In concert with those findings, the Court stated:

> A similar analysis underlies the 'search incident to arrest' principle, and marks its proper extent. When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to searach for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as the one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control' – construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.
>
> There is no comparable justification, however, for Routinely searching any room other than that in which an arrest occurs-or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself. Such searches, in the absence of well-

---

[1] The *Chimel* Court also referenced *Sibron v. New York*, 392 US 40; 88 S Ct 1889; 20 Led2d 917 (1968), Which applied the same standard as *Terry* but reached a different result. The *Sibron* Court held that a policeman's action in thrusting his hand into a suspect's pocket had been neither motivated by nor limited to objective of protection. *Id.*

> recognized exceptions, may be made only under the authority of a search warrant. [footnote omitted]. The 'adherence to judicial processes' mandated by the Fourth Amendment requires no less. 395 US at 762-763.

The Court found the argument that it is reasonable to search a man's home when he is arrested in the home to be unsupported because the argument is "founded on little more than a subjective view regarding the acceptability of certain sorts of police conduct, and mot on consideration relevant to Fourth Amendment interests." 395 US at 764-765. The Court surmised that the foregoing analysis would lead to an evaporation of Fourth Amendment protections in this area. 395 US at 765.

In sum, the Court reasoned:

> Application of sound Fourth Amendment principles to the facts of this case produces a clear result. The search here went far beyond the petitioner's person and the area from within which he might have obtained either a weapon or something that could have used as evidence against him. There was no constitutional justification, in the absence of a search warrant, for extending the search beyond the area. The scope of the search was, therefore, 'unreasonable' under the Fourth and Fourteenth Amendments and the petitioner's conviction cannot stand. 395 US at 768.

Chimel sets forth a clear, unambiguous standard: officers, absent an exception to the warrant requirement, may not search outside the defendant's immediate vincinity.

In the case at bar, officers entered Mr. Brown's home without consent and immediately detained him. There was no reason to search anywhere outside the area in which Mr. Brown was arrested. The officers recovered the gun in the attic, after having to use a ladder to gain access. The officer then entered the room and walked to the front of the attic. The gun was recovered from under a blanket. This area was clearly not in the 'immediate vicinity' of Mr. Brown. The officers had Mr. Brown in custody and the

home secure. At that point, they should have secured judicial approval to take any further action relative to searching Mr. Brown's home. Quite simply, they did not.

There are no specific facts the officers could articulate which would establish an exception to the warrant requirement.

The search in this case clearly falls under the purview of *Chimel* and, as such, this case compels the same result. Officers conducted a routine search outside Mr. Brown's "wingspan" without first receiving judicial authorization. This type of police action is clearly prohibited by both the Michigan and United States Constitutions. Consequently, the physical evidence seized in this case must be suppressed.

Respectfully submitted,
KARLSTROM COONEY, LLP

By: ______________________________
Timothy P. Flynn (P42201)
Attorney for Defendant

Dated: June ___, 2008

EXHIBIT B

Approved, SCAO

Original–Court
1st copy–Corrections
2nd copy–Corrections (for return)
3rd copy–Michigan State Police CJIC
4th copy–Defendant
5th copy–Prosecutor

STATE OF MICHIGAN 3RD JUDICIAL CIRCUIT WAYNE COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS	CASE NO. 07-009589-01

ORI 821985J
MI-
Police Report No.

Court address
1441 ST. ANTOINE DETROIT, MI 48226

Court telephone no.
313-224-4679

THE PEOPLE OF THE STATE OF MICHIGAN

v

Defendant's name, address, and telephone no.
BROWN, EDDIE, LEE

CTN/TCN	SID	DOB
82-07709570-01	1642222W	08/07/1970

Prosecuting attorney name: KYM WORTHY P38875 — Bar no.

Defendant attorney name: T. FLOOD — Bar no.

THE COURT FINDS:

1. The defendant was found guilty on 10-02-07 of the crime(s) stated below:

Count	CONVICTED BY Plea*	Court	Jury	DISMISSED BY*	CRIME	CHARGE CODE(S) MCL citation/PACC Code
2	G				FELONY FIREARM	750.227B-A

*For plea: insert "G" for guilty plea; "NC" for nolo contendere; "MI" for guilty but mentally ill; For dismissal: insert "D" for dismissed by court or "NP" for dismissed by prosecutor/plaintiff.

☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(20)(b).
☐ 3. HIV testing and sex offender registration is completed.
☐ 4. The defendant has been fingerprinted according to MCL 28.243.

Defendant's driver license number

IT IS ORDERED:

☐ 5. Probation is revoked.
6. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.
7. Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM Years	MINIMUM Mos.	MINIMUM Days	MAXIMUM Years	MAXIMUM Mos.	DATE SENTENCE BEGINS	JAIL CREDIT Mos.	JAIL CREDIT Days	OTHER INFORMATION
2	11-05-07	2	-	-	2	-	11-05-07	-	16	DISMISS CT. 1
										DISMISS ENHANCEMENT NOTICE

☐ 8. Sentence(s) to be served consecutively to: (if this item is not checked, the sentence is concurrent)
☐ each other. ☐ case numbers ______________________.

9. Defendant shall pay as follows: (specify fine and minimum state costs for each count; restitution; assessments for crime victim rights fund; reimbursement; attorney fees; and other costs)

The due date for payment is ______________. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

☐ 10. The concealed weapon board shall ☐ suspend for ________ days ☐ permanently revoke the concealed weapon license, permit number ______________, issued by ______________ County.

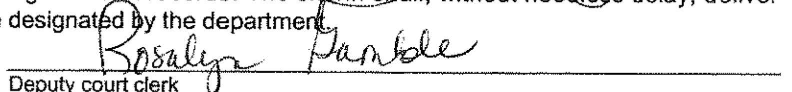
11. Court recommendation:

11/05/2007
Date

Judge HON. ANNETTE J. BERRY — P42275 Bar no.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)



Deputy court clerk

MCL 765.15(2), MCL 769.16a, MCL 775.22, MCL 780.766