STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARDELL YOUNG,

Defendant-Appellant.

UNPUBLISHED
November 8, 1996

No. 185724
LC No. 94-70768-FH

Before: Markman, P.J., and Smolenski and G.S. Buth,* JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of manufacturing marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c), and possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d). Defendant was sentenced to two to four years in prison for the manufacturing conviction, and to time already served (218 days) for the possession conviction. We affirm.

A brief recitation of the facts of this case is necessary for the resolution of defendant's issues. On September 9, 1994, Robert Eubanks notified police that some tin sheeting was missing from his property. Officer Robert Holifield responded to the call. Upon inspecting the scene, Holifield noticed drag marks leading towards the adjacent property. The adjacent property consisted of two residences, 3418 South Meridian Road and 3422 South Meridian Road. The property was owned by defendant's sister, and defendant was residing at 3422 South Meridian Road for the purpose of assisting in making repairs.

For the purpose of investigating the larceny, Holifield drove to defendant's residence, using the driveway to approach the houses. Holifield knocked on the side door of defendant's house, which apparently was the main entry. After receiving no answer, Holifield began looking around the backyard. Eubanks had indicated that he had earlier seen defendant drunk in the backyard.

Holifield crossed to the back line of defendant's property when he heard Eubanks call to him. In the course of doing so, Holifield noticed a storage locker filled with marijuana plants hanging upside

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

down. As Holifield approached the back of the property, he observed several marijuana plants growing in and around a block barn. Holifield contacted LAWNET and advised them of the situation, whereupon a search warrant was obtained.

Defendant first argues that Holifield's initial warrantless search of the curtilage of his home was unconstitutional and that the trial court should have suppressed all evidence obtained from the search. We disagree. The trial court's decision following a suppression hearing will not be reversed unless it is clearly erroneous. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983). A decision is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *People v Chambers*, 195 Mich App 118, 121; 489 NW2d 168 (1992).

The initial inquiry in any search and seizure issue is whether there was a search. The controlling test is whether the police activity violated the defendant's reasonable expectation of privacy. *People v Whalen*, 390 Mich 672, 677; 213 NW2d 116 (1973). The curtilage surrounding a residence is protected by the Fourth Amendment the same extent as the home, meaning it may not be searched without a warrant unless some exception to the warrant requirement exists. *Oliver v United States*, 466 US 170, 178-180; 104 S Ct 1735; 80 L Ed 2d 214 (1984). This Court has said that the driveway of a home is generally considered as within the curtilage of the home it services. *People v Tate*, 134 Mich App 682, 689; 352 NW2d 297 (1984).

In *People v Taormina*, 130 Mich App 73, 80; 343 NW2d 236 (1983), this Court held that the defendant could not have had a reasonable expectation of privacy in the area of his driveway adjacent to the house since the defendant could not reasonably expect that individuals would not enter his driveway on the way up to his house. In that case, the front door of the house was two-tenths of a mile from the public road. There were no gates, fences, or "No Trespassing" signs surrounding the defendant's property. Similarly, we conclude that defendant could not have a reasonable expectation in his driveway. The houses were set back twenty-five or thirty yards from the road, and the driveway ran between them. The main door to defendant's residence was the side door which abutted the driveway. There were no gates or fences or signs prohibiting the public from using the driveway to approach defendant's residence. Defendant could not reasonably expect that individuals would not use the driveway to approach his residence.

Since defendant did not have a reasonable expectation of privacy in his driveway, Officers Holifield and Gross were rightfully in defendant's driveway when they approached the residence. The plain view doctrine is an exception to the exclusionary rule and provides that visual observations of objects and activities, even inside a person's home, from a location where the observer may properly be, does not transgress Fourth Amendment protections. *People v Cooke*, 194 Mich App 534, 536; 487 NW2d 497 (1992). The officers could see the gray storage locker from defendant's driveway. They could also observe the marijuana inside the locker from the driveway because the door of the locker was open. Since the officers could observe the marijuana in the gray storage locker from a place where they had a lawful right to be, the trial court properly admitted the evidence.

