

Per Curiam

UNITED STATES v. ROSE

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 75-1535. Decided October 12, 1976

After the District Court had found respondent guilty at a bench trial, double jeopardy did not bar the Government's appeal from the District Court's order suppressing certain evidence, entered upon reconsideration of respondent's motion to suppress, which was originally denied. *United States v. Morrison, ante*, p. 1.

Certiorari granted; vacated and remanded.

PER CURIAM.

The operative facts herein are substantially identical to those in *United States v. Morrison, ante*, p. 1. Respondent's car was stopped by Border Patrol agents; a search disclosed marihuana. Respondent lost a motion to suppress and was found guilty after a bench trial. Following this trial, but before sentencing, the District Court, relying upon our decision in *Almeida-Sanchez v. United States*, 413 U. S. 266 (1973), granted respondent's motion to suppress. The Court of Appeals for the Tenth Circuit, as it did in *Morrison*, found the Government's appeal barred by double jeopardy.

In *United States v. Wilson*, 420 U. S. 332 (1975), we held that double jeopardy would not bar a Government appeal if success on that appeal would result in the reinstatement of a verdict of guilty. The fact that the order of suppression here occurred after a general finding of guilt rendered by the court in a bench trial, rather than after a return of a verdict of guilty by a jury, is immaterial. *Morrison, ante*, p. 1. Double jeopardy, therefore, does not bar an appeal by the Government.

We grant the motion to proceed *in forma pauperis* and the petition for certiorari, vacate the judgment of the Court of Appeals, and remand to that court for proceedings consistent herewith.

It is so ordered.