

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

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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