

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TANISHA TERREL,

Defendant-Appellee.

UNPUBLISHED

April 14, 1998

No. 202511

Wayne Circuit Court

LC No. 97-000369

Before: Michael J. Kelly, P.J., and Fitzgerald and M.G. Harrison*, JJ.

MEMORANDUM.

The Wayne County Prosecutor appeals by right dismissal of charges of assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279, on grounds of pre-arrest delay. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We reverse.

Although a warrant charging defendant with this offense was issued in April, 1994, defendant was not arrested until early in 1997. After an evidentiary hearing, the trial court concluded that defendant had shown that her ability to have a fair trial has been prejudiced by the delay. The reason for the delay was, at least in part, due to the fact that shortly after the warrant was issued, defendant moved to Wisconsin, and, although the prosecution enlisted the aid of the Federal Bureau of Investigation, it was unsuccessful in determining her whereabouts. The fact remains that the prosecution was unable to determine defendant's whereabouts and although defendant's family was aware that these charges were pending, they neither informed the prosecution of defendant's location nor did defendant volunteer to return.

Whether the prosecution's efforts were sufficiently diligent is an issue that need not be resolved; the record contains no indication whatsoever that the delay in arresting defendant was deliberate, perpetrated by the prosecution with the intent of gaining some tactical advantage. Accordingly, as that is a threshold test for finding a due process violation, the lower court erred in dismissing this prosecution. *People v White*, 208 Mich App 126, 134-135; 527 NW2d 34 (1994).

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

Reversed and remanded to the Wayne Circuit Court, Criminal Division, for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ E. Thomas Fitzgerald

/s/ Michael G. Harrison