

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

SUPREME COURT NO. 156376

Plaintiff-Appellee,

COURT OF APPEALS NO. 327881

CIRCUIT COURT NO. 14-004482-FH

v

LARRY GERALD MEAD,

Defendant-Appellant.

JERARD M. JARZYNSKA (P35496)
Prosecuting Attorney
JERROLD SCHROTENBOER (P33223)
Chief Appellate Attorney
312 S. Jackson Street
Jackson, MI 49201-2220
(517) 788-4283

LARRY GERALD MEAD, #232656
Defendant-Appellant in Pro Per
Newberry Correctional Facility
13747 E. County Road 428
Newberry, MI 49868

ANSWER TO APPLICATION FOR LEAVE TO APPEAL

Plaintiff asks this Court to deny this application, stating:

1. On April 8, 2015, a jury found defendant guilty of possessing meth. MCL 333.7403(2)(b)(i). The Court of Appeals' second opinion states what happened:

On the night of May 24, 2014, Rachel Taylor was driving a vehicle, and Mead rode in the front passenger seat. [Jackson City Police] Officer Richard Burkart testified that he stopped a 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 floor board." 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. (P 2).

2. Subsequently, on April 8, 2015, Jackson County Circuit Court Judge Thomas Wilson sentenced defendant as a fourth felony offender, MCL 769.12, to two-10 years.

3. Then, on November 2, 2015, Judge Wilson denied defendant's request for a directed verdict (claiming that the meth should have been suppressed).

4. Then, on September 13, 2016, the Court of Appeals affirmed in an unpublished opinion. (Docket no. 327881).

5. Subsequently, on April 14, 2017, this Court remanded back to the Court of Appeals:

for consideration of (1) whether this Court's peremptory order in *People v LaBelle*, 478 Mich 891; 732 NW2d 525 (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 authority 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. 500 Mich 967; 892 NW2d 379 (2017).

6. On remand, the Court of Appeals affirmed concluding that *LaBelle* directly controls, but rejected any other ground for justifying the search.

7. For two reasons, this Court should now deny leave to appeal. First, as defendant has admitted and as the Court of Appeals ruled, *LaBelle* is indistinguishable. Second, even if this Court concludes that *LaBelle* is wrong and should be overruled, the officer relied in good faith on it. Either way, the evidence is not to be suppressed.

The facts in the present case are so extremely close to what happened in *LaBelle* that, in his Court of Appeal brief (in the original appeal), defendant said:

“If one trades the marijuana for methamphetamine, the facts in *LaBelle* are indistinguishable from the facts of the present case.” (P 9). In the present case, on May 29, 2014, Officer Burkart stopped a car (for an expired plate) a few blocks from the courthouse in Jackson. (Preliminary Examination Transcript [PETr], pp 6-8). While Taylor drove the car, defendant was the passenger. (PETr, p 8). At the time, defendant had his arms around a backpack which was on his lap. (PETr, p 8). Rather quickly, Officer Burkart discovered that neither occupant had a valid license to drive. (PETr, p 8). He then obtained consent from Taylor to search both herself and the car. (PETr, p 9). After searching Taylor and finding nothing, Officer Burkart had defendant come out of the car and received from him permission to search him. (PETr, p 9). Officer Burkart then searched the car, starting with the backpack that defendant had left in the car. (PETr, pp 9-10). He found both marijuana and methamphetamine. (PETr, pp 9-10).¹

In *LaBelle*, the officers stopped the car for not coming to a complete stop at a stop sign. The driver did not have a valid license. The defendant was the car's passenger. She had a backpack with her. The car's driver then consented to have the officer search the car. Before the officer searched the car, the defendant exited it while leaving the backpack in the car. The officers then searched the backpack and found marijuana. The circuit court suppressed the evidence and the Court of Appeals affirmed.

This Court, however, summarily reversed finding that the search was legal:

Authority to search the entire passenger compartment of the vehicle includes any unlocked containers located therein,

¹ Plaintiff refers to nothing but the preliminary examination transcript. This Court may not refer to the trial evidence because “[t]estimony later taken on the trial, amplifying the circumstances of the search, cannot be considered.” *People v Miller*, 245 Mich 115, 117; 222 NW 151 (1928).

including the backpack in this case. Moreover, defendant did not assert a possessory or proprietary interest in the backpack before it was searched but, rather, left the backpack in the car she knew was about to be searched. 478 Mich 892.

Therefore, the Court of Appeals correctly affirmed, finding that *LaBelle* is materially indistinguishable:

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. [Citation omitted.] Because Mead lacks standing to challenge the search, any challenge to the search must fail. (P 2).

Second, even if this Court now has second thoughts about *LaBelle*, nothing is to be suppressed as the officer relied in good faith on this Court's decision (which defendant himself is no longer claiming to have been incorrectly decided). *People v Short*, 289 Mich 538; 549-551; 797 NW2d 665 (2010), lv den 489 Mich 989; 800 NW2d 69 (2011).²

ACCORDINGLY, plaintiff asks this Court to deny this application for leave to appeal.

September 15, 2017

Respectfully Submitted,

/s/ Jerrold Schrottenboer
JERROLD SCHROTTENBOER (P33223)
CHIEF APPELLATE ATTORNEY

² The Court of Appeals opinion, page 4, mentions that the 2009 police officers' manual cites to *LaBelle* for what police officers may do when searching a car.

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PROOF OF SERVICE

Dina M. Peek states that on September 15, 2017, she served a copy of:
ANSWER TO APPLICATION FOR LEAVE TO APPEAL
upon:

LARRY GERALD MEAD, #232656
Defendant-Appellant in Pro Per

by First Class Mail with postage prepaid and/or by True Filing and/or by electronic mail.

/s/ Dina M. Peek
Dina M. Peek
Legal Secretary