

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RASON HORTON,

Defendant-Appellant.

UNPUBLISHED

November 29, 2007

No. 271966

Washtenaw Circuit Court

LC No. 04-001537-FC

Before: Donofrio, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to 20 to 35 years' imprisonment for the armed robbery conviction consecutive to a two-year prison term for felony-firearm. We affirm.

Armed with a handgun, defendant entered a Citgo gas station in Ann Arbor, Michigan. Defendant forced the clerk to help him remove a safe from under the gas station counter. The clerk subsequently identified defendant as the robber. Defendant later confessed to the crime.

Before he was arrested, defendant was involved in similar robberies at other gas stations in Ann Arbor and Detroit. Thereafter, defendant fled to New Mexico, but the police apprehended him in that state. Ann Arbor detectives flew to New Mexico to interview defendant, where he essentially confessed to the Citgo and other robberies.¹ The prosecution brought charges against defendant in three separate proceedings. Defendant moved to suppress his statements given to the detectives at a consolidated *Walker*² hearing. The trial court denied defendant's motion. Defendant proceeded to trial for the charges arising from the subsequent Ann Arbor robbery. Defendant was convicted of first-degree felony murder, carjacking, armed robbery and felony-firearm. This Court affirmed defendant's conviction. *People v Horton*,

¹ The Ann Arbor detectives were investigating a homicide that occurred during a subsequent robbery.

² *People v Walker*, 374 Mich 331; 132 NW2d 87 (1965).

unpublished opinion per curiam of the Michigan Court of Appeals, issued January 18, 2007 (Docket No. 264604), aff'd 478 Mich 871; 731 NW2d 739 (2007).

Defendant first argues that his armed robbery conviction should be reversed because the trial court erred in denying his motion to suppress. Defendant obviously prepared his brief when his appeal was still pending in Docket No. 264604 because he incorporates his arguments in that case and asserts this Court's ruling in that case "will become the law of the case with respect to the claim raised in the instant case." While defendant erroneously submits that this appeal implicates the law of the case doctrine,³ we agree that this Court's determination in Docket No. 264604 is dispositive on this issue. Collateral estoppel bars defendant from litigating this issue again in this appeal. *People v Gates*, 434 Mich 146, 154; 452 NW2d 627 (1990).

This Court reviews de novo questions of law related to the admissibility of evidence. *People v Callon*, 256 Mich App 312, 321; 662 NW2d 501 (2003). Likewise, whether collateral estoppel precludes a party from raising a claim is a legal question that this Court reviews de novo. *Horn v Dep't of Corrections*, 216 Mich App 58, 62; 548 NW2d 660 (1996).

The United State Supreme Court has held that collateral estoppel applies in criminal cases. *Ashe v Swenson*, 397 US 436, 443; 90 S Ct 1189; 25 L Ed 2d 469 (1970). The doctrine means "that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *Id.* "Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties where the prior proceeding culminated in a valid, final judgment and the issue was (1) actually litigated, and (2) necessarily determined." *Gates, supra* at 154. "Collateral estoppel applies only where the basis of the prior judgment can be ascertained clearly, definitely, and unequivocally." *Id.* at 158.

We conclude that collateral estoppel bars the instant defendant's claim of error regarding the trial court's ruling on the suppression hearing. Defendant concedes that the legal and factual issues are the same. Further, the same parties are involved in both cases. This Court has already affirmed the trial court's ruling that denied defendant's motion to suppress. See *Horton, supra*, slip op at 2-4. Additionally, our Supreme Court denied leave to appeal, 478 Mich 871, so this Court's decision in Docket No. 264604 is a final adjudication, MCR 7.302(G)(3). Thus, collateral estoppel precludes relitigation of the trial court's denial of defendant's suppression motion in the instant appeal between the same parties because the previous appeal "culminated in

³ "Under the law of the case doctrine, an appellate court's determination of law will not be differently decided on a subsequent appeal in the same case if the facts remain materially the same." *People v Kozyra*, 219 Mich App 422, 433; 556 NW2d 512 (1996). The law of the case doctrine is analytically related to claim preclusion (*res judicata*) and issue preclusion (collateral estoppel). *Locricchio v Evening News Ass'n*, 438 Mich 84, 109; 476 NW2d 112 (1991). "[R]es judicata bars the reinstatement of the same cause of action by the same parties in a subsequent suit. Collateral estoppel bars the relitigation of issues previously decided when such issues are raised in a subsequent suit by the same parties based upon a different cause of action." *Topps-Toeller, Inc v City of Lansing*, 47 Mich App 720, 727; 209 NW2d 843 (1973).

a valid, final judgment and the issue was (1) actually litigated, and (2) necessarily determined.” *Gates, supra* at 154.

Next, defendant alleges that the prosecution engaged in misconduct requiring reversal. We disagree. This Court reviews claims of prosecutorial misconduct de novo. *People v Wilson*, 265 Mich App 386, 393; 695 NW2d 351 (2005). “The test is whether defendant was denied a fair and impartial trial.” *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995).

We find that there was no prejudice to defendant based on the prosecution’s arguments that the defense was not credible, and the record does not support defendant’s contention that the prosecution made an improper appeal to the jury’s sympathy or expressed a personal belief that the defense was fraudulent or that defendant was guilty. Thus, we conclude that defendant was not denied a fair trial. *Paquette, supra* at 342.

We affirm.

/s/ Patrick M. Donofrio

/s/ Joel P. Hoekstra

/s/ Jane E. Markey