State of Michigan
In The Michigan Supreme Court

Pro Per Criminal Application For Leave To Appeal

I am appealing a Court of Appeals decision that affirmed my conviction in whole and affirmed the trial Court's denial of my motion for relief from judgement.

People of the State of Michigan
Plaintiff - Appellee

V S.

Larry Gerald Mead 232656
Defendant - Appellant

Michigan Supreme Court # 154584

Court of Appeals # 327881

Jackson Co. Cir. # 14-004482-FH

8/23/17

I am currently incarcerated
in M.D.O.C. at:
Marquette Branch Prison
1960 U.S. Hwy. 41 South
Marquette, Mich. 49855

Issue I: A. At page 6. "Although referenced at trial, the inventory search exception to the warrent requirement is irrelevant and no one has argued otherwise. Under the doctrine of judicial estoppel, the prosecution should be held to the issue they took below."

B. The Court should review the Court of Appeals decision on the issue because:
1. The issue raises a legal principle that is very important to Michigan Law.
2. The Court of Appeals decision is clearly wrong and will cause material injustice to me.
3. The decision conflicts with a Supreme Court decision

C. Explanation on the Following pages 1-10

The Court of Appeals has failed to follow the Order of the Michigan Supreme Court and has ruled in defiance of said Order to base it's decision upon the record. The Overview given by the Court of Appeals only addresses 1 of the 3 issues that they were directed to rule on and 1 that it wasn't ordered to rule upon to support their denial of appeal. The Court's analogy of law throughout their Opinion does not align at all with their Final Holding. The People v Parker, 230 Mich App 337, case cited, stating, "standing exists if, considering the totality of the circumstances, the defendant had a legitimate expectation of privacy in the object of the search..." Only the backpack, known to be defendant's was ever discussed and searched by police. The vehicle was not the object of the search, the backpack was and defendant had an expectation of privacy in it. This second round ruling of the Court of Appeals is nearly identical to the First ruling they made and which has already been vacated by the Michigan Supreme Court!!!

The Court of Appeals was directed to rule on (1) "whether this Court's peremptory order in People v LaBelle, 478 Mich 891, is distinguishable." In determining that "LaBelle" is indistinguishable from the present case

the Court of Appeals has failed to reflect the record, the facts and the law and look upon the central issue raised by defendant in the Michigan Supreme Court which is Judicial Estoppel when applying "LaBelle" as indistinguishable precedent.

The State cannot claim and have ruled in their favor as a fact of law in District Court that defendant <u>was</u> in possession of the back pack before the search and then in Circuit Court claim and have ruled in their favor that the search was legal because he <u>was not</u> in possession of the backpack before the search. This prohibition is clearly stated in defendant's initial brief to the Michigan Supreme Court, supported by United States Supreme Court rulings and again now with applicable "domestic" case law in Paschke v Retool Industries, 445 Mich 502, LEXIS, HN1, HN2, and HN3.

Possession of the backpack in the present case was clearly established prior to the search of it. Defendant's backpack/property was seized by police prior to the search of it and as such police needed a warrent to search

the back pack, (United States v Chadwick, 97 S.Ct. 2476, at 2478, 11, Search and Seizure Key 7 [12]) not the State to provide a way to circumvent 4th Ammendment prohibitions.

Per the video of the trial, the arresting officer stated that he had no probable cause or any reason to search the back pack. In a just, fair, and equal application of the "good faith" clause, the arresting officer believed that he had no valid reason to search the back pack and just as the defense cannot successfully provide a legitimate reason that an officers "good faith" was based on mistaken and faulty information, the State cannot successfully provide a legitimate (or worse in this case - illegitimate) reason that an officers "good faith" was based on mistaken and faulty information, claiming the search was justified.

The two seperate contrary claims by the State in regards to the issue of possession in the present case, the later of which claims must be estopped, as well as the estoppel of the application of "LaBelle" to the present case because "LaBelle" is clearly distinguished by the facts in the

two cases in that in "LaBelle" possession was not established until AFTER the search and in the present case possession was established BEFORE the search. Clearly a major distinguishable fact.

The second distinguishable fact in the present case is that the facts of the record show that the backpack searched in the present case was technically seized, along with defendant who was in literally physical possession of the backpack, 5 seperate times prior to the search of it and in the "LaBelle" case the backpack was <u>never</u> seized in Labelles possession.

The third distinguishable fact in the present case is that in the present case the defendant was seen by police with the backpack in his physical possession and in the "LaBelle" case, LaBelle was <u>never</u> seen with the backpack in her possession.

The Fourth distinguishable fact in the present case is that in the present case police knew that the driver did not have common authority over the backpack and in "LaBelle" case police believed the driver did have common authority over the backpack, believing that it was the

drivers possession in the drivers vehicle. Those are 4 clear facts present in the record which distinguish "Labelle" from the present case.

The Fourth distinguishing fact above is addressed in the Michigan Supreme Court's direction to rule on the simple "yes or no" question presented to the Court of Appeals in; (2) "whether the record demonstrates that the police officer reasonably believed that the driver had common authority over the backpack in order for the driver's consent to justify the search." The honest answer to that question is "NO". The Court of Appeals was directed to make their decision to that question based upon the analogy in Illinois v Rodriquez, 497 US 177, but instead of answering the question based upon the leading precedent on "common authority", they chose to defy the Michigan Supreme Court and proceeded to rule the Court's direction inapplicable rather than do as ordered.

