

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND LEE WOOD,

Defendant-Appellant.

UNPUBLISHED

July 25, 1997

No. 191434

Ingham Circuit Court

LC No. 87-057128 FC

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

After remand pursuant to this Court's Docket No. 135972 for a hearing to determine whether the prosecutor provided statutorily requisite "reasonable assistance" in locating *res gestae* witnesses the defense wished to call as trial witnesses, MCL 767.40a(5); MSA 28.980(1)(5), the Ingham Circuit Court determined that reasonable assistance had been furnished, and defendant's motion for new trial on this basis was denied. Defendant appeals by right. This case is being decided without oral argument pursuant to MCR 7.214(E).

The assistant prosecutor erred in suggesting that only after the defense first exhausted its own resources in attempting to locate the missing witnesses and serve them with trial subpoenas did the prosecution have an obligation under the statute of providing "reasonable assistance." In *People v Burwick*, 450 Mich 281, 288; 537 NW2d 813 (1995), the Court held that the prosecutor's statutory obligation to provide reasonable assistance in locating witnesses does not require "a showing of demonstrated need or unsuccessful efforts on the part of the defense."

For his part, defendant errs in attempting to apply a due diligence standard to such prosecution efforts. The prosecutor must exercise due diligence in producing persons listed as prosecution witnesses to be called at trial. *Id.*, at 287. The judicially developed "due diligence" standard formerly applicable to *res gestae* witnesses has, for defense witnesses, been replaced only with the lesser, statutory standard of "reasonable assistance."

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

The statute provides the defense the option of requesting assistance from the prosecuting attorney, an investigative law enforcement agency, or both. Here, defendant's request was addressed only to the prosecutor, and therefore called into play only such reasonable assistance as the prosecutor's own resources might afford. Defendant did not seek the assistance of an investigative law enforcement agency and cannot be heard to complain that such agencies failed to provide reasonable assistance. The testimony at the hearing on remand established that the prosecutor did exhaust the resources at her command in attempting to locate and serve the missing witnesses, albeit without success, and thus the statutory obligation of "reasonable assistance" was fulfilled. Put another way, the trial court's finding that reasonable assistance was provided is not clearly erroneous.

Furthermore, the record fails to indicate that any suggested additional efforts would have been successful. Thus, any shortcomings have not been shown to be prejudicial to the defense, and relief from defendant's conviction is therefore unwarranted, since no miscarriage of justice has occurred. *People v Grant*, 445 Mich 535, 544 ff; 520 NW2d 123 (1994). Likewise, there is no indication that the witnesses would have provided testimony favorable to the defendant.

Affirmed.

/s/ Kathleen Jansen
/s/ Myron H. Wahls
/s/ Patrick R. Joslyn