

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

July 23, 1996

Plaintiff-Appellee,

v

No. 175649

LC No. 93011260

DENNIS L. HUGUELY,

Defendant-Appellant.

Before: Marilyn Kelly, P.J., and Neff and J. Stempien,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of breaking and entering an occupied dwelling with intent to commit larceny, MCL 750.110; MSA 28.305. He subsequently pleaded guilty to being an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, and was sentenced to four to fifteen years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court abused its discretion in failing to *sua sponte* order a hearing, pursuant to MCL 330.2026; MSA 14.800(1026), to determine if defendant was competent to stand trial. We disagree. Although the determination of a defendant's competence to stand trial is within the discretion of the trial court, *People v Newton (After Remand)*, 179 Mich App 484, 488; 446 NW2d 487 (1989), a trial court only has the duty to raise the issue of incompetence where facts are brought to its attention which raise a "bona fide doubt" as to the defendant's competence to stand trial. *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990); *People v Nelson Johnson*, 58 Mich App 473, 475; 228 NW2d 429 (1975). After a review of the record, we find that none of the three instances of conduct committed by defendant before and during trial was sufficient to raise a bona fide doubt with the trial court that defendant was competent to stand trial. *People v Garfield*, 166 Mich App 66, 74; 420 NW2d 124 (1988).

Defendant next argues that his conviction should be reversed because the trial court failed to properly instruct the jury on the essential elements of the lesser included offense of entering without

* Circuit judge, sitting on the Court of Appeals by assignment.

breaking. Defendant failed to properly preserve this issue for appeal because he did not object to the jury instructions given by the trial court. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993); *People v Gregg*, 206 Mich App 208, 211; 520 NW2d 690 (1994). Manifest injustice will not result in our failure to review this issue. *People v Furguson*, 208 Mich App 508, 510; 528 NW2d 825 (1995).

Lastly, defendant argues that the trial court abused its discretion in refusing to grant defendant's request for substitution of counsel. Appointment of substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. *People v Ginther*, 390 Mich 436, 441; 212 NW2d 922 (1973); *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991). Defendant told the court that he no longer wanted to be represented by his appointed counsel on the second day of trial as the prosecution was about to rest its case. Thus, appointment of substitute counsel would have significantly disrupted the judicial process by necessitating an adjournment of the trial in order to permit substitute counsel to become familiar with the case and the trial proceedings up to that point. *People v Cousins*, 139 Mich App 583, 593; 363 NW2d 285 (1984).

Moreover, in asking for substitute counsel, defendant did not assert that his counsel was inadequate, lacking in diligence or was disinterested in his case. *People v Morgan*, 144 Mich App 399, 401; 375 NW2d 757 (1985); *People v Meyers (On Remand)*, 124 Mich App 148, 165; 335 NW2d 189 (1983). Nor did defendant and his counsel disagree over a fundamental trial tactic. *People v Jones*, 168 Mich App 191, 195; 423 NW2d 614 (1988). Thus, defendant's request for substituted counsel was not supported by a showing of good cause. *Mack, supra*, 14. Under these circumstances, we cannot say that the trial court abused its discretion in failing to appoint substitute counsel for defendant midtrial. *People v Arquette*, 202 Mich App 227, 231; 507 NW2d 824 (1993); *Mack, supra*; *Jones, supra*.

Affirmed.

/s/ Marilyn Kelly
/s/ Janet T. Neff
/s/ Jeanne Stempien