The Court of Appeals makes a ruling at LEXIS, HN2, about reliance on foreign law in support of their rejection of "Rodriquez" when they were the one who introduced

the "Foreign" Utah case to begin with!!! The defendant and the Michigan Supreme Court have been applying United States Supreme Court Constitutional Law in support of the law refering to common authority. Defendant cannot understand how the Court of Appeals can disregard the Michigan Supreme Court's direction to use the analogy of "Rodriquez" to determine if common authority existed and, rather, it explains why "Rodriquez" allegedly does not apply when "Rodriquez" is the authority on common authority and there is no other "domestic" precedent on common authority to rely on.

Property is property be it car, house, backpack or a suitcase and common authority is common authority no matter what the object the common authority is over, making the Court of Appeals decision an unprecedented decision in regards to the present case by not relying on "Rodriquez" and answering the question lawfully, "NO".

The whole case rests upon whether the driver had common authority over the back pack to give consent to search it. She did not and it is further proven by the Fact that she was never arrested - For anything !!!

It really only takes common sense, not common authority or case law to determine that in the United States of America, including Michigan, that no person has <u>any authority</u> to give police permission to search property that police knew without a doubt was not that person's but was indeed, in fact, somebody elses property.

As for the third question directed to the Court of Appeals at; (3) "whether there are any grounds upon which the search may be justified.", the Court of Appeals appears to base their determination, of no, there were not any other grounds to justify the search, with another response in defiance of the Michigan Supreme Court, answering that the defendant had no standing to object to the search. The question was, were there grounds to justify the search not, did the defendant have standing to object to the search. It is rather obvious that the Michigan Supreme Court has already determined that the defendant has standing to object when it vacated rather than affirmed the first ruling of the Court of Appeals which stated the defendant had no standing to object (People v Earl 297 Mich App 104) and remanded back to the Court of Appeals to answer

3 distinctly different and seperate questions because if defendant did not have standing to object, those 3 questions would have been moot.

The Court of Appeals entirely misses the whole point of this appeal by not comprehending, as defendant has stated previously, that he is not objecting to the search of the vehicle, he is objecting to the search of his own personal property that had been legally seized by police multiple times well prior to the search of it and which was determined to be his possession in his possession for 25 minutes prior to the search with his arms around it by the District Court as a fact of law and searched without his consent by police with police having full knowledge that it was the defendant's, only the defendant's, and that no other person had any authority what so ever to give police permission to search it. Defendant has no idea how to make that any clearer to the State or the Court of Appeals.

Even forgetting the analogy of "Rodriquez" as the authority and using the Court of Appeals analogy citing MCOLES and Michigan Criminal Law and Procedure there was no valid

consent given to search the backpack with this "domestic" law.

The Court of Appeals clearly states the defendant's case and exactly why "LaBelle" is distinguishable where it cites People v Rasmussen, 191 Mich App 721, and rules that defendant <u>did not abandon</u> his back pack. The analogy in "LaBelle" that LaBelle did not have standing to object is based upon the Court's ruling that LaBelle <u>did abandon</u> the back pack. This is precisely why the cases are distinguishable and what distinguishes them, giving the defendant standing to object to the search of the back pack. The issue of abandonment and the issue of estoppel make 6 salient distinguishable facts in the case. Ruling the cases indistinguishable is imaginary.

Furthermore, "Rasmussen's" abandonment is based upon People v Shabez, 424 Mich 42, and in the Court's determination in that case not only does "Shabez" negate the false allegation of abandonment of property already established to be in defendant's possession and seized by police but this "domestic" law shows that the initial seizures of the defendant's person and his property (at least 3 of the 5) were unreasonable because there was no probable cause to detain the defendant or his property and that the

Fruits of the subsequent search must be suppressed. (LEXIS, HN14) The order of suppression in "Shabez" is also cited and applied in People v LoCicero (after remand) 453 Mich 496, 1.2.

"LaBelle" and the present case are clearly distinguishable in 6 seperate ways, police had no reasonable belief that the driver had common authority over the backpack, nor did she, and there are no other valid reasons to justify the search of the defendant's backpack.

Defendant respectfully requests that his previously submitted brief to the Michigan Supreme Court and his Response to Prosecutors Answer to Application for Leave to Appeal be reflected upon once again when this Honorable Court renders a decision and that, please, a prompt decision be made to put and end to this continued injustice with a ruling reversing defendants conviction and vacating the sentance. Thank-You.

Respectfully submitted

Larry G. Mead

8/23/17

State of Michigan
In The Michigan Supreme Court

Relief Requested

For the above reasons I request that the Supreme Court grant my application for leave to appeal or order any other relief that it decides I am entitled to receive.

8/23/17

Larry Gerald Mead

Larry Gerald Mead 232656
Marquette Branch Prison
1960 U.S. Hwy. 41 South
Marquette, Mich. 49855

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 4th JUDICIAL CIRCUIT Jackson COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS	CASE NO. 14-4482-FH

ORI
MI-

Court address
312 S. Jackson Street, Jackson, MI 49201

Court telephone no.
517-788-4380

Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN

v

Defendant's name, address, and telephone no.
LARRY GERALD MEAD

CTN/TCN	SID	DOB
38-14001389-01	0837682T	8-23-1958

Prosecuting attorney's name: Jerard Jarzynka — Bar no.

