

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMEL WATTS,

Defendant-Appellant.

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UNPUBLISHED

October 30, 2001

No. 220281

Wayne Circuit Court

Criminal Division

LC No. 93-008740

Before: Cooper, P.J., and Sawyer and Owens, JJ.

PER CURIAM.

Defendant was convicted by a jury in 1994 of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b. This Court affirmed defendant's convictions in a prior appeal. *People v Watts*, unpublished opinion per curiam of the Court of Appeals, issued July 30, 1996 (Docket No. 182210) (*Watts I*). Subsequently in 1999, the trial court granted defendant's motion for relief from judgment under MCR 6.500 *et seq.*, and issued an amended judgment of sentence from which defendant now appeals as of right. We affirm.

The majority of the issues that defendant now raises on appeal were previously addressed and decided by this Court in *Watts I*. Accordingly, further review of those issues is limited by the law of the case doctrine. Under that doctrine, an appellate court's determination of an issue in a specific case is binding on lower tribunals on remand and also upon the appellate court in subsequent appeals. *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). The doctrine applies only to issues actually decided, either implicitly or explicitly, in the previous appeal. *Id.* Moreover, "an appellate court's determination of law will not be differently decided . . . if the facts remain materially the same." *People v Kozyra*, 219 Mich App 422, 433; 556 NW2d 512 (1996). Where a defendant disagrees with an appellate court's original ruling, his remedy is to seek redress in a higher court. *Id.* "The rationale behind the doctrine is the need for finality of judgments and the lack of jurisdiction of an appellate court to modify its judgments except on rehearing." *South Macomb Disposal Authority v American Ins Co*, 243 Mich App 647, 654; 625 NW2d 40 (2000).

The primary purpose of the doctrine is to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit. However, the doctrine does not preclude reconsideration of a question if there has been an intervening change of law. For this exception to apply, the

change of law must occur after the initial decision of the appellate court. Whether law of the case applies is a question of law subject to review de novo. [*Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001) (citations omitted).]

In civil cases, the law of the case doctrine applies without regard to whether the prior panel's decision was the correct one. *Kalamazoo v Dep't of Corrections (After Remand)*, 229 Mich App 132, 135; 580 NW2d 475 (1998). An appellate court is not bound by the doctrine, but applies the doctrine as a discretionary rule of practice. *Id.* at 135-136. However, in criminal cases a trial court retains the authority to grant a new trial at any time where "justice has not been done." MCL 770.1. Thus, the law of the case doctrine is more flexible in criminal cases and will not be applied if it creates injustice or if the prior opinion was clearly erroneous. *People v Phillips (After Second Remand)*, 227 Mich App 28, 33-34; 575 NW2d 784 (1997); *People v Herrera (On Remand)*, 204 Mich App 333, 340-341; 514 NW2d 543 (1994). For instance, a prior erroneous decision will not be allowed to stand where the party's constitutional rights are involved and those rights would be violated if the erroneous decision was allowed to stand. *Bennett v Bennett*, 197 Mich App 497, 499-500; 496 NW2d 353 (1992), following *Locricchio v Evening News Ass'n*, 438 Mich 84, 109; 476 NW2d 112 (1991).

Here, all but one of defendant's issues were previously addressed and decided in *Watts I*. Defendant has not shown that that panel's decisions with regard to those issues were erroneous or that there has been an intervening change in the law that would affect the result in this case. Accordingly, the law of the case doctrine forecloses further consideration of those issues.

We agree, however, that the prior panel failed to address defendant's argument that the trial court improperly limited his cross-examination of Louis Jones. Accordingly, we will address the merits of that issue.

The scope of cross-examination is within the trial court's sound discretion and this Court will not reverse absent an abuse of discretion. *Wischmeyer v St Mary's Medical Center*, 449 Mich 469, 474-475; 536 NW2d 760 (1995). An abuse of discretion occurs when the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *People v Babcock*, 244 Mich App 64, 76; 624 NW2d 479 (2000).

At trial, defense counsel attempted to impeach Louis Jones with a prior statement that he gave to the police. The trial court refused to allow defense counsel to use the statement for impeachment purposes, concluding that the prior statement was not inconsistent with Jones' trial testimony. MCR 613(b). Defendant failed to show that the witness' trial testimony was inconsistent with the prior statement. Therefore, the prior statement was inadmissible. The trial

court did not abuse its discretion in limiting defendant's cross-examination of this witness.  
*People v Lucas*, 188 Mich App 554, 572; 470 NW2d 460 (1991).

Affirmed.

/s/ Jessica R. Cooper

/s/ David H. Sawyer

/s/ Donald S. Owens