

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RAMON CAMACHO,

Defendant-Appellee.

UNPUBLISHED

February 19, 1999

No. 204548

Recorder's Court

LC No. 96-009655

Before: Gribbs, P.J., and Saad and P.H. Chamberlain*, JJ.

MEMORANDUM.

The people appeal by right an order of the Recorder's Court granting defendant's motion to quash the information charging possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). We reverse and remand for reinstatement of the charge. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A reviewing court may not substitute its judgment for that of the magistrate but may reverse the magistrate's determination of the sufficiency of the evidence to establish probable cause only if an abuse of discretion is apparent on the record. This Court reviews the trial court's decision de novo to determine whether there has been an abuse of the magistrate's discretion. E.g., *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997).

Here, the trial court concluded that the evidence presented at the preliminary examination was insufficient with regard to whether defendant possessed the drugs in question, indicating that it was relying upon *People v Lewis*, 178 Mich App 464; 444 NW2d 194 (1989). The trial court's reliance upon *Lewis* is misplaced. In *Lewis*, drugs were found on a table in a common area of a house, and although there was evidence that the defendant had access to the inside of the house, there was no evidence that the defendant resided there or that drugs or drug-related evidence were found in close proximity to where the defendant's personal papers or possessions were kept. In contrast, in this case the drugs and drug-related evidence were discovered in a bedroom of the house, in close proximity to

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

both recent and old correspondence addressed to defendant, the more recent letters having been sent to defendant at the address searched. On this record, there was no abuse of discretion by the magistrate. See, e.g., *People v Richardson*, 139 Mich App 622; 362 NW2d 853 (1984); *People v McManus*, 121 Mich App 380; 328 NW2d 636 (1982); *People v Lemble*, 103 Mich App 220; 303 NW2d 191 (1981); *People v Peterson*, 63 Mich App 538; 234 NW2d 692 (1975).

Reversed and remanded for reinstatement of the charge. We do not retain jurisdiction.

/s/ Roman S. Gibbs

/s/ Henry William Saad

/s/ Paul H. Chamberlain