Defendant attorney's name: Pro Per — Bar no.

1. The defendant was found guilty on 4-8-2015 (Date) of the crime(s) stated below:

Count	CONVICTED BY Plea*	Court	Jury	DISMISSED BY*	CRIME	CHARGE CODE(S) MCL citation/PACC Code
1	G				Cont. Sub. - Possess Methamphetamine (Habitual 4th)	333.74032B1; 769.12

*For plea: insert "G" for guilty plea, "NC" for nolo contendere, or "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(21)(b).

FILED
MAY 21 2015
JACKSON COUNTY

Defendant's driver license number

☐ 3. HIV testing and sex offender registration is completed.

☐ 4. The defendant has been fingerprinted according to MCL 28.243.

IT IS ORDERED:

☐ 5. Probation is revoked.

6. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.

7. The defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM Years	Mos.	Days	MAXIMUM Years	Mos.	DATE SENTENCE BEGINS	JAIL CREDIT Mos.	Days	OTHER INFORMATION
1	5-21-2015	2			10		5-21-2015		57	

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

9. The defendant shall pay:

State Minimum	Crime Victim	Restitution	Court Costs	Attorney Fees	Fine	Other Costs	Total
$68.00	$130.00		$800.00		$125.00		$1,123.00

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. The defendant is subject to lifetime monitoring pursuant to MCL 780.520n.

12 Court recommendation:

5-21-2015
Date

Judge Thomas D. Wilson — P42371 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 Nadeen Bullinger

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22,

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY GERALD MEAD,

Defendant-Appellant.

UNPUBLISHED
September 13, 2016

No. 327881
Jackson Circuit Court
LC No. 14-004482-FH

Before: TALBOT, C.J., and O'CONNELL and OWENS, JJ.

PER CURIAM.

Defendant, Larry Gerald Mead, appeals as of right his conviction, following a jury trial, of possessing methamphetamine, MCL 333.7403(2)(b)(*i*), as a fourth-offense habitual offender, MCL 769.12. The trial court sentenced him to serve 2 to 10 years' imprisonment. We affirm.

I. FACTUAL BACKGROUND

Jackson Police Officer Richard Burkart testified that he stopped a vehicle for an expired license plate. Mead, a passenger in the vehicle, was holding a backpack on his lap. The driver consented to a search of the vehicle. When Officer Burkart asked Mead to leave the vehicle, Mead left his backpack on the passenger compartment floor. Mead consented to a search of his person, and Officer Burkart found nothing illegal on Mead. However, when Officer Burkart searched the vehicle, he opened the backpack in the front passenger compartment and found methamphetamine. Mead then admitted the backpack belonged to him. The trial court denied Mead's motion to suppress the evidence. At trial, Mead testified that he was "not contesting the drugs," but only "the manner in which [the search] was conducted."

II. ANALYSIS

Mead contends that the trial court erred by refusing to suppress the evidence found in the backpack. We disagree.

This Court reviews for clear error the trial court's findings following a suppression hearing. *People v Chowdhury*, 285 Mich App 509, 514; 775 NW2d 845 (2009). The trial court has clearly erred if we are definitely and firmly convinced that it made a mistake. *People v Johnson*, 466 Mich 491, 497-498; 647 NW2d 480 (2002). We review de novo the trial court's ultimate decision on a suppression motion. *Chowdhury*, 285 Mich App at 514. We also review

de novo whether police conduct violated the Fourth Amendment. *People v Hyde*, 285 Mich App 428, 438; 775 NW2d 833 (2009).

Both the United States and Michigan constitutions "guarantee the right of persons to be secure against unreasonable searches and seizures." *Id.* (quotation marks and citations omitted). See US Const, Am IV; Const 1963, art 1, § 11. If police officers obtain evidence while violating the Fourth Amendment, the evidence is generally inadmissible in criminal proceedings. *Hyde*, 285 Mich App at 439; *Mapp v Ohio*, 367 US 643, 655; 81 S Ct 1684; 6 L Ed 2d 1081 (1961). A search conducted without a warrant violates the Fourth Amendment unless an exception to the warrant requirement applies. *People v Dagwan*, 269 Mich App 338, 342; 711 NW2d 386 (2005).

However, a person must have standing to challenge the validity of a search. *People v Earl*, 297 Mich App 104, 107; 822 NW2d 271 (2012). A passenger with no property or possessory interest in a vehicle that has been legally stopped lacks standing to contest a search of the vehicle. *Id.* at 108.

Mead contends that he had standing to contest the search in this case because the backpack in which the drugs were found belonged to him, not the driver. We disagree, concluding that *People v LaBelle*, 478 Mich 891; 732 NW2d 114 (2007), controls the outcome of this case.

In *LaBelle*, the vehicle's driver consented to the search of the passenger compartment of the vehicle. *People v LaBelle*, 273 Mich App 214, 216; 729 NW2d 525 (2006), reversed 478 Mich 891 (2007). The vehicle's passenger left a backpack on the floor in the front passenger compartment, and inside the backpack, officers discovered marijuana. *Id.* The passenger stated that the backpack belonged to her. *Id.* This Court initially overturned the passenger's conviction. *Id.* at 226.

