

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALBERT LEE COLLINS,

Defendant-Appellant.

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UNPUBLISHED

July 15, 1997

No. 183176

Cass Circuit Court

LC No. 89-006830

Before: Neff, P.J., and Smolenski and D. A. Roberson\*, JJ.

PER CURIAM.

In 1989, defendant was convicted by the trial court of armed robbery, MCL 750.529; MSA 28.797, possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and second-offense habitual offender, MCL 769.10; MSA 28.1082. Defendant was originally sentenced to consecutive terms of two years' imprisonment on the felony-firearm conviction and twenty-five to fifty years' imprisonment on the armed robbery conviction. Defendant appealed and this Court vacated defendant's convictions on the ground that defendant's counsel had been ineffective in failing to raise the defense of insanity. *People v Collins*, unpublished opinion per curiam of the Court of Appeals, issued 8/5/92 (Docket No. 125701), slip op p 3. This Court remanded for the following proceedings:

Because defendant Collins has already had a trial which we find to have been otherwise fair, we are reluctant to order a new trial. Court rules provide that in an action tried without a jury, on a motion for a new trial the trial court may take additional testimony and amend its findings of fact and conclusions of law. . . . Therefore, on remand, the trial court must first conduct a hearing to determine whether at the time of the first trial defendant Collins was competent to both stand trial and waive his right to a jury. If the trial court finds defendant Collins was not competent, it must grant defendant's request for a new trial. . . . If the trial court finds that defendant Collins was competent, it must provide defendant with the opportunity to assert an insanity defense. If the defense is raised, the trial court must reopen the proofs to allow both

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\* Recorder's Court judge, sitting on the Court of Appeals by assignment.

plaintiff and defendant Collins to present evidence on the issue. The trial court should then amend its original findings of fact and conclusions of law by making findings regarding the insanity defense and the possible verdict of guilty but mentally ill, and enter judgment on its amended findings. [*Id.* (citations omitted).]

On remand, the trial court found that defendant was presently competent and had been competent at the time of his original trial. Defendant then asserted the defense of insanity. Following a hearing at which proofs were taken on this defense, the court amended its findings of facts and conclusions of law and found defendant guilty but mentally ill. Defendant was sentenced to consecutive terms of two years' imprisonment on the felony-firearm conviction and twenty to fifty years' imprisonment on the armed robbery conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred under MCR 6.431(C) in reopening the proofs without defendant's consent. We reject defendant's argument for several reasons. First, defendant has waived this issue where he failed to raise it below. *People v Conner*, 209 Mich App 419, 422; 531 NW2d 734 (1995). Second, with respect to the reopening of proofs, the trial court was bound by this Court's previous ruling pursuant to the law of the case doctrine. *People v Kozyra*, 219 Mich App 422, 433; 556 NW2d 512 (1996). Finally, this Court's previous opinion provided that proofs would be reopened only if the defense of insanity was raised by defendant. A defendant may not acquiesce to an issue and then claim error as to that issue on appeal. *People v Barclay*, 208 Mich App 670, 673; 528 NW2d 842 (1995).

Next, defendant contends that the trial court's retrospective determination of his competency in 1989 constituted error and a violation of his right to due process. However, under the doctrine of the law of the case, the trial court was required by this Court's previous opinion to retrospectively determine defendant's competency. Accordingly, defendant's only option is an application for leave to appeal to our Supreme Court. *Kozyra, supra*.

Finally, we conclude that the trial court's findings of fact with respect to its verdict of guilty but mentally ill were not clearly erroneous or affected by error of law. MCR 2.517; MCR 2.613(A).

Affirmed.

/s/ Janet T. Neff  
/s/ Michael R. Smolenski  
/s/ Dalton A. Roberson