STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 17, 2008
v	No. 274676 Jackson Circuit Court
DENNIS WAYNE KURTS, Defendant-Appellant.	LC No. 04-000365-FH

Before: Wilder, P.J., and Murphy and Meter, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of operating a motor vehicle while intoxicated, third offense, MCL 257.625(1) and (9), operating a motor vehicle with a schedule 1 controlled substance in his body, MCL 257.625(8), and operating a motor vehicle with a suspended or revoked license, MCL 257.904. At sentencing, the trial court vacated the conviction for operating a motor vehicle with a schedule 1 controlled substance in the body. We affirm defendant's convictions.

This case was previously addressed in an interlocutory appeal filed by the prosecution, culminating in our Supreme Court's ruling in *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006).[1] The Supreme Court stated:

> In these consolidated appeals, we are called upon to determine whether 11-carboxy-THC, a "metabolite" or byproduct of metabolism created when the body breaks down THC (tetrahydrocannabinol), the psychoactive ingredient of marijuana, is a schedule 1 controlled substance under MCL 333.7212 of the Public Health Code. We hold that it is. Thus, a person operating a motor vehicle with 11-carboxy-THC in his or her system may be prosecuted under MCL 257.625(8), which prohibits the operation of a motor vehicle with any amount of a schedule 1 controlled substance in the body. [*Derror, supra* at 319-320.]

Constitutional issues raised by defendant were rejected by the Supreme Court. *Id.* at 334-341.

[1] Defendant's case was consolidated with *Derror*.

Here, defendant first argues that carboxy THC, a metabolite of marijuana with no pharmacologic effects, is not a schedule 1 controlled substance for purposes of a prosecution under MCL 257.625(8) and that MCL 333.7106, which defines marijuana, is unconstitutionally vague and overbroad. As recognized by defendant, our Supreme Court has already addressed and rejected these arguments during the interlocutory appeal, and the law of the case doctrine bars further consideration of the issues on our part. See *Grievance Administrator v Lopatin*, 462 Mich 235, 259-260; 612 NW2d 120 (2000). Outside the law of the case doctrine, we are of course likewise bound by the Supreme Court's holding addressing the issues raised by defendant. *Boyd v W G Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993), overruled on other grounds *Karaczewski v Farbman Stein & Co*, 478 Mich 28, 30; 732 NW2d 56 (2007). We also note that the trial court vacated the conviction under MCL 257.625(8); therefore, the issue would appear to be moot. *People v Briseno*, 211 Mich App 11, 17; 535 NW2d 559 (1995).

Defendant next argues that during his cross-examination, the prosecutor improperly asked defendant to comment on the credibility of a police officer who testified for the prosecution. Defendant failed to raise this issue below; therefore, our review is for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). We find it unnecessary to determine whether the line of questioning was improper because, assuming error, defendant was not prejudiced given the nature of the harmless questioning and the strength of the evidence, especially considering that this was a bench trial. *People v Garfield*, 166 Mich App 66, 79; 420 NW2d 124 (1988) (trial judge is presumed to know the law). Accordingly, reversal is unwarranted.

A remaining issue relating to the assessment of attorney fees has been rendered moot as the fee has been paid.

Affirmed.

/s/ Kurtis T. Wilder
/s/ William B. Murphy
/s/ Patrick M. Meter