However, our Supreme Court reversed, holding that the search of the backpack was valid because the driver consented to the search. *LaBelle*, 478 Mich at 891-892. The driver's consent included the entire passenger compartment of the vehicle and any unlocked containers inside, including the backpack. *Id.* The passenger "did not assert a possessory or proprietary interest in the backpack before it was searched but, rather, left the backpack in a car she knew was about to be searched." *Id.*

The facts in this case are closely analogous—Mead left his backpack in a vehicle that he knew was about to be searched, and he did not assert a possessory interest in the backpack until after the search. While Mead asserts for a variety of reasons that the Michigan Supreme Court improperly decided *LaBelle*, this Court is not free to overrule decisions of the Michigan Supreme

Court. See *People v Strickland*, 293 Mich App 393, 402; 810 NW2d 660 (2011).[1] On the basis of *LaBelle*, the trial court properly denied Mead's motion to suppress the evidence in this case.

We affirm.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Donald S. Owens

[1] This includes Supreme Court orders that include a decision with an understandable rationale, *People v Giovannini*, 271 Mich App 409, 414; 722 NW2d 237 (2006), such as the order in *LaBelle*.

Order

Michigan Supreme Court
Lansing, Michigan

April 14, 2017

Stephen J. Markman,
Chief Justice

154584

Robert P. Young, Jr.
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 154584
COA: 327881
Jackson CC: 14-004482-FH

LARRY GERALD MEAD,
Defendant-Appellant.

/

On order of the Court, the application for leave to appeal the September 13, 2016 judgment of the Court of Appeals is considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE the judgment of the Court of Appeals, and we REMAND this case to that court for consideration of: (1) whether this Court's peremptory order in *People v LaBelle*, 478 Mich 891 (2007), is distinguishable; (2) whether the record demonstrates that the police officer reasonably believed that the driver had common authority over the backpack in order for the driver's consent to justify the search, see *Illinois v Rodriguez*, 497 US 177, 181, 183-189; 110 S Ct 2793; 111 L Ed 2d 148 (1990); and (3) whether there are any other grounds upon which the search may be justified.

We do not retain jurisdiction.

p0411

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 14, 2017

Clerk

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY GERALD MEAD,

Defendant-Appellant.

FOR PUBLICATION
August 8, 2017
9:00 a.m.

No. 327881
Jackson Circuit Court
LC No. 14-004482-FH

ON REMAND

Before: TALBOT, C.J., and O'CONNELL and K. F. KELLY, JJ.

O'CONNELL, J.

This case addressing defendant Larry Gerald Mead's Fourth Amendment right against unreasonable searches returns to us on remand from the Michigan Supreme Court. Mead appeals as of right his conviction, following a jury trial, of possessing methamphetamine, MCL 333.7403(2)(b)(*i*), as a fourth-offense habitual offender, MCL 769.12. The trial court sentenced him to serve 2 to 10 years' imprisonment. In our prior opinion, we concluded that Mead, a passenger in a vehicle, lacked standing to challenge the search of a container in the vehicle under *People v LaBelle*, 478 Mich 891; 732 NW2d 114 (2007), and affirmed Mead's conviction.[1] However, the Michigan Supreme Court vacated our judgment and remanded for us to consider:

> (1) whether [the Michigan Supreme Court's] peremptory order in *People v LaBelle*, 478 Mich 891 (2007), is distinguishable; (2) whether the record demonstrates that the police officer reasonably believed that the driver had common authority over the backpack in order for the driver's consent to justify the search, see *Illinois v Rodriguez*, 497 US 177, 181, 183-189; 110 S Ct 2793; 111 L Ed 2d 148 (1990); and (3) whether there are any other grounds upon which the search may be justified.[2]

[1] *People v Mead*, unpublished opinion per curiam of the Court of Appeals, issued September 13, 2016 (Docket No. 327881).

[2] *People v Mead*, 500 Mich 967; 892 NW2d 379 (2017).

On remand, we address all three issues, conclude that issue one controls, and affirm.

I. FACTUAL BACKGROUND

On the night of May 29, 2014, Rachel Taylor was driving a vehicle, and Mead rode in the front passenger seat. Officer Richard Burkart testified that he stopped the vehicle for an expired license plate. Officer Burkart stated that Mead had a backpack on his lap. According to Officer Burkart, Taylor consented to a search of the vehicle, Officer Burkart asked Taylor and Mead to exit the vehicle, and Mead left the backpack "on the front passenger floorboard." When Officer Burkart searched the vehicle, he opened the backpack and found methamphetamine. Mead admitted that the backpack belonged to him, but moved to suppress the evidence found in the backpack. The trial court denied his motion.

II. *PEOPLE V LABELLE*

We conclude the Michigan Supreme Court's order in *LaBelle*, 478 Mich at 891-892, is not distinguishable from the present case, and therefore, we are required to affirm both defendant's conviction and sentence.

