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## Fourth Amendment trouble brewing

**P**retend you are taking the SAT exam. Here is a fill-in-blank question from the verbal section:

A man is walking alone on a sidewalk in a high-crime neighborhood. Two police officers are in a car approaching from the opposite direction. The car stops. One officer rolls down the window and begins to speak to the man: "Come here," the officer

Which word best completes the sentence?

- A. commands
- B. orders
- C. asks

If you answered either A or B, you are still in the running for that college scholarship you are after.

If you answered C, you have probably just blown your chance for a perfect score on the verbal section. But you may have just secured yourself a seat on the Illinois Appellate Court. To understand why, take a look at *People v. Ramsey Qurash*, 2017 IL App (1st) 143412 (decided March 16, 2017).

The facts of the case match our SAT question above. Chicago police officer Stephen Gregory testified that after he said "Come here," Qurash dropped a large white bottle into the snow. Gregory got out of the car, picked up the bottle and saw it contained a leafy substance that appeared to be marijuana. He arrested Qurash and found more contraband on his person. Qurash was charged with several drug offenses.

The majority opinion characterizes the issue in the case as "[D]eceptively simple: [A]s a matter of law, do the words

'come here,' uttered by a police officer to a citizen, result in a seizure." If it does result in a seizure, then the drugs must all be suppressed since Officer Gregory lacked either probable cause or reasonable suspicion at the moment he said those two words. The [1]st District decided the issue by characterizing "Come here" as a mere request that did not result in a seizure, and thus affirmed the conviction.

However, Justice David Ellis filed a dissent contending that no reasonable person would have interpreted "Come here" as a mere offer he could refuse. Qurash did not consent to an officer's request; rather, he acquiesced to the officer's command. And because the officer lacked any suspicion whatsoever when he issued that command, the seizure violated the Fourth Amendment and the conviction must be reversed.

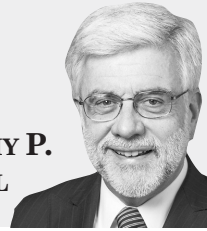
Preliminarily, both the majority and the dissent agree that the trial court's holding that the officer's words did not constitute a seizure was a question of fact deserving deferential review.

I am not so sure. True, the trial court's finding that the officer said "Come here" is a question of historical fact that deserves deferential review. And whether or not a defendant has voluntarily consented to an officer's request for a search or seizure is an issue reviewed deferentially in Illinois. *People v. West*, 2017 ILL. App. (3d) 130802.

But the issue of whether a seizure has occurred is a question of law that merits de novo review. In fact, as noted above, the majority even began its analysis by describing the issue in the case as a "matter of law."

### CRIMINAL PROCEDURE

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(Slip, 5) A seizure occurs when a reasonable person would believe he is not free to leave. *U.S. v. Mendenhall*, 446 U.S. 544 (1980) (opinion of Stewart, J.).

Deciding how a reasonable person would react to "Come here" is an objective test resulting in a finding of law that merits de novo review.

Yet even under a deferential standard, I believe the dissent is correct that a seizure occurred when the officer said "Come here" and that the trial court was clearly erroneous in holding otherwise.

It is worth quoting Ellis at length: "Those two words, alone, are not a request. Nor could they plausibly be construed as a question ('Come here?') To a man walking down the street, alone at night, in a high-crime neighborhood, when two officers stopped their car in the middle of the street and one of them said, 'Come here,' any reasonable person would believe that he was required to comply with that directive that he was not

free to leave."

The dissent does something else worth noting. It exhibits an awareness that an appellate court decision is not a "one-off"; it does not exist in a vacuum. An appellate decision in a common-law system must of necessity be Janus-faced: It must decide the case that has already occurred in the past with the realization that its decision will have impact on people in the future.

This leads Ellis to say "I fear that the majority's holding will have the unintended effect of encouraging individuals not to comply with a police officer's request, or order, to 'come here.' Under the majority's reasoning, the best way for citizens to protect their [F]ourth [A]mendment rights is to ignore the police in that context because if they complied even though not required to do so, they would be consenting to police questioning without any [F]ourth [A]mendment protections at all."

And Ellis goes on to note the dilemma the court has created for a pedestrian in the future. For if she refuses to comply and simply continues walking and if the officer continues to say "Come here" a person could find herself accused of resisting or obstructing a lawful order of the police. Ellis cites *People v. Synnott* for the proposition that "merely refusing a police officer's lawful order to move can constitute interference with the officer in the discharge of his or her duty." 349 Ill. App. 3d 223, 229 (2004).

Ellis's dissent makes this case worth a second look. For, as he notes, "'Come here' is not a question. 'Come here' is not a request. 'Come here' is an order."