

# Court of Appeals, State of Michigan

## ORDER

People of MI v Joe McCoy

Docket No. 307211

LC No. 11-007461-AR

Michael J. Talbot  
Presiding Judge

Kurtis T. Wilder

Kirsten Frank Kelly  
Judges

In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court orders that the July 12, 2011, order of the 36<sup>th</sup> District Court, which dismissed the charge of carrying a concealed weapon, and the November 8, 2011, order of the Wayne Court Circuit Court, which affirmed the district court's order, are REVERSED. An officer's pursuit of a fleeing person does not amount to a seizure within the meaning of the Fourth Amendment of the United States Constitution and its Michigan counterpart, Const 1963, art 1, sec 11. Instead, a seizure does not occur until defendant submits to a show of authority or is physically restrained. *California v Hodari D*, 499 US 621, 626; 111 S Ct 1547; 113 L Ed 2d 690 (1991); *People v Lewis*, 199 Mich App 556, 559-560; 502 NW2d 363 (1993). See also *People v Toney*, 437 Mich 1060; 472 NW2d 849 (1991), reversing 187 Mich App 1; 466 NW2d 331 (1991). According to the testimony at the preliminary examination, defendant did not submit to Officer Rutledge's command ("come here") but he instead ran away. Officer Rutledge observed a "shiny object" fall from defendant as he was running after defendant along the "matted" path through the yard of tall weeds. Because defendant discarded the weapon before he was physically restrained by Officer Rutledge, the weapon was properly retrieved and used as evidence against him. *Lewis, supra* at 558-560. Therefore, the district court erred in suppressing the weapon and in dismissing the charge based on insufficient evidence. Furthermore, the circuit court erred as a matter of law in ruling that "there is little or no nexus between the defendant and the discarded gun." Officer Rutledge told Officer Szklarski to look for a weapon near the fence along the yard. Officer Szklarski went to the location and discovered the weapon lying in the grass. Therefore, it is up for the jury, not the courts, to decide whether the weapon retrieved by Officer Szklarski was the shiny object that Officer Rutledge observed falling from defendant during the pursuit. See *People v Northey*, 231 Mich App 568, 575; 591 NW2d 227 (1998).

Accordingly, the matter is REMANDED to the 36<sup>th</sup> District Court with instructions to bind defendant over on the CCW charge. Pursuant to MCR 7.215(F)(2), this order shall take immediate effect and the Court retains no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

AUG 16 2012

Date

  
Chief Clerk