The defendant in *LaBelle* was a passenger in a motor vehicle. *Id.* The vehicle's driver violated MCL 257.652(1), and the police stopped the vehicle. *Id.* The Michigan Supreme Court concluded that the stop was objectively lawful. *Id.* After the stop, the driver consented to a search of the vehicle. See *id.* Police then searched an unlocked backpack that the defendant left in the "passenger compartment of the vehicle." See *id.* The defendant moved to suppress evidence of the contents of the backpack. See *id.* However, the Supreme Court concluded that "[t]he search of the backpack was valid," explaining that "[b]ecause the stop of the vehicle was legal, the defendant, a passenger, lacked standing to challenge the subsequent search of the vehicle." *Id.* Further, "[a]uthority to search the entire passenger compartment of the vehicle includes any unlocked containers located therein, including the backpack in this case." *Id.*

We cannot distinguish Mead's case from the Supreme Court's order in *LaBelle*. Mead was a passenger in a motor vehicle driven by Taylor. Officer Burkart stopped the vehicle. Mead has not challenged the validity of the stop. After the stop, Taylor consented to a search of the vehicle. Officer Burkart then searched an unlocked backpack in the vehicle's passenger compartment. Therefore, under *LaBelle*, Mead lacked standing to challenge the search, and Officer Burkart had authority to search the backpack. *LaBelle* is binding on this Court. *People v Giovannini*, 271 Mich App 409, 414; 722 NW2d 237 (2006). Because Mead lacks standing to challenge the search, any challenge to the search must fail. See *People v Earl*, 297 Mich App 104, 107; 822 NW2d 271 (2012), aff'd 495 Mich 33 (2014).

III. REASONABLE BELIEF OF COMMON AUTHORITY

Notwithstanding the fact that existing Michigan law provides that a passenger in a motor vehicle does not have standing to contest the search of a third party's vehicle, the Supreme Court has directed us to address whether the record in the present case demonstrates that Officer Burkart reasonably believed that Taylor had common authority over the backpack in order for her consent to justify the search and directed our attention to *Rodriguez*, 497 US at 181, 183-189.

The *Rodriguez* Court did not address warrantless searches, pursuant to consent, of containers in automobiles. Rather, it addressed "[w]hether a warrantless entry [to an apartment] is valid when based upon the consent of a third party whom the police, at the time of the entry, reasonably believe to possess common authority over the premises, but who in fact does not" possess common authority. *Id.* at 179. In doing so, the Court ruled that the Fourth Amendment prohibition against warrantless entry to another's home does not apply when the police obtained "voluntary consent" from either "the individual whose property is searched," "a third party who possesses common authority over the premises," or a third party who an officer reasonably believes possesses common authority over the premises. *Id.* at 181-189. Common authority exists amongst persons with " 'mutual use of the property by persons generally having joint access or control for most purposes.' " *Id.* at 181, quoting *United States v Matlock*, 415 US 164, 171 n 7; 94 S Ct 988; 39 L Ed 242 (1974). An officer reasonably believes that a third party possesses common authority over a premises if "the facts available to the officer at the moment" would "warrant a man of reasonable caution in the belief that the consenting party had authority over the premises." *Id.* at 188 (quotations and citations omitted).

Multiple federal circuit courts and other state courts have applied *Rodriguez*'s common authority framework to evaluate a third party's consent to search a container inside a vehicle. See *State v Harding*, 282 P3d 31, 34-41; 697 Utah Adv Rep 54; 2011 UT 78 (2011) (collecting cases). Those foreign courts have determined that officers violate persons' Fourth Amendment rights when searching a bag in a car when officers could not have a reasonable belief that a third party had common authority to consent to the search. *Id.* In citing case law from all of these courts, the Supreme Court of Utah determined that courts evaluate the reasonableness of an officer's actions by analyzing several factors, such as the type of container searched, any identifying material on the outside of the container, the container's location, the number of containers, the number of passengers, and the passengers' conduct. *Id.* at 38-39.

If *Rodriguez* and its extension to searches of containers in automobiles as applied in foreign courts were the law in Michigan, an argument that Officer Burkart lacked a reasonable belief that Taylor had common authority over the backpack would have some merit. A backpack is a container used to store personal items, which suggests individual, rather than common, ownership. See *Harding*, 282 P3d at 38. The relationship between Mead and Taylor suggests that Taylor would not have authority over Mead's personal items. Mead testified that he met Taylor the night of the search. Taylor stated on a video of the traffic stop that Mead was in her car because she was dropping Mead off on her way to another destination. Officer Burkart testified that Mead had the backpack on his lap with his arms resting on either side at the time of the stop. The video shows that Officer Burkart searched the backpack while it was placed in the passenger side of the vehicle. Officer Burkart testified that he believed the backpack belonged to Mead.

However, in Michigan, *Rodriguez*'s common authority framework does not apply to warrantless searches of containers in automobiles. Case law from foreign courts is not binding. *Great Lakes Society v Georgetown Charter Twp*, 281 Mich App 396, 414; 761 NW2d 371 (2008). No Michigan Court has successfully applied *Rodriguez*'s common authority framework to warrantless searches, pursuant to consent, of containers in automobiles. To the contrary, this Court attempted to apply the framework to the search of the backpack in *People v LaBelle*, 273 Mich App 214, 221-226; 729 NW2d 525 (2006), rev'd 478 Mich 891 (2007), and concluded that

the deputy had no consent to search the backpack because it was not reasonable for the deputy to believe that the driver had common authority over the backpack. But the Michigan Supreme Court reversed the judgment, reasoned that "[a]uthority to search the entire passenger compartment of the vehicle includes any unlocked containers located therein," and concluded that "[t]he search of the backpack was valid." *Labelle*, 478 Mich at 891-892.

