

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellant/Cross-Appellee,

v

JERRY SHEPPHARD, JR., KENNETH
SLATCHER, and LARRY BROWN,

Defendants/Appellees/Cross-Appellants,

and

GAYLE O. JOHNSON,

Defendant/Appellee.

UNPUBLISHED
July 28, 1998

No. 202919
Recorder's Court
LC No. 97-900003

Before: Jansen, P.J., and Kelly and Markey, JJ.

PER CURIAM.

The prosecution appeals by leave granted from a Recorder's Court's order denying the prosecution's delayed application for leave to appeal from the Thirty-Sixth District Court's order dismissing the charges against defendants. Defendants Shepphard, Slatcher, and Brown have filed a cross-appeal.

Defendants Slatcher, Brown, and Johnson were Detroit Police Officers and defendant Shepphard was an employee of MPG Checker Cab. Defendants were each charged with one count of committing a gross fraud or cheat at common law, MCL 750.280; MSA 28.491, and one count of conspiracy to commit a gross fraud or cheat at common law, MCL 750.157(a); MSA 28.354(1), by allowing certain taxi cabs to operate without inspection in the City of Detroit. The complaint was signed and the warrants were issued on October 17, 1995.

No preliminary examinations were held in the district court. Instead, defendants moved to dismiss the charges, arguing that the gross fraud or cheat statute was unconstitutionally vague. The

district court held a hearing on November 21, 1995 and February 2, 1996. The district court ultimately ruled that the statute was unconstitutionally vague and entered its order dismissing the charges on February 2, 1996.

The prosecutor did not immediately appeal by right to the Recorder's Court.¹ Rather, the prosecutor ordered the transcript of the hearing in the district court. According to the prosecutor's appellate brief, the transcript was ordered on February 15, 1996. A reminder letter was then sent to the court reporter on July 25, 1996. One volume of the transcripts was received by the prosecutor on August 8, 1996. However, the prosecutor did not immediately review the transcript and the prosecutor did not inform the court reporter that the wrong transcript was sent until November 1, 1996. The correct transcript was received by the prosecutor on November 25, 1996. It was not until February 4, 1997 that the prosecutor finally filed its application for leave to appeal in the Recorder's Court.

The Recorder's Court heard arguments on April 4, 1997, and denied the prosecutor's application for leave to appeal in an order dated April 9, 1997. The Recorder's Court ruled that the application was untimely and that the prosecutor offered no reason for failing to properly follow the appeal procedure. The prosecutor then filed an application for leave to appeal in this Court on April 28, 1997, and this Court granted leave in an unpublished order dated July 21, 1997.

The prosecutor's sole argument on appeal is that the district court erred in dismissing the charges, contending that the district court erred in finding that the gross fraud or cheat statute is unconstitutionally vague. The prosecutor, however, has utterly failed to address the Recorder's Court's reason for the denial of the application for leave to appeal, which is the actual order being appealed to this Court. Because the prosecutor had failed to address the Recorder's Court's reason for denying leave to appeal, we need not even consider granting the prosecutor the relief it seeks. *Joerger v Gordon Food, Inc*, 224 Mich App 167, 175; 568 NW2d 365 (1997); *Roberts & Son Contracting, Inc v North Oakland Development Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987).

Moreover, we agree with cross-appellants that the Recorder's Court did not abuse its discretion in denying the prosecutor's application for leave to appeal. The prosecutor waited for over one year after the district court entered its order dismissing the charges before it filed an application for leave to appeal in the Recorder's Court. The problems surrounding the transcript do not excuse the prosecutor's delay. The Recorder's Court correctly noted at the hearing that the prosecutor should have filed its claim of appeal first, then requested the hearing transcript, and any delay could have resulted in an order by the Recorder's Court to expedite the filing of the transcript. Accordingly, the Recorder's Court did not abuse its discretion in denying the application for leave to appeal as being untimely, there being no good reasons for the delay. See MCR 7.103(B)(6).

Affirmed.

/s/ Kathleen Jansen
/s/ Michael J. Kelly
/s/ Jane E. Markey

¹ Pursuant to MCR 7.101(B)(1)(a), the prosecutor had an appeal of right if it was filed within twenty-one days from the entry of the district court's order on February 2, 1996.