

## MSC: People v. Richmond

1. May 2010 By Matthew Nelson

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In an opinion with consequences for both civil and criminal practitioners, the Michigan Supreme Court granted leave to appeal and reversed the Court of Appeals' judgment in *People v. Richmond*, No. 136648. The Court concluded that the prosecutor's voluntary dismissal of criminal charges without prejudice rendered the prosecutor's appeal of an earlier (erroneous) evidentiary ruling moot. The 4-3 decision commanded an unusual majority of Chief Justice Kelly and Justices Cavanagh, Markman and Hathaway. Justice Cavanagh authored the opinion for the majority. The opinion suggests a new basis for the Michigan Court of Appeals to reject claims of appeal by right from civil cases where the parties reached an agreement to dismiss claims without prejudice to permit appeal of a significant interlocutory order. In *People v. Richmond*, the defendant was charged with a variety of drug and firearm related offenses. After being bound over to circuit court, the defendant moved to suppress the evidence obtained by police after executing a search warrant because the affidavit supporting the warrant was insufficient to establish probable cause. The circuit court granted the motion and excluded all the evidence against the defendant. The prosecutor then moved to voluntarily dismiss the case without prejudice, acknowledging that the circuit court's decision made it impossible for the prosecution to proceed. The circuit court signed an order of acquittal/dismissal without prejudice "on the motion of the People." The prosecution appealed the suppression order to the Court of Appeals, and the Court of Appeals reversed.

In his appeal to the Michigan Supreme Court, the defendant argued for the first time that the prosecution could not appeal the suppression order because the issues was moot after the prosecution voluntarily obtained dismissal of the case. The Michigan Supreme Court agreed. The Court explained that a court does not declare principles of law that have no practical legal effect in the case before it. In this case, the Court reasoned that the circuit court's dismissal of the charges without prejudice at the prosecutor's request eliminated the controversy between the parties and rendered the matter a "pretended controversy" that "did not rest upon existing facts or rights" (internal quotation omitted). The prosecution's actions effectively denied appellate review to its own appeal.

In a footnote, the majority stated that the proper procedure in this case was for the prosecution to seek leave to appeal the interlocutory suppression order from the Court of Appeals. According to the Court, "the prosecution should be able to meet the requirements of [MCR 7.205] in cases such as this with little difficulty . . . [because] when an order to suppress evidence effectively eliminates the prosecution's case, the prosecution should be able to show that it 'would suffer substantial harm by awaiting final judgment before taking an appeal,'" namely, trial could preclude appellate review of the suppression order because prejudice would attach under the Double Jeopardy Clause. In contrast, the Court concluded that permitting the prosecution to appeal after it chooses to

dismiss its case would allow the prosecution to circumvent both the mootness doctrine and the rules pertaining to interlocutory appeals.

Justices Corrigan authored a dissent in which she reasoned that the court's suppression order effectively prevented the prosecution from going forward and that the prosecutor voluntarily dismissed the case solely to pursue its case after appellate review and reversal of the erroneous evidentiary ruling.