Police officers in Michigan are trained to follow Michigan law. For example, state statutes allow the Michigan Commission on Law Enforcement Standards (MCOLES) to institute and publicize training standards for law enforcement officers. See MCL 28.621; MCL 28.611. The book *Michigan Criminal Law & Procedure: A Manual for Michigan Police Officers* (Kendall Hunt publishing company, 3rd edition, 2009), addresses "search and seizure" "law most commonly applied by police officers in Michigan" as required by MCOLES.[3] The manual cites the Michigan Supreme Court's order in *Labelle* when discussing the scope of a warrantless search of a container pursuant to consent. *Manual*, ch 23, p 343. Specifically, the manual states that a search's scope "turns on whether it is objectively reasonable for the officer to believe that the scope of the consent permits the officer to open a particular closed container" and that the *Labelle* "court held that when police have authority to search the entire passenger compartment of a vehicle, that authority extends to any unlocked containers within the vehicle." *Id.*

Thus, because Mead lacks standing to challenge the validity of the search and because current Michigan law does not apply *Rodriguez*'s common authority framework to warrantless searches of containers in automobiles, we decline to apply *Rodriguez*'s common authority framework to this case.

IV. OTHER GROUNDS JUSTIFYING THE SEARCH

Finally, the Michigan Supreme Court directed us to consider whether other grounds justified the search of the backpack. We conclude that, under the facts of this case as presented to this panel, no other grounds justified the search.

Both the United States and Michigan constitutions "guarantee the right of persons to be secure against unreasonable searches and seizures." *People v Hyde*, 285 Mich App 428, 438; 775 NW2d 833 (2009) (quotations and citations omitted); See US Const, Am IV; Const 1963, art 1, § 11., "Searches and seizures conducted without a warrant are unreasonable per se, subject to several specifically established and well-delineated exceptions." *People v Brown*, 279 Mich App 116, 131; 755 NW2d 664 (2008) (quotations and citations omitted). A discussion of relevant exceptions follows.

A warrantless search of abandoned property does not violate the Fourth Amendment. *People v Rasmussen*, 191 Mich App 721, 725; 478 NW2d 752 (1991). Fourth Amendment protections apply only when a person has an expectation of privacy in the searched property.

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[3] Michigan State Police, *Criminal Law and Procedure Manual* <http://www.michigan.gov/msp/0,4643,7-123-3493_57129-140963--,00.html> (accessed July 20, 2017).

See *id.* By definition, a person lacks an expectation of privacy in abandoned property. *Id.* A person had abandoned property when "he voluntarily discarded, left behind, or otherwise relinquished his interest in the property so that he could no longer retain a reasonable expectation of privacy in the property at the time of the search." *Id.* at 726-727. For example, a person abandons a bag when he discards it while running from the police. *People v Lewis*, 199 Mich App 556, 557-560; 502 NW2d 363 (1993).

Mead demonstrated a possessory interest in the backpack by holding it on his lap while in the vehicle. He did not abandon the backpack by leaving it inside the vehicle because leaving a bag inside the vehicle in which you are riding does not equate to discarding, leaving behind, or relinquishing ownership in the item.

A police officer may conduct a protective or *Terry* search of the passenger compartment of a vehicle without a warrant "if the police officer possesses a reasonable belief based on 'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant' the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons," "limited to those areas in which a weapon may be placed or hidden." *Michigan v Long*, 463 US 1032, 1049; 103 S Ct 3469; 77 L Ed 2d 1201 (1983), quoting *Terry v Ohio*, 392 US 1, 21; 88 S Ct 1868; 20 L Ed 2d 889 (1968). When evaluating the validity of a search, the " 'issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.' " *Id.* at 1050, quoting *Terry*, 392 US at 27.

The protective or *Terry* search exception does not apply here. At no point did Officer Burkart testify that he had a reasonable belief that Taylor or Mead could gain immediate control of a weapon inside the vehicle or testify that he believed his safety or the safety of others was in danger, and the prosecution did not cite this exception as a basis for the search.

An officer may conduct a search incident to arrest without a warrant "whenever there is probable cause to arrest." *People v Nguyen*, 305 Mich App 740, 756; 854 NW2d 223 (2014). To have probable cause for an arrest, the investigating officers "must possess information demonstrating" " 'a probability or substantial chance' " "that an offense has occurred and that the defendant has committed it." *Id.* at 751-752, quoting *People v Lyon*, 227 Mich App 599, 611; 577 NW2d 124 (1998). An officer " 'may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest.' " *People v Tavernier*, 295 Mich App 582, 584; 815 NW2d 154 (2012), quoting *Arizona v Gant*, 556 US 332, 351; 129 S Ct 1710; 173 L Ed 2d 485 (2009). "[T]here is no reason to believe that evidence relevant to the crime of arrest would be found in the vehicle" when police are addressing "civil infractions" or a person "driving without a valid license." *Id.* at 586. "[J]ustifying the arrest by the search and at the same time the search by the arrest, just will not do." *Smith v Ohio*, 494 US 541, 543; 110 S Ct 1288; 108 L Ed 2d 464 (1990) (quotations, alterations, and citation omitted). For example, a "search of a container cannot be justified as being incident to an arrest if probable cause for the contemporaneous arrest was provided by the fruits of that search." *People v Champion*, 452 Mich 92, 116-117; 549 NW2d 849 (1996).

