

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEON D. WILLIS,

Defendant-Appellant.

UNPUBLISHED

April 15, 2003

No. 237166

Washtenaw Circuit Court

LC No. 01-000094-FC

Before: Griffin, P.J., and Neff and Gage, JJ.

MEMORANDUM.

Defendant appeals as of right from his convictions of car-jacking, MCL 750.529a, armed robbery, MCL 750.529, and felony-firearm, MCL 750.227(b). He was sentenced to concurrent terms of nine to fifteen years' for the car-jacking and armed robbery convictions, and a two-year consecutive term for the felony-firearm conviction. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that his constitutional right to confrontation was violated when the trial court allowed the preliminary examination testimony of Ricky Love into evidence based on a finding that due diligence was exercised in trying to procure his attendance. See MRE 804(b)(1) and MRE 804(a)(5). In *People v Bean*, 457 Mich 667, 684; 580 NW2d 390 (1998), the Supreme Court stated:

The test for whether a witness is "unavailable" as envisioned by MRE 804(a)(5) is that the prosecution must have made a diligent good-faith effort in its attempt to locate a witness for trial. The test is one of reasonableness and depends on the facts and circumstances of each case, i.e., whether diligent good-faith efforts were made to procure the testimony, not whether more stringent efforts would have produced it The trial court's determination will not be disturbed on appeal unless a clear abuse of discretion is shown. (Citations omitted).

The trial court did not abuse its discretion in finding that Love had been evading service and that the police had exercised due diligence. The police began attempts at service as soon as it became clear that there would be no plea and the case would go to trial. Even if Love was reluctant to testify at the preliminary examination, there was no evidence that he would attempt to evade service. Therefore, it was not unreasonable to wait to serve him until the police knew that the trial was going forward. The police made numerous visits to his residence. They

interviewed neighbors, and received information that would have reasonably led them to believe that Love was in the area, as he was stopping by his home. That Love and his girlfriend were staying at her mother's residence as of the day it became clear the case would go to trial lends support to the deduction that he was evading service. The police made numerous telephone calls to the residence telephone as well as a cell phone, and left messages that would have facilitated Love contacting them. They did not learn that the defendant was in Niles, Michigan, until the night before trial; it would therefore have been unreasonable to expect that they would attempt service in Niles. Under the circumstances, the efforts made were diligent good faith efforts that constituted due diligence. *People v Conner*, 182 Mich App 674, 680-683; 452 NW2d 877 (1990).

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Hilda R. Gage