

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

COREY D. HILL,

Defendant-Appellee.

UNPUBLISHED
December 2, 1997

No. 196304
Recorder's Court
LC No. 96-003084

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

MEMORANDUM.

This appeal is being decided without oral argument pursuant to MCR 7.214(E). The trial court dismissed this armed robbery prosecution after concluding that defendant was prejudiced by a prearrest delay. The prosecutor now appeals as of right. We reverse.

A prearrest delay does not warrant dismissal unless a defendant can show substantial prejudice to his right to a fair trial and intent by the prosecution to gain a tactical advantage. *People v White*, 208 Mich App 126, 134; 527 NW2d 34 (1994). Assuming that the trial court was correct in finding that defendant's ability to present a defense was prejudiced by the delay in this case, defendant was still not entitled to dismissal. During an evidentiary hearing the trial court found no evidence to suggest that the delay was the result of an intentional scheme orchestrated by the prosecution in order to gain a tactical advantage. At worst, this was a case of negligence in promptly investigating the case and effectuating the arrest warrant. Accordingly, dismissal on the basis of a due process violation was erroneous.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ Myron H. Wahls
/s/ John R. Weber

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