In this case, Officer Burkart did not search the backpack incident to the arrest of Mead or Taylor. Officer Burkart stopped the vehicle due to an expired license plate. It is unclear how the vehicle could contain evidence of an expired license plate. Officer Burkart repeatedly testified that he had no intent to arrest Taylor for the infraction. Additionally, Officer Burkart testified that Mead and Taylor admitted to using narcotics. But he did not testify that drug use was the basis for the stop of the vehicle, that either admitted to possessing drugs that night, that either admitted using drugs that night, or that either exhibited signs of being under the influence of narcotics. Upon viewing the video of the traffic stop, it does not appear that Taylor or Mead are within reaching distance of the backpack or passenger compartment of the vehicle at the time of the search. Therefore, Officer Burkart lacked probable cause for a lawful arrest as is required to permit a search incident to arrest.

Police may also search a vehicle or a container within a vehicle without a warrant if they have probable cause that the vehicle or container " 'contains articles that the officers are entitled to seize.' " *People v Garvin*, 235 Mich App 90, 101; 597 NW2d 194 (1999), quoting *People v Armendarez*, 188 Mich App 61, 71-72; 468 NW2d 893 (1991); See also *People v Bullock*, 440 Mich 15, 24; 485 NW2d 866 (1992). Probable cause exists if the totality of the circumstances demonstrates "a substantial basis for concluding that a search would uncover evidence of wrongdoing" and "a fair probability that contraband or evidence of a crime will be found in a particular place." *Garvin*, 235 Mich App at 102 (quotations, alterations, and citations omitted).

The record in Mead's case does not contain evidence that Officer Burkart had probable cause to search the backpack in the automobile. Again, Officer Burkart testified that Mead and Taylor admitted to using narcotics. But he did not testify that drug use was the basis for the stop of the vehicle, that either admitted to possessing or using drugs that night, that he believed the backpack would contain narcotics, or that either exhibited signs of being under the influence of narcotics. And again, the prosecution did not cite this exception as a basis for the search.

An inventory search is a "well-defined exception to the warrant requirement of the Fourth Amendment." *Colorado v Bertine*, 479 US 367, 371; 107 S Ct 738; 93 L Ed 2d 739 (1987). "[A]n inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence." *Florida v Wells*, 495 US 1, 4; 110 S Ct 1632; 109 L Ed 2d 1 (1990); See also *People v Poole*, 199 Mich App 261, 266; 501 NW2d 265 (1993). Rather, the search "protect[s] an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property" and "guard[s] the police from danger." *Bertine*, 479 US at 372. The search must be conducted reasonably, *id.* at 374, in good faith, *id.*, and pursuant to standardized police procedures "designed to produce an inventory," including procedures that "regulate the opening of containers found during inventory searches," *Wells*, 495 US at 4; see also *Poole*, 199 Mich App at 266.

The record lacks evidence as to whether Officer Burkart's search of the backpack fell within the scope of a proper inventory search. Officer Burkart testified that he searches vehicles to "check for valuables or any damage to the vehicle, anything that may be in there" whenever he "tow[s] or impound[s] a vehicle." However, Officer Burkart offered no further explanation of police department policies, did not explain department policy for the search of a container, and did not explain how his search complied with department policy. Therefore, we lack evidence to determine that he conducted a proper inventory search.

"The inevitable-discovery rule permits the admission of evidence obtained in violation of the Fourth Amendment if the prosecution establishes by a preponderance of the evidence that the information inevitably would have been discovered through lawful means." *People v Mahdi*, 317 Mich App 446, 469; 894 NW2d 732 (2016).

The inevitable discovery exception does not apply here. On appeal, the prosecution only argues that Taylor consented to the search and that Mead lacked standing to contest the search. The prosecution is correct. Even assuming that the search violated Mead's Fourth Amendment rights, the prosecution advanced no other argument that the police inevitably would have discovered the contents of the backpack. We conclude that no other grounds justified the search.

We affirm.

/s/ Peter D. O'Connell
/s/ Michael J. Talbot
/s/ Kirsten Frank Kelly

State of Michigan
In The Michigan Supreme Court

People of the State of Michigan
Plaintiff - Appellee

VS.

Larry Gerald Mead
Defendant - Appellant

Supreme Court No. 154584

Court of Appeals No. 327881

Jackson Co. Cir. No. 14-004482-FH

Notice of Filing Application

I, Larry Gerald Mead #232656, swear that on this day, , 2017, that I am notifying the Michigan Court of Appeals and the 4th Judicial Circuit Court of Jackson County Michigan that I am filing in the Michigan Supreme Court an application for Leave to Appeal the Michigan Court of Appeals decision on 8-8-17 in regards to the above case. I am doing so through U.S. Postal Service 1st Class Mail.

I declare that the statements above are true to the best of my knowledge, information and belief.

8/23/17

Larry Gerald Mead
Larry Gerald Mead 232656
Marquette Branch Prison
1960 U.S. Hwy. 41 South
Marquette, Mich. 49855

State of Michigan
In The Michigan Supreme Court

People of the State of Michigan
Plaintiff - Appellee

VS.

