

MICHIGAN SUPREME COURT

People of the State of Michigan v. Edwin Dewayne Richmond

486 Mich. 29 (2010) · No. SC: 136648; COA: 277012; Wayne CC: 06-013878-01; Rehearing No. 563 · Decided June 28, 2010

SUMMARY

The Michigan Supreme Court partially grants the prosecution’s motion for rehearing and clarifies that the prosecution may refile charges and, if necessary, pursue an interlocutory appeal concerning the underlying suppression ruling. The Court explains that its prior decision vacated the Court of Appeals’ ruling on jurisdictional rather than merits grounds and that the prosecution has non-frivolous arguments supporting reinstatement of the case. Justice Corrigan concurs in part and dissents in part, while Chief Justice Kelly and Justice Cavanagh would deny rehearing.

CASE DETAILS

COURT	Michigan Supreme Court
WRITING FOR THE COURT	Per curiam; Marilyn Kelly, Chief Justice; Michael F. Cavanagh; Elizabeth A. Weaver; Maura D. Corrigan; Robert P. Young, Jr.; Stephen J. Markman; Diane M. Hathaway
JURISDICTION	Michigan
DECIDED	June 28, 2010
DOCKET	SC: 136648; COA: 277012; Wayne CC: 06-013878-01; Rehearing No. 563
DISPOSITION	other
PROCEDURAL POSTURE	The prosecution moved for rehearing of the Michigan Supreme Court's decision in People v. Richmond, 486 Mich. 29 (2010), which had vacated the Court of Appeals' decision on jurisdictional grounds. The Supreme Court granted rehearing in part to clarify how the prosecution could proceed after dismissal of the criminal charges and denied rehearing in all other respects.
PRECEDENTIAL VALUE	Published Michigan Supreme Court order; precedential value pertains to the clarification of the prosecution's available procedural course.
PARTIES	Edwin Dewayne Richmond v. People of the State of Michigan

TOPICS

appellate procedure

interlocutory appeal

criminal procedure

mootness

suppression of evidence

PRACTICE AREAS

criminal procedure

appellate procedure

criminal appeals

QUESTIONS PRESENTED

1. Whether the prosecution could refile the charges after dismissing the case to seek appellate review of the suppression ruling.
2. Whether the prosecution could pursue an interlocutory appeal challenging the underlying suppression ruling.
3. Whether the prosecution's dismissal and proposed reinstatement were barred by mootness, the law of the case, collateral estoppel, or double jeopardy.

HOLDINGS

1. The prosecution may refile the charges against the defendant, subject to applicable legal constraints including double-jeopardy principles.
2. If necessary, the prosecution may file an interlocutory appeal to challenge the underlying suppression ruling.
3. The prosecution's motion for rehearing was granted in part for clarification and denied in all other respects.

KEY QUOTATIONS

"The prosecution may refile the charges against defendant and, if necessary, file an interlocutory appeal to challenge the underlying suppression ruling." (at 1)

"This Court's opinion vacates the Court of Appeals' decision, which corrected the circuit court's ruling in light of Keller, on jurisdictional grounds, not on the merits." (at 1)

FACTUAL BACKGROUND

The prosecution had dismissed the criminal case in order to seek appellate review of the circuit court's suppression ruling. The suppression ruling was subject to correction in light of the intervening change in law recognized in *People v. Keller*. The prosecution also had received a unanimous Court of Appeals decision in its favor and asserted non-frivolous grounds for reinstating the charges.

PROCEDURAL HISTORY

The circuit court suppressed evidence. The Court of Appeals corrected the circuit court's suppression ruling in light of *People v. Keller*, but the Supreme Court vacated the Court of Appeals' decision on jurisdictional grounds in *Richmond*. The prosecution then sought rehearing and clarification regarding refiling the charges and obtaining appellate review of the suppression ruling. The Supreme Court granted clarification in part, authorizing refiling and, if necessary, an interlocutory appeal.

