

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DAVID HOWELL,

Defendant-Appellant.

UNPUBLISHED

August 1, 2000

No. 213736

Macomb Circuit Court

LC No. 97-002867-FH

Before: Hood, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), MSA 14.15(7401)(2)(a)(iv), carrying a concealed weapon, MCL 750.227; MSA 28.424, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to two to forty years' imprisonment for the drug conviction, one to five years' imprisonment for the carrying a concealed weapon conviction, and two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant first argues that he was denied a fair trial when a police officer was allowed to express his opinion that forty-six packets of crack cocaine indicated an intent to deliver and that over \$700 found on defendant's person indicated drug trafficking and the sale of cocaine. Defendant has failed to preserve the issue by objecting to the officer's testimony during trial. MRE 103(a)(1); *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994). We do not believe that failure to consider this issue would result in manifest injustice. *Grant, supra*, 445 Mich 547.

Defendant next argues that the trial court abused its discretion in denying defendant's motion for an adjournment. We disagree. A trial court's decision to grant or deny a motion for an adjournment is reviewed for an abuse of discretion. *People v Echavarria*, 233 Mich App 356, 369; 592 NW2d 737 (1999).

In determining whether a continuance or adjournment is warranted, a trial court should consider "(1) whether the defendant is asserting a constitutional right, (2) whether the defendant has a legitimate reason for asserting the right, such as a bona fide dispute with his attorney, (3) whether the defendant

was negligent in asserting his right, (4) whether the defendant is merely attempting to delay trial, and (5) whether the defendant demonstrated prejudice resulting from the trial court's decision." *Echavarria, supra*, 233 Mich App 369. Defendant asserted his constitutional right to counsel. However, defendant was unable to demonstrate a legitimate reason for doing so where there was no bona fide dispute with his appointed counsel. Defendant merely stated that he did not think that he had an adequate amount of time to meet with appointed counsel. He never indicated that there was a disagreement or that he was dissatisfied with appointed counsel. Defense counsel indicated that, while there may have been a disagreement about the case, it was her opinion that defendant was merely searching for an attorney who would "tell him what he wants to hear." Counsel expressed her desire to proceed with trial and assured the court that she was prepared to do so. In addition, even if there had been a legitimate dispute, the motion for an adjournment was still properly denied because defendant was negligent in failing to bring the matter to the court's attention prior to the commencement of trial. Defendant was out on bond for some time prior to his trial. There was simply no reason for the delay in seeking substitute counsel and advising the court of the possible conflict. Defendant's failure to alert the court at an earlier time evidences that his motion for an adjournment may have been a delay tactic.

Defendant argues that there was a serious dispute about the theory of the case and that he should have been given an opportunity to retain counsel who would set forth his desired theory. It was defendant's contention that police planted the evidence in his vehicle. However, defendant fails to acknowledge that he was, in fact, given an opportunity to present evidence supporting this theory. Defendant testified that the officer took something from a briefcase in the patrol car before continuing to search defendant's vehicle. Thus, the jury was presented with evidence that the drugs may have been planted. It cannot be said that defendant was prejudiced by the trial court's failure to grant an adjournment where his desired theory was presented at trial.

Finally, defendant argues that the verdict was against the great weight of the evidence. However, the issue is not preserved because defendant failed to move for a new trial before the trial court. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997); *People v Bradshaw*, 165 Mich App 562, 565; 419 NW2d 33 (1988).

Affirmed.

/s/ Harold Hood

/s/ David H. Sawyer

/s/ Mark J. Cavanagh