

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GLENN LLOYD ETHRIDGE,

Defendant-Appellant.

UNPUBLISHED

February 13, 1998

No. 191245

Recorder's Court

LC No. 94-011043 FC

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

MEMORANDUM.

Defendant was convicted by a jury of first-degree 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 consecutive terms of two years' imprisonment for the felony-firearm conviction and life in prison without parole for the murder conviction. Defendant appeals as of right. We affirm.

Defendant argues that the trial court erred in refusing to give defendant's requested "adverse inference" instruction, CJI2d 5.12, where the prosecutor failed to produce an endorsed res gestae witness and no hearing was held to establish whether the prosecutor used due diligence to produce this witness. However, after reviewing the record we conclude that the prosecutor's representations to the trial court concerning the efforts made to secure this witness establish due diligence. Cf. *People v Burwick*, 450 Mich 281, 294; 522 NW2d 631 (1995). Accordingly, defendant was not entitled to his requested instruction. *People v Paquette*, 214 Mich App 336, 344; 543 NW2d 342 (1995).

Affirmed.

/s/ Jane E. Markey

/s/ Martin M. Doctoroff

/s/ Michael R. Smolenski