

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOHN EDWARD LAFOREST,

Defendant-Appellee.

UNPUBLISHED

March 12, 1999

No. 210447

Genesee Circuit Court

LC No. 97-000945 FH

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

PER CURIAM.

The people appeal as of right the trial court's order closing this case upon granting defendant's motion to quash the information charging defendant with carrying a concealed weapon in a motor vehicle, MCL 750.227; MSA 28.424. See *People v Brooks*, 87 Mich App 515; 275 NW2d 26 (1978). 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. See, e.g., *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997).

Unlike the trial court, we find no abuse of discretion by the magistrate here. The magistrate correctly noted that the issue of whether defendant was traveling within the scope of his concealed weapon permit on the night of his arrest is a factual question for resolution by the trier of fact at trial. *People v Grainger*, 117 Mich App 740, 754-755; 324 NW2d 762 (1982). The trial court erred in dismissing the case based upon its conclusion that defendant "does have a concealed weapon's permit and was operating under the assumption that he was operating legally." The prosecution is not required to prove that defendant knew he was carrying the gun in violation of his license restrictions, but only that he knowingly carried the gun at the time. *People v Combs*, 160 Mich App 666, 672-673; 408 NW2d 420 (1987). See also *People v Quinn*, 440 Mich 178; 487 NW2d 194 (1992). Defendant's

“assumptions” about his compliance with the restrictions of his concealed weapon permit are irrelevant, as well as unsupported by any actual sworn testimony.

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

/s/ William B. Murphy

/s/ Barbara B. MacKenzie

/s/ Michael J. Talbot