

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KHARI SPENCE,

Defendant-Appellee.

UNPUBLISHED

April 30, 1999

No. 210570

Wayne Circuit Court - Criminal
Division

LC No. 97-007418

Before: Kelly, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

The prosecution appeals by right from an order of the Wayne Circuit Court granting defendant's motion to suppress evidence and dismissing this case against defendant for carrying a concealed weapon, MCL 750.227; MSA 28.424. We vacate that order and remand this case for further findings of fact. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews the trial court's ultimate decision with regard to a motion to suppress evidence de novo, but reviews for clear error the underlying findings of fact made by the trial court in deciding the motion, according deference to the trial court's resolution of factual issues about which there is conflicting testimony. *People v Parker*, 230 Mich App 337, 339; 584 NW2d 336 (1998); *People v Shields*, 200 Mich App 554, 558; 504 NW2d 711 (1993), lv den 444 Mich 945 (1994).

Here, the prosecution contends the trial court erred in finding that the police lacked probable cause to search defendant because, regardless of whose version of events is believed, defendant knowingly disclosed to the police the fact that he was armed with a weapon, and a person does not have a reasonable expectation of privacy in that which he knowingly discloses to the public. However, the prosecution's argument glosses over several key factual and legal issues raised by the conflicting testimony in this case, such as whether defendant's actions were voluntary and uncoerced, or whether the police officers ever had any justification for a traffic stop in the first place.

The real problem in this case is that the trial court itself failed to address the disputed issues adequately. The trial court's terse remarks from the bench are insufficient to indicate how the court resolved the disputed issues as to whether the traffic stop itself was justified by a reasonable belief that defendant had disregarded a stop sign, whether the police officer's questions to defendant regarding

weapons were prompted by a visible bulge in defendant's clothing, or whether defendant's disclosure of his weapon was the result of some kind of arguably improper tactics by the police officers during the traffic stop, e.g., threatening to search the car, offering to "cut a deal," or other conduct beyond the permissible scope of investigation during a lawful traffic stop. See generally, Anno: *Permissibility under Fourth Amendment of detention of motorist by police, following lawful stop for traffic offense, to investigate matter not related to offense*, 118 ALR Fed 567.

Vacated and remanded for further factfinding consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ Janet T. Neff

/s/ Michael R. Smolenski