Larry Gerald Mead
Defendant - Appellant

Supreme Court No. 154584

Court of Appeals No. 327881

Jackson Co. Cir. No. 14-004482-FH

Motion to Waive Fees

For the reasons stated in the affidavit of indigency below, I request that this Court GRANT a waiver pursuant to MCR 7.319(C) of all Fees required for filing the attached pleading because I am indigent and the provisions of MCL 600.2963 requiring prisoners to pay filing fees do not apply to appeals from a decision involving a criminal conviction.

8/23/17

Larry Gerald Mead
Larry Gerald Mead ~~232656~~

Affidavit of Indigency

My name and number are Larry Gerald Mead 232656

I am incarcerated at Marquette Branch Prison in Marquette, Mich. 49855

I attest that I cannot pay the filing fee.

Because: My only source of income is from my prison job and I make $1.14 a day.
I have no assets that can be converted to cash.
The Court of Appeals waived my Fees in that Court.

I declare that the statements above are true to the best of my knowledge, information and belief.

8/23/17

Larry Gerald Mead
Larry Gerald Mead
Marquette Branch Prison
1960 U.S. Hwy. 41 South
Marquette, Mich. 49855

MICHIGAN DEPARTMENT OF CORRECTIONS — CSJ-318

DISBURSEMENT AUTHORIZATION (EXPEDITED LEGAL MAIL – PRISONER) — REV. 11/15 4835-3318

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Prisoner Number 232656 Prisoner Name (Type or Print Clearly) Larry Mead

☒ Legal Postage ☐ Filing Fee $ ☐ Certified Mail (Must Be a Court Ordered Requirement)

☐ New Case ☒ Case Number Mich. Supreme Court # 154584

Pay To U.S. Postal Service

Mailing Address Clerk's Office Michigan Supreme Court
Hall of Justice P.O. Box 30052
Lansing, Mich. 48909

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AUG 28 2017
LARRY S. ROYSTER
CLERK SUPREME COURT

The Following Section Must Be Completed In Authorizing Staff Member's Presence

Prisoner Signature Larry Mead Date & Time Submitted 8-23-17 / 09:34

Received by (Type or Print Name & Title) PERTICKIN AIPC Staff Signature P. Pertickin

Date &Time Received by Authorizing Staff 8/23/17 0934

Authorization Denied

☐ Does not meet definition of legal mail or court filing fee as identified in OP 05.03.118
☐ Not hand delivered to authorizing staff member
☐ Does not include court order for handling as certified mail
☐ Prisoner refused to sign & date in staff member's presence
☐ New case or case number not on form
☐ Other (explain)

Denied by (Type or Print Name & Title) _____ Signature _____

Section Below to be Completed by Mail Room Staff

Placed in Mail by (Type or Print Name & Title) _____ Signature _____

Postage Amount $ _____ Date Placed in Outgoing Mail _____

Only Business Office Staff are to Write in the Section Below

Postage $ _____ Total Obligation $ _____ ☐ Court Filing Fee Denied Due to NSF

Filing Fee $ _____ Check # _____

Date Copy Sent to Prisoner _____

Processed by (Type or Print Name & Title) _____ Signature _____

DISTRIBUTION: ☐ Prisoner Accounting ☐ Prisoner ☐ Counselor's File ☒ Prisoner

State of Michigan
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People of the State of Michigan
Plaintiff-Appellee

VS.

Larry Gerald Mead
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Supreme Court No. 154584

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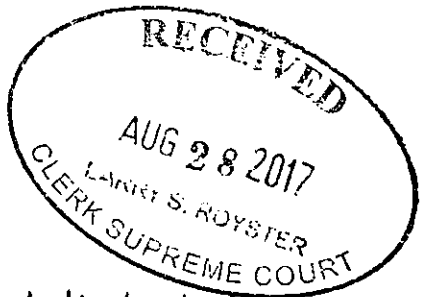
Jackson Co. Cir. No. 14-004482-FH

Proof of Service

On , 2017, I mailed by U.S. Mail 1 copy of the documents listed below:

Application for Leave to Appeal
Copy of Trial Court Decision
Copy of Court of Appeals First decision
Copy of Michigan Supreme Courts First decision
Copy of Court of Appeals Second decision
Motion to Waive fees/Affidavit of Indigency
Proof of Service



To: Jerrold Schrotenboer
Chief Appellate Attorney Jackson County
312 S. Jackson Street
Jackson, Mich. 49201

I declare that the statements above are true to the best of my knowledge, information and belief.

8/23/17

Larry Gerald Mead
Larry Gerald Mead
Marquette Branch Prison
1960 U.S. Hwy. 41 South
Marquette, Mich. 49855

State of Michigan
In The Michigan Supreme Court

8/23/17

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Jackson Co. Cir. 14-004482-FH

People of the State of Michigan
VS.
Larry Gerald Mead

Dear Clerk:

Enclosed please find originals of the documents listed below. I am indigent and cannot provide four copies.

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Larry Gerald Mead 232656
Marquette Branch Prison
1960 U.S. Hwy 41 South
Marquette, Mich. 49855

Copy Sent To:
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Chief Appellate Attorney Jackson County
312 S. Jackson Street
Jackson, Mich. 49201