STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 12, 2004
v	No. 248707 Macomb Circuit Court
C.J. F. MILLENDER, Defendant-Appellant.	LC No. 2002-001933-FH

Before: Cavanagh, P.J., and Jansen and Saad, JJ.

PER CURIAM.

Defendant appeals by right from his convictions by jury of assault with a dangerous weapon, MCL 750.82, assault with intent to do great bodily harm less than murder, MCL 750.84, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

Defendant first argues that he was deprived of a fair trial because the police failed to fully investigate and discover exculpatory evidence. After de novo review, we disagree. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). Contrary to defendant's assertions, it is well established that the prosecution does not have the affirmative duty to seek and find exculpatory evidence. See *People v Burwick*, 450 Mich 281, 289 n 10; 537 NW2d 813 (1995); *People v Sawyer*, 222 Mich App 1, 6; 564 NW2d 62 (1997).

Next, defendant argues that his due process rights were violated by the prosecution's failure to provide him with an alleged four-page statement made to police by codefendant Evelyn Carroll. See *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963). After de novo review, we disagree. See *Hawkins*, *supra*.

During the trial, counsel for codefendant Carroll told the trial judge that his client advised him that she had written the statement for the police but that he had not received a copy of it in the discovery materials. The prosecutor denied that such statement existed, the two police officers who allegedly took the statement testified that they never took a written statement from Carroll, and the police file contained no such statement. The trial judge ordered that the statement be looked for and subsequently was advised by the officers and the prosecutor that such a statement did not exist. Codefendant's counsel requested an evidentiary hearing on the matter which was denied by the trial court on the grounds that it had already been established that even if it existed at one time, it no longer did and everyone with such information other than

Carroll had already indicated that it did not exist. The trial court's denial did not constitute an abuse of discretion. See *People v Collins*, 239 Mich App 125, 138-139; 607 NW2d 760 (1999). Further, contrary to defendant's argument on appeal, the prosecutor did not "suppress" the alleged statement since it did not even know of or possess the statement. See *People v Davis*, 199 Mich App 502, 514; 503 NW2d 457 (1993).

Finally, defendant argues that the prosecution failed to use due diligence to procure a res gestae witness, Marcus Bowman. However, the prosecutor removed Bowman from his witness list pursuant to MCL 767.40a(4), which permits such deletion upon leave of the court and for good cause shown. Due diligence is the standard regarding *production* of a witness. See *People v Wolford*, 189 Mich App 478, 484; 473 NW2d 767 (1991). A trial court's conclusion on whether good cause was shown is reviewed for an abuse of discretion. *Burwick*, *supra*. Here, the trial court noted that defendant did not object to the removal of Bowman from the witness list and good cause was established because efforts to locate him failed. There was no abuse of discretion.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Henry William Saad