

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MIKE BAHRI,

Defendant-Appellant.

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UNPUBLISHED  
February 17, 2004

No. 244229  
Oakland Circuit Court  
LC No. 01-182114-FH

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction of felonious assault, MCL 750.82, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A trial court may admit a witness' prior testimony if the witness is unavailable for trial. MRE 804(b)(1). A witness is unavailable if he is absent from the hearing and the proponent of his statement has been unable to procure his attendance, notwithstanding the exercise of due diligence. MRE 804(a)(5). Due diligence is the attempt to do everything that is reasonable, not everything that is possible, to obtain the presence of a witness. *People v Cummings*, 171 Mich App 577, 585; 430 NW2d 790 (1988). The focus is on whether diligent, good-faith efforts were made to procure the testimony and not on whether more stringent efforts would have produced it. *People v Bean*, 457 Mich 677, 684; 580 NW2d 390 (1998). Whether the prosecution exercised due diligence depends on the facts of each case. *Id.* We review the trial court's findings of fact for clear error, *People v Lawton*, 196 Mich App 341, 348; 492 NW2d 810 (1992), and the determination of due diligence for an abuse of discretion. *Bean*, *supra* at 684.

Defendant argues that the trial court abused its discretion by determining that the prosecution exercised due diligence in attempting to locate the complainant, and that the use of the complainant's preliminary examination testimony at trial violated defendant's constitutional right to confront his accuser. US Const, Am VI; Const 1963, art 1, § 20. We disagree and affirm. The complainant's whereabouts were unknown before trial. The prosecution engaged in extensive and protracted efforts to locate him in order to secure his presence at trial. The efforts continued over several months and included contacting the complainant's relatives and possible place of employment, checking with hospitals, morgues, and jails, and contacting law enforcement agencies, the Department of Corrections, various state agencies, and local utility companies. Cf. *People v James (After Remand)*, 192 Mich App 568, 571-572; 481 NW2d 715

(1992) (no effort made to locate witness until day of trial). Defendant identifies no other steps the prosecution could have taken in an effort to locate the complainant. The trial court did not clearly err in finding that the prosecution made diligent, good-faith efforts to locate the complainant. *Lawton, supra* at 348. Defendant had the opportunity to cross-examine the complainant at the preliminary examination. See *People v Briseno*, 211 Mich App 11, 14; 535 NW2d 559 (1995). The trial court did not abuse its discretion by concluding that the complainant's preliminary examination testimony was admissible at trial. *Bean, supra* at 684. The testimony bore sufficient indicia of reliability, and its admission did not deprive defendant of his constitutional right to confront his accuser. MRE 804(b)(1); *People v Meredith*, 459 Mich 62, 66-71; 586 NW2d 538 (1998).

Affirmed.

/s/ Bill Schuette

/s/ Patrick M. Meter

/s/ Donald S. Owens