

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES WESLEY MCKINNEY,

Defendant-Appellant.

UNPUBLISHED
September 13, 2012

No. 305093
Hillsdale Circuit Court
LC No. 09-332105-FC

Before: WILDER, P.J., and O'CONNELL and K. F. KELLY, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions for first-degree murder, MCL 750.316(1)(a), unlawfully driving away a motor vehicle, MCL 750.413, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to life in prison without the possibility of parole for his murder conviction, two to five years' imprisonment for unlawfully driving away a motor vehicle, and two years' imprisonment for felony-firearm. We affirm.

The only argument raised by defendant relates to the admission of his confession. The trial court previously granted defendant's motion to suppress his confession. The prosecution sought leave to appeal in this Court and we affirmed. *People v McKinney*, unpublished opinion per curiam of the Court of Appeals, issued October 26, 2010 (Docket No. 296455). In lieu of granting leave to appeal, the Michigan Supreme Court reversed, finding that defendant's statement that "he would 'just as soon wait' until he had an attorney before talking to the police, followed immediately by his statement that he was willing to discuss the 'circumstances,' was not an unequivocal assertion of the right to counsel or a statement declaring an intention to remain silent." *People v McKinney*, 488 Mich 1054; 794 NW2d 614 (2011). The case was remanded for trial, during which defendant's confession was admitted and defendant was convicted as previously noted. Defendant now appeals his conviction, arguing his confession should have been suppressed.

We conclude that the law of the case doctrine applies and we are bound by the Supreme Court's decision. The law of the case doctrine "provides that an appellate court's decision regarding a particular issue is binding on courts of equal or subordinate jurisdiction during subsequent proceedings in the same case." *People v Herrera (On Remand)*, 204 Mich App 333, 340; 514 NW2d 543 (1994).

While defendant argues his confession should have been suppressed because he unequivocally invoked his right to counsel after which police impermissibly continued their interrogation, the Michigan Supreme Court has already determined defendant did not unambiguously invoke his right to counsel or his right to remain silent. The law governing the issue has not changed, nor have the facts of the case materially changed. See *People v Phillips*, 227 Mich App 28, 31-32; 575 NW2d 784 (1997); *People v Spinks*, 206 Mich App 488, 491; 522 NW2d 875 (1994). As such, this Court is bound by the Supreme Court's decision. *Herrera*, 204 Mich App at 340.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly