

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DERRICK J. RAY,

Defendant-Appellant.

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UNPUBLISHED  
October 27, 1998

No. 200605  
Recorder's Court  
LC No. 95-014100

Before: Kelly, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for first-degree premeditated murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to life in prison for the first-degree murder conviction, and two years in prison for the felony-firearm conviction, the two sentences to run consecutively. We affirm.

Defendant argues that he is entitled to a new trial on the basis that his purported jury waiver was invalid because the judge presiding over the jury waiver hearing failed to inquire on the record whether defendant understood that she may not be the same judge presiding at his bench trial. The trial court's determination that a defendant validly waived his right to a jury trial is reviewed for clear error. *People v Leonard*, 224 Mich App 569, 595; 569 NW2d 633 (1997).

Our review of the record shows that the judge accepting the waiver complied with all the requirements of MCR 6.402(B). A trial court is not required to inform a defendant, prior to waiving his right to a jury trial, that a different judge may preside at his bench trial. MCL 763.3; MSA 28.856; MCR 6.402(B). Furthermore, once a defendant has validly waived his right to a trial by jury, "any judge of the court in which said cause is pending shall have jurisdiction to proceed with the trial of said cause." MCL 763.4; MSA 28.857. In this case, it appears that the presiding judge at the jury waiver hearing transferred the case to a different judge in order to avoid any appearance of impropriety on her part since she sat as the trier of fact in an earlier case involving defendant. Further, the record reveals that defendant sought a jury trial on the day of trial not because he was dissatisfied with the particular judge who was assigned to hear the case, but because he had consulted with another attorney who had informed him that, in the event that he was convicted, his grounds for reversal would be stronger if a

jury, rather than a judge, rendered the conviction. Neither a remand nor a reversal of defendant's convictions is warranted on this basis.

Defendant also argues that the trial court erred in denying defense counsel's motion to withdraw because it was apparent that there had been a breakdown in the attorney-client relationship. The decision regarding substitution of counsel is within the sound discretion of the trial court and will not be disturbed on appeal absent a showing of an abuse of discretion. *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991). Appointment of a substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. *Id.* Good cause exists where a legitimate difference of opinion develops between a defendant and his counsel with regard to a fundamental trial tactic. *Id.*

At the start of trial, defense counsel argued that he and defendant had "come to an impasse in terms of" defendant taking defense counsel's advice. The trial court denied the motion on the ground that defendant was simply trying to take control of the proceedings. We find that defendant's request to substitute defense counsel was not supported by a showing of good cause. Our review of the record reveals that retained counsel was always prepared and competent to represent defendant. Furthermore, defendant had never expressed any discontent with counsel during the waiver hearing nor any other time during the ten months preceding the trial. Because the granting of the motion would have unreasonably disrupted the judicial process in this case, we conclude that the trial court did not abuse its discretion.

Defendant also argues that the trial court committed reversible error in admitting evidence that defendant was a drug dealer and owned illegal weapons. We disagree. In order for a defendant to properly preserve a claim respecting the improper admission of evidence, he must timely object to the admission of the challenged evidence during trial. *People v Furman*, 158 Mich App 302, 329-330; 404 NW2d 246 (1987). Because defendant failed to object during trial to the admission of the now-challenged evidence, our review is precluded unless failure to consider the issue would result in manifest injustice. *People v Burgess*, 153 Mich App 715, 723; 396 NW2d 814 (1994). We conclude that manifest injustice will not result if we withhold our review of this issue.

Defendant also argues that the trial court's findings of fact and conclusions of law were clearly erroneous because the trial court considered three alternative states of mind in determining whether defendant was guilty of first-degree premeditated murder. We disagree. This Court will not disturb a trial court's findings of fact unless they are clearly erroneous. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). In order to find a defendant guilty of first-degree premeditated murder, there must be a finding that the defendant intended to kill the victim and that the act of killing was premeditated and deliberate. *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). Here, the trial court stated that in order to find defendant guilty, it had to find that defendant had "one of three intents." However, the trial court later stated that it found that defendant intended to kill the victim. We conclude that the trial court's findings of fact were not clearly erroneous.

Affirmed.

/s/ Michael J. Kelly  
/s/ Donald E. Holbrook, Jr.  
/s/ William B. Murphy