

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

AARON FLETCHER LEAPHEART,

Defendant-Appellee.

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UNPUBLISHED  
February 26, 2008

No. 276694  
Wayne Circuit Court  
LC No. 06-100086

Before: Whitbeck, P.J., and Jansen and Davis, JJ.

PER CURIAM.

Plaintiff appeals by leave granted a circuit court order affirming a district court order that dismissed this case based on illegal seizure grounds. Because the district court's rationale for suppressing the evidence at issue was flawed, we remand this case to the district court for appropriate reconsideration of the suppression decision. We decide this case without oral argument under MCR 7.214(E).

I. Basic Facts And Procedural History

Defendant Aaron Fletcher Leapheart was charged with carrying a concealed weapon,<sup>1</sup> being a felon in possession of a firearm,<sup>2</sup> and possessing a firearm during commission of a felony.<sup>3</sup> Detroit Police Officer Robert Skender was the sole witness at Leapheart's preliminary examination, which also amounted to a hearing on his motion to suppress evidence as the result of an illegal seizure. Officer Skender testified that on October 5, 2006, at about 11:15 p.m., he saw Leapheart standing by a truck in the street; as the officer approached, Leapheart started walking away. Officer Skender said that as Leapheart was walking away, "he was attempting to walk to the back between the two houses, and we<sup>[4]</sup> stopped him due to him being in the street." Officer Skender expressed a belief that "it is a violation of Michigan law to stand in the street to

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<sup>1</sup> MCL 750.227.

<sup>2</sup> MCL 750.224f.

<sup>3</sup> MCL 750.227b.

<sup>4</sup> Officer Skender was working with three partners when he encountered Leapheart.

engage in conversation where sidewalks are provided” and that this conduct also violated a city ordinance. Officer Skender also said that there was a prohibition against impeding vehicular traffic that would apply to the situation.

Officer Skender testified as follows about his initial interaction with Leapheart:

As we approached, like I said he was walking away attempting to walk between the houses. My focus was on him since he was on my side of the car. As I called him not by his name, *I just said let me talk to you for a second*. He complied with that, and as he approached me he stated to me that he had a gun in his pocket. [Emphasis added.]

Apparently based on this statement, the police arrested Leapheart and charges were brought against him.

In the course of explaining its decision to suppress the critical evidence (and thus dismiss the charges against Leapheart), the district court stated, “And, I agree with counsel that if indeed Officer Skender indicated that he was in uniform, that upon being asked to return back to him or talk to him, that you felt that you were obligated to do so.” The circuit court adopted the district court’s findings and upheld its decision. The prosecution now appeals.

## II. Seizures

### A. Standard Of Review

The prosecutor argues that the district court erred in suppressing the evidence because the initial encounter between Officer Skender and Leapheart, involved only a request for voluntary action and a voluntary response from Leapheart, and did not constitute a seizure for Fourth Amendment purposes. Leapheart responds that there was no question that he was not free to leave and that the encounter thus constituted a seizure. We review for clear error a lower court’s factual findings at a suppression hearing, and we review de novo the trial court’s ultimate ruling on the motion to suppress.<sup>5</sup>

### B. Applying The Legal Standards

A seizure for Fourth Amendment purposes occurs “only if, in view of all the circumstances, a reasonable person would have believed that he was not free to leave.”<sup>6</sup> Here, the district court’s rationale for apparently concluding that Officer Skender’s initial contact with Leapheart constituted a seizure was quite vague. Specifically, as noted above, the district court stated that “if indeed Officer Skender indicated that he was in uniform, that upon being asked to return back to him or talk to him, that you felt that you were obligated to do so.” The district court appears to have concluded that merely because Officer Skender was in uniform and

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<sup>5</sup> *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005).

<sup>6</sup> *People v Jenkins*, 472 Mich 26, 32; 691 NW2d 759 (2005).

expressed a desire to talk to Leapheart, a reasonable person in Leapheart's circumstances would not have felt free to leave. Taken literally, the district court's remark could be viewed as improperly determining whether Leapheart subjectively felt obligated to comply with Officer Skender's request that Leapheart talk to him, rather than considering whether a reasonable person in Leapheart's circumstances would have felt free to leave. However, given that no testimony was taken from Leapheart, we presume that the district court was not actually purporting to have determined his subjective belief about whether he was free to leave.

