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CRIMINAL LAW AND PROCEDURE MANUAL

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SEARCH AND SEIZURE

Consent to search property in a vehicle given by a driver who does not have actual or apparent authority over the property is invalid

In [People v. Mead](#), Mead was a passenger in a vehicle stopped for an expired plate. While approaching the vehicle, the officer observed Mead clutching a black backpack on his lap. The driver was asked to step from the vehicle and later consented to a search of the vehicle. When the officer then asked Mead to step out of the vehicle, he left the backpack on the passenger floorboard. Both Mead and the driver separately confirmed they had just met and the driver was merely giving Mead a ride. The officer then searched the passenger side of the vehicle, including Mead's backpack, and found methamphetamines and other drugs in the backpack.

Mead was charged with possession of methamphetamine contrary to [MCL 333.7403\(2\)\(b\)\(i\)](#). The officer later testified at the preliminary examination that the driver never gave explicit consent to search the backpack (only the vehicle), he never sought Mead's consent to search the backpack, and he believed the backpack was Mead's because he was hugging it in his lap.

Mead filed a motion to suppress the evidence found in his backpack as the fruit of an illegal search. The trial court and the Court of Appeals upheld the search under the Michigan Supreme Court's prior holding in [People v. LaBelle](#). On appeal, the Michigan Supreme Court reversed, holding that the warrantless search of the backpack violated Mead's Fourth Amendment rights.

Passengers may have a reasonable expectation of privacy in property in a vehicle

The Court overruled the *per se* rule from [People v. LaBelle](#) that a passenger lacks standing to challenge the search of a legally stopped vehicle. Instead, the Court reaffirmed that a person—whether a passenger in a vehicle, or a

pedestrian, or a homeowner, or a hotel guest—may challenge a search if the person shows under the totality of the circumstances that he or she had a reasonable expectation of privacy in the area searched and the expectation of privacy was one that society is prepared to recognize as reasonable.

In this case, the Court found that Mead asserted a clear possessory interest in the backpack by clutching it in his lap, and the officer believed that backpack belonged to Mead because of the way he was holding it. Although Mead had no reasonable expectation of privacy in the interior of the driver's vehicle, the Court found based on the totality of the circumstances that Mead had a reasonable expectation of privacy in his backpack that society is willing to recognize as reasonable.

Scope of consent

Additionally, the Court overruled [People v. LaBelle](#) to the extent it supported a bright-line rule that a driver's consent to search a vehicle provides automatic authority to search any unlocked container in the passenger compartment. Instead, the Court reaffirmed that an officer must obtain consent from someone with actual or apparent authority to give it, the scope of any consent search is defined by the consenting party, and the standard for measuring the scope of consent is "objective reasonableness."

In this case, the Court found that an objectively reasonable officer would not have believed the driver had actual or apparent authority over Mead's backpack. The officer believed the backpack belonged to Mead; no evidence suggested the driver had mutual use of the backpack; backpacks are generally used to transport personal items suggesting individual ownership; and the officer knew that the driver and Mead were near strangers.

Officers are reminded that in order to conduct a warrantless search pursuant to the consent exception, the officer must obtain consent that is freely and voluntarily given by a person having actual or apparent authority to consent, and the search must not exceed the scope of the consent given.

Officers are further reminded that the consent exception is just one of the judicially recognized exceptions to the search warrant rule and was the only exception at issue in this case. Depending on the specific facts and circumstances, officers may nevertheless be authorized to conduct a warrantless search of a container found in a vehicle, including those associated with a passenger, based on another judicially recognized exception to the search warrant rule despite the absence of consent.