

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD ARTHUR HART,

Defendant-Appellant.

UNPUBLISHED

June 8, 2010

No. 288216

Wayne Circuit Court

LC No. 07-007134-FC

Before: GLEICHER, P.J., and FITZGERALD and WILDER, JJ.

PER CURIAM.

Defendant appeals as of right his conviction on two counts of child sexually abusive activity, MCL 750.145c(2), and one count of using a computer to commit possession of child sexually abusive material, MCL 752.797(3)(d), following a jury trial in Wayne Circuit Court. We affirm.

Defendant argues that this Court erred when it reversed the lower court's suppression of evidence in its January 24, 2008 order, and that upon de novo review, the evidence should have been suppressed. Defendant argues that the suppression of defendant's computer and two disks that contained evidence of child pornography was proper because the evidence was seized in violation of the Fourth Amendment. Defendant further argues that the doctrine of the law of the case should not apply because applying the doctrine would deprive him of an independent review of his constitutional claim. We disagree.

This Court reviews de novo "whether the law of the case doctrine applies." *Manske v Dep't of Treasury*, 282 Mich App 464, 467; 766 NW2d 300 (2009). The law of the case doctrine "holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue." *Sinicropi v Mazurek*, 279 Mich App 455, 465; 760 NW2d 520 (2008). "[A] question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case." *Id.* The law of the case applies to issues actually decided either implicitly or explicitly. *Grievance Adm'r v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). If a defendant has an objection to the decision of the appellate court, "his redress is an application for rehearing to the deciding court or an appeal to a still higher tribunal." *People v Whisenant*, 384 Mich 693, 702; 187 NW2d 229 (1971). The law of the case "need not be applied to create an injustice or where a prior decision is clearly erroneous." *People v Wells*, 103 Mich App 455, 463; 303 NW2d 226 (1981). "Two exceptions to the doctrine exist: (1) when the decision would preclude the independent review of

constitutional facts and (2) when there has been an intervening change of law.” *Webb v Smith*, 224 Mich App 203, 209; 568 NW2d 378 (1997), citing *MS Dev, Inc v Auto Plaza of Woodhaven (After Remand)*, 220 Mich App 540, 548; 560 NW2d 62 (1996), rev’d on other grounds 456 Mich 935 (1998).

The law of the case doctrine applies. This Court explicitly ruled on the validity of the search and seizure of the evidence and reversed the trial court’s order suppressing the evidence. *People v Edward Hart*, unpublished order of the Court of Appeals, entered January 24, 2008 (Docket No. 281813). Defendant’s avenue of redress from that order was to apply for rehearing or appeal to the Michigan Supreme Court. *Whisenant*, 384 Mich at 702. Defendant did neither. Rather, defendant now seeks to have this Court reconsider its own ruling on the grounds that to apply the law of the case would deny defendant independent review of the constitutional issue. This is not the case. The constitutional issue and facts defendant seeks to have reviewed are the same as this Court reviewed in issuing the January 24, 2008 order. Defendant does not argue that this Court previously failed to consider relevant facts relating to the search and seizure or that the facts this Court considered have changed. Also, there has been no intervening change in the law. Therefore, this Court is bound by its January 24, 2008 order and will not revisit the decision regarding the admissibility of the challenged evidence.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Kurtis T. Wilder