STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 20, 2012
v JOSE EMILIO GARCIA, Defendant-Appellant.	No. 306170 Oakland Circuit Court LC No. 2010-230666-FH

Before: STEPHENS, P.J., and OWENS and MURRAY, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for possession with intent to deliver 50 to 449 grams of heroin, MCL 333.7401(2)(a)(iii), possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v), felon in possession of a firearm (felon in possession), MCL 750.224f, and three counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to 10 to 20 years for the possession with intent to deliver heroin conviction, 10 to 15 years for the possession of cocaine conviction, 10 to 20 years for the felon in possession conviction, and two years for each felony-firearm conviction. We affirm.

Defendant requests this Court to reverse his convictions and sentences and suppress the evidence gathered as a result of a search of his home. We decline to do so. Defendant's argument on appeal is virtually identical to the argument he raised in a prior interlocutory appeal and is, therefore, precluded by the law of the case doctrine.

In *People v Osantowski*, 274 Mich App 593, 614-615; 736 NW2d 289 (2007), rev'd in part on other grounds 481 Mich 103 (2008), this Court stated:

> Where a prior ruling of this Court concerns the same question of law in the same case, the doctrine of law of the case applies and the prior ruling is controlling. A legal issue raised in one appeal may not be raised in a subsequent appeal after proceedings held on remand to a lower court. [Citing *People v Stinson,* 113 Mich App 719, 730; 318 NW2d 513 (1982).]

When the facts and law remain materially unchanged, a previous panel's decision is controlling in a subsequent appeal in the same case. *People v Fisher*, 449 Mich 441, 444-445; 537 NW2d 577 (1995); see also *People v Ham-Ying (After Remand)*, 178 Mich App 601, 606; 444 NW2d

529 (1989) ("The reason for the rule is the need for finality of judgment and the want of jurisdiction in an appellate court to modify its own judgments except on rehearing.").

Defendant requests this Court to find that the emergency aid exception to the warrant requirement and independent source doctrine do not apply to the facts of this case. This finding, however, would be contrary to this Court's decision in *People v Garcia*, unpublished opinion per curiam of the Court of Appeals, issued March 29, 2011 (Docket No. 300145), in which this Court stated:

> [A]s the district court found, even striking all references to marijuana, the affidavit also contained the admission by defendant that he had been using cocaine in his condominium, which would give the magistrate a substantial basis to find probable cause that there was contraband located in the unit. Accordingly, the independent source of defendant's admission provided the basis for a valid search warrant, and *all* items found in the house pursuant to this warrant – marijuana, guns, cocaine, and heroin – are admissible. Therefore, the circuit court properly reinstated counts 2 through 6 of the information, which constituted charges related to the cocaine and firearms. [*Garcia*, unpub op at 7; internal citations omitted.]

Defendant does not argue that the material facts or law have changed since this Court's prior decision in this case. Thus, if defendant desired further consideration of this issue, he should have either requested reconsideration before this Court or appealed to the Supreme Court. Since he did neither, the decision became the law of the case and further review is precluded. *Ham-Ying (After Remand)*, 178 Mich App at 606.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Donald S. Owens
/s/ Christopher M. Murray