

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RALPH GARRETT,

Defendant-Appellee.

UNPUBLISHED

July 5, 2002

No. 229905

Wayne Circuit Court

LC No. 00-006955

Before: Zahra, P.J., and Cavanagh and White, JJ.

MEMORANDUM.

Defendant was charged with carrying a concealed weapon on his person, MCL 750.227. Defendant filed a motion to suppress the gun. Following a hearing, the trial court granted defendant's motion, and dismissed the case. The prosecution appealed, and filed a motion to remand, which this Court granted, retaining jurisdiction. The trial court heard the prosecution's motion to remand on June 19, 2001, following which the trial court again suppressed the evidence and dismissed the charge against defendant. The prosecution appeals, and we affirm.

This Court reviews de novo a trial court's ultimate decision on a motion to suppress. *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). However, the trial court's underlying findings of fact are reviewed for clear error. *Id.*

"Resolution of facts about which there is conflicting testimony is a decision to be made initially by the trial court. The trial judge's resolution of a factual issue is entitled to deference. This is particularly true where a factual issue involves the credibility of the witnesses whose testimony is in conflict." [*People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999), quoting *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983).]

A finding of fact is clearly erroneous if, after a review of the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made. *People v Swirles (After Remand)*, 218 Mich App 133, 136; 553 NW2d 357 (1996). This Court should not overstep its review function by making independent factual findings. *Farrow, supra* at 209.

The prosecution contends that the trial court misconstrued its duty on remand as one of simply reconsidering its earlier findings in light of witness credibility, rather than addressing the effect of new documentary evidence that invalidated defendant's claim of innocence. We do not

agree. The trial court clearly considered the new documentary evidence regarding defendant's driving privileges. The court, however, believed defendant's testimony regarding the underlying basis for the stop.

The trial court was entitled to judge credibility and make the finding that, contrary to the arresting officer's testimony, defendant had stopped at the red light. That finding is not clearly erroneous. *Echavarria, supra*. The trial court stated that it found several aspects of the arresting officer's testimony not credible. The traffic stop, according to the arresting officer, was effected for the sole reason that defendant had, allegedly, run a red light. We are not left with a definite and firm conviction that a mistake has been made, *Swirles (After Remand), supra* at 136, and will not substitute our judgment for that of the trial court by making independent findings. *Farrow, supra* at 209.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Helene N. White