

# Order

Michigan Supreme Court  
Lansing, Michigan

December 8, 2011

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2008-36

Michael F. Cavanagh  
Marilyn Kelly

Amendment of Rule 7.205 of the  
Michigan Court Rules

Stephen J. Markman  
Diane M. Hathaway  
Mary Beth Kelly  
Brian K. Zahra,  
Justices

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On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 7.205 of the Michigan Court Rules is adopted, effective January 1, 2012.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 7.205 Application for Leave to Appeal

(A)-(D)[Unchanged.]

(E) Emergency Appeal.

(1)-(2)[Unchanged.]

(3) Where the trial court makes a decision on the admissibility of evidence and the prosecutor or the defendant files an interlocutory application for leave to appeal seeking to reverse that decision, the trial court shall stay proceedings pending resolution of the application in the Court of Appeals, unless the trial court makes findings that the evidence is clearly cumulative or that an appeal is frivolous because legal precedent is clearly against the party's position. The appealing party must pursue the appeal as expeditiously as practicable, and the Court of Appeals shall consider the matter under the same priority as that granted to an interlocutory criminal appeal under MCR 7.213(C)(1). If the application for leave to appeal is filed by the prosecutor and the defendant is incarcerated, the defendant may request that the trial court reconsider whether pretrial release is appropriate.

(F)-(G)[Unchanged.]

Staff Comment: This amendment addresses the situation that arose in *People v Richmond*, 486 Mich 29 (2010), in which a prosecutor's dismissal of a case following a

trial court's suppression of evidence in the case resulted in a finding that the appeal of the suppression order was moot. Under the amendment above, a party could pursue an interlocutory appeal of a trial court suppression order and in most cases would be entitled to a stay in the case.

The staff comment is not an authoritative construction by the Court.



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.

December 8, 2011

*Corbin R. Davis*

Clerk