Generally, the mere fact that a uniformed police officer makes a request of a person to provide information or answer questions does not amount to a seizure of the person. In particular, the United States Supreme Court has stated that, "In the ordinary course a police officer is free to ask a person for identification without implicating the Fourth Amendment."<sup>7</sup> Accordingly, because in the ordinary course of a patrol a police officer is in uniform, a uniformed police officer's mere request to talk to a person does not amount to a seizure. Thus, we conclude that the district court erred in effectively finding that Officer Skender seized Leapheart in his initial contact with him merely because the officer was in uniform when he asked Leapheart to talk with him.

Apart from this, we note that, because of the lack of other critical factual findings by the district court, it is not clear whether the district court would have found that the initial contact between Officer Skender and Leapheart constituted a seizure. It is true that Officer Skender said that the officers "stopped [Leapheart] due to him being in the street." However, even if Officer Skender had a *subjective* intent to restrain Leapheart, that would not be dispositive of whether Leapheart was actually seized when Officer Skender first made contact with him (that is, when Officer Skender said that he wanted to talk with Leapheart), unless Officer Skender *objectively* expressed that intent.<sup>8</sup>

Rather, if a reasonable person in Leapheart's circumstances would have taken Officer Skender's initial communication as a mere request to voluntarily talk with him, there would be no seizure for Fourth Amendment purposes. But if a reasonable person in such circumstances would not have felt free to leave, then Leapheart would have been seized within the meaning of the Fourth Amendment. This is not a determination we can properly make as an initial matter. Accordingly, we must remand to the district court to reconsider its suppression decision. Specifically, the district court must determine whether Officer Skender's manner of expressing to Leapheart a desire to talk to him constituted a command that a reasonable person in Leapheart's circumstances would have felt compelled to obey (and thus a seizure), or a mere request that a reasonable person in such circumstances would have felt free to disregard (and so

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<sup>7</sup> *Hiibel v Sixth Judicial Dist Court of Nevada*, 542 US 177, 185; 124 S Ct 2451; 159 L Ed 2d 292 (2004).

<sup>8</sup> See *Michigan v Chesternut*, 486 US 567, 575 n 7; 108 S Ct 1975; 100 L Ed 2d 565 (1988) ("Of course, the subjective intent of the officers is relevant to an assessment of the Fourth Amendment implications of police conduct only to the extent that that intent has been conveyed to the person confronted."); see also *Jenkins, supra* at 32 n 6 ("only *objective* conduct and circumstances are relevant for Fourth Amendment purposes.") (emphasis in original).

not a seizure). In making this determination, the district court should not repeat the error of considering the mere fact that a request to talk was made by a uniformed police officer as indicating that a seizure occurred.

In summary, we conclude that the district court's rationale for granting the suppression motion was flawed. Therefore, we must remand this case to the district court for reconsideration of the suppression issue because proper resolution of this issue requires further factual determinations that initially must be made by the district court.

### C. Investigatory Stop

The prosecutor also advances an alternative argument that, even if Leapheart was seized by the initial encounter with Officer Skender, there was reasonable suspicion to justify this as an investigatory stop, and that the district court improperly applied a probable cause standard to evaluate whether an investigatory stop was justified. However, this argument is not properly brought because it is outside the scope of the prosecutor's statement of the question presented, which raised only the issue of whether there was merely a voluntary encounter between Officer Skender and Leapheart.<sup>9</sup> Further, this alternative argument is outside the scope of this Court's order granting leave to appeal in this case, which was "limited to the issues raised in the application" because only the voluntary encounter argument was raised in the prosecutor's application for leave to appeal to this Court.

We remand this case to the district court for reconsideration of its decision consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck  
/s/ Kathleen Jansen  
/s/ Alton T. Davis

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<sup>9</sup> *People v Miller*, 238 Mich App 168, 172; 604 NW2d 781 (1999).