STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARRETT LLOYD DIXON,

Defendant-Appellant.

UNPUBLISHED
October 20, 1998

No. 198262
Jackson Circuit Court
LC No. 96-076312 FH

Before: Corrigan, C.J., and Doctoroff and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). He was sentenced to one to twenty years' imprisonment. We affirm.

Defendant first argues that the trial court erred in finding that the prosecution exercised due diligence in attempting to locate the confidential informant who purchased the cocaine. We disagree. The trial court's determination of due diligence is a factual matter and the court's findings will not be set aside on appeal unless clearly erroneous. *People v Wolford*, 189 Mich App 478, 484; 473 NW2d 767 (1991).

The prosecutor does not have a duty to use due diligence to produce all res gestae witnesses. *People v Burwick*, 450 Mich 281, 288; 537 NW2d 813 (1995). However, once the prosecution files a list of witnesses it intends to produce at trial as required by MCL 767.40a(3); MSA 28.980(1)(3), the prosecution is required to exercise due diligence to produce a witness on that list, unless the prosecution seeks to delete the witness from its witness list pursuant to MCL 767.40a(4); MSA 28.980(1)(4). *Wolford, supra*, 189 Mich App 483-484. "Due diligence is the attempt to do everything reasonable, not everything possible, to obtain the presence of a witness." *People v DeMeyers*, 183 Mich App 286, 291; 454 NW2d 202 (1990). The test for due diligence is whether "diligent good-faith efforts were made to procure the [witness' presence], not whether more stringent efforts would have produced [the witness]." *People v Bean*, 457 Mich 677, 684; __ NW2d __ (1998). See also *People v Watkins*, 209 Mich App 1, 4; 530 NW2d 111 (1995). An examination of

the record reveals that reasonable and diligent good-faith efforts were made to locate the informant and secure his presence at trial. The police first attempted to locate Taylor in a rehabilitation program where they expected him to be based on information from a police officer familiar with Taylor. When Taylor, who was wanted on a bench warrant for violating his probation, was not found in the rehabilitation program, the police checked Taylor's last known address and the local and national (LEIN) computer system, contacted Taylor's probation officer, spoke to other informants, and gave a subpoena to an officer who had reported seeing Taylor in the preceding weeks. Under these circumstances, we conclude that the trial court did not clearly err in finding that the prosecution exercised due diligence in attempting to locate Taylor.

Defendant next argues that his alleged inculpatory statement should not have been admitted because the corpus delicti of the crime was not satisfied. We review a trial court's decision to admit evidence for an abuse of discretion. *People v Howard*, 226 Mich App 528, 551; 575 NW2d 16 (1997). Here, defendant claims that the corpus delicti was not satisfied because his identity as the seller of the cocaine was not shown by independent evidence. However, this position was squarely rejected by our Supreme Court in *People v Konrad*, 449 Mich 263, 270; 536 NW2d 517 (1995):

> The defendant's contention that proof of the corpus delicti requires evidence that the cocaine was constructively possessed *by the defendant* is incorrect. "Proof of the identity of the perpetrator of the act or crime is not part of the corpus delicti." *Di Orio*, 150 F2d 939. It is sufficient to show that the crime was committed by someone." [Emphasis in the original.]

Accordingly, defendant's argument is without merit.

Affirmed.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ E. Thomas Fitzgerald