

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CARLOS M. RIVERA,

Defendant-Appellee.

UNPUBLISHED

November 25, 1997

No. 194003

Oakland Circuit Court

LC No. 95-141842 FH

Before: O'Connell, P.J., and White and C. F. Youngblood*, JJ.

MEMORANDUM.

The Oakland Prosecutor appeals by right dismissal of this prosecution for possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(iv); MSA 14.15(7403)(2)(iv), the circuit court having determined that the amount of cocaine on the prosecution's exhibit, a plastic bag, is not visible to the naked eye. *People v Harrington*, 396 Mich 33, 49; 238 NW2d 20 (1976); *People v Hunten*, 115 Mich App 167, 170-171; 320 NW2d 68 (1982).

The circuit court erred in focusing on the amount of cocaine which remains on the prosecution's exhibit after testing for the presence of cocaine. Under *Harrington*, the issue is whether, at the time of defendant's arrest, cocaine residue was visible to the naked eye. *Harrington, supra*. At preliminary examination, the arresting officer testified that he observed substantial white residue on the bag in question. Accordingly, the magistrate did not abuse his discretion in binding defendant over for trial on the charge of possession of less than twenty-five grams of cocaine, and the circuit court erred in dismissing the prosecution. *People v Justice (After Remand)*, 454 Mich 334, 344; 562 NW2d 652 (1997).

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

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

/s/ Peter D. O'Connell
/s/ Helene N. White
/s/ Carole F. Youngblood