DISPOSITION

other

REMAND INSTRUCTIONS

The prosecution may refile the charges and, if necessary, file an interlocutory appeal challenging the underlying suppression ruling. Rehearing was denied in all other respects.

CASES CITED

- People v. Keller, 479 Mich. 467 (2007)
- People v. Richmond, 486 Mich. 29, 42 (2010)
- Freeman v. DEC Int'l, Inc., 212 Mich. App. 34, 38 (1995)
- People v. Johnson, 191 Mich. App. 222, 225 (1991)

OPINION

PER CURIAM.

Order Michigan Supreme Court Lansing, Michigan June 28, 2010 Marilyn Kelly, Chief Justice Rehearing No. 563 Michael F. Cavanagh Elizabeth A. Weaver Maura D. Corrigan Robert P. Young, Jr. 1 December 8 Stephen J. Markman Diane M. Hathaway, Justices 136648 PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v SC: 136648 COA: 277012 Wayne CC: 06-013878-01 EDWIN DEWAYNE RICHMOND, Defendant-Appellant.

On order of the Court, the prosecution's motion for rehearing of this Court's opinion, 486 Mich 29 (2010), is GRANTED in part.

We grant the prosecution's request for clarification about how it may proceed against defendant in light of this Court's decision. The prosecution may refile the charges against defendant and, if necessary, file an interlocutory appeal to challenge the underlying suppression ruling.

As the dissent in Richmond explained, the circuit court's suppression ruling is subject to correction because of the intervening change in the law occasioned by our decision in People v Keller, 479 Mich 467 (2007). Slip op at 3-4. See also Freeman v DEC Int'l, Inc, 212 Mich App 34, 38 (1995) (exception to law of the case doctrine); People v Johnson, 191 Mich App 222, 225 (1991) (exception to collateral estoppel doctrine).

This Court's opinion vacates the Court of Appeals' decision, which corrected the circuit court's ruling in light of Keller, on jurisdictional grounds, not on the merits. The prosecutor's original decision to dismiss the case to seek appellate review was, at most, a procedural misstep that did not reach the merits of her case.

Moreover, we note that the prosecutor has non-frivolous arguments such that she can appropriately seek to reinstate her case. The comments to MRPC 3.1 define “frivolous” as “an action taken primarily for the purpose of harassing or maliciously injuring a person.” In light of the intervening change in the law in *Keller*, in view of the fact that the prosecutor has received a unanimous Court of Appeals decision in her favor, and in view of the clarifying nature of the instant decision, we believe that reasonable arguments remain available to the prosecutor to explain why reinstatement of charges under these circumstances is appropriate.

In all other respects, the motion for rehearing is DENIED. CORRIGAN, J. (concurring in part and dissenting in part). I would grant the prosecution’s motion for rehearing, and upon rehearing, would affirm for the reasons stated in my dissenting opinion in *People v Richmond*, 486 Mich 29, 42 (2010).

As the prosecutor suggests in her motion for rehearing, the majority opinion in *Richmond* creates an absurd situation: a prosecutor may accept a dismissal of charges but may not move for such a dismissal without rendering the case “moot.” When a prosecutor maintains legally cognizable and live interests that can be vindicated only through appellate review, whether a claim is “moot” does not arbitrarily turn on whether the prosecutor, rather than the defendant or the trial court, moves to dismiss the case.

I concur in the Court’s order of clarification, however, because I agree that the prosecution may proceed in the manner explained in the order. The prosecutor clearly has a non-frivolous case that she rightfully wishes to pursue.

Thus, where double jeopardy grounds do not bar it, this order preserves a prosecutor’s statutory right of appeal and ensures that the administration of justice will not be forever thwarted by the rule created in *Richmond*. KELLY, C.J. and CAVANAGH, JJ., would deny rehearing. I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 28, 2010 _____ Clerk