Defendant also argues that the warrantless search of his backyard where the marijuana in the block barn was found was unconstitutional. We agree with defendant that he had a reasonable expectation of privacy in his backyard area and that Holifield's warrantless search of that area was unconstitutional. See *People v Hopko*, 79 Mich App 611, 618; 262 NW2d 877 (1977). However, we find that the evidence obtained as a result of that search was admissible pursuant to the inevitable discovery doctrine exception to the exclusionary rule. That doctrine provides that otherwise tainted evidence may be admissible if the evidence would ultimately have been obtained in a constitutional manner. *People v Kroll*, 179 Mich App 423, 429; 446 NW2d 317 (1989). Holifield and Gross could see marijuana inside the storage locker from their position in defendant's driveway. This information alone demonstrated the requisite probable cause to obtain a search warrant for the entire premises. Since the officers would have obtained a search warrant for the premises based on that information, the marijuana in the backyard would inevitably have been discovered. For this reason we find that the trial court did not err in denying defendant's motion to suppress the evidence.

Defendant's next argument is that the search of 3418 South Meridian Road was unconstitutional because the search warrant only specified the address of 3422 South Meridian Road as the address to be searched. We disagree. The places and persons authorized to be searched by a warrant must be described sufficiently to identify them with reasonable certainty so that the object of the search is not left in the officer's discretion. *People v Flemming*, 221 Mich 609, 615; 192 NW 625 (1923); *People v Blount*, 100 Mich App 351, 353; 299 NW2d 3 (1980). The erroneous identification of an address, despite diligent police efforts to ascertain the correct address, in a warrant which otherwise properly describes the premises does not invalidate a search. *People v Westra*, 445 Mich 284, 285-286; 517 NW2d 734 (1994).

We find that the search warrant issued in this case sufficiently described the property to be searched. The warrant described the property as two dwellings at 3422 South Meridian Road. There were no numbers on either of the houses, so the officers could not reasonably have been expected to know that the registered address of one of the residences was 3418 South Meridian Road. The specificity of the appearance and location of each of the dwellings described in the warrant did not leave any object of the search to the officers' discretion.

Defendant's final argument is that insufficient evidence was presented at trial to sustain his convictions for manufacture and possession of marijuana. We disagree. When reviewing a claim of insufficient evidence, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Defendant argues that the prosecution failed to prove that he manufactured marijuana. MCL 333.7106(2); MSA 14.15(7106)(2) defines "manufacture" as the "production, preparation, propagation, compounding, conversion, or processing of a controlled substance . . . ." The evidence at trial showed that marijuana was growing in the backyard of the house in which defendant resided. Defendant knew there were plants in the backyard that looked like hemp plants, and he had a suspicion

that the plants were marijuana plants. There were 153 marijuana plants growing in the yard at heights from eight to sixteen feet. A total of 160 pounds of marijuana was found on defendant's property. An O'Hause scale was also found on the property. Eubanks saw defendant on at least one occasion looking at the plants with some other people. Upon his arrest, defendant stated that he was growing the marijuana for the hogs. We find that there was sufficient evidence from which a rational trier of fact could find that defendant was involved in manufacturing marijuana by growing it on his property.

Defendant also argues that the prosecution failed to prove that he possessed marijuana because there was no evidence of any connection between defendant and the marijuana found on his property. We disagree. The element of possession may be proved by actual or constructive possession. *Wolfe, supra* at 520. The defendant's mere presence at a location where drugs are found is not sufficient to establish constructive possession; some additional connection between the defendant and the contraband must be shown. *Id.* Constructive possession may be found where the defendant knowingly has power and intention to exercise dominion or control over the narcotics, or if there is proximity to the substance together with indicia of control. *People v Sammons*, 191 Mich App 351, 371; 478 NW2d 901 (1991).

We conclude that a rational trier of fact could find from the facts of this case that defendant possessed marijuana. Marijuana leaves, rolling papers, and marijuana stalks were found lying on and around a coffee table outside of the basement bedroom in which defendant was found hiding. There was also a trail of marijuana leaves on the stairs leading from the main floor to the basement. Marijuana leaves were found in the microwave oven of defendant's residence. Defendant was living on the property for the purpose of making repairs. There was only one bed and one bedroom in the house where defendant resided. Defendant stated to Officer Gross upon his arrest that he was growing the marijuana to feed the hogs. We conclude there was sufficient evidence that defendant constructively possessed the marijuana on the property because the drug was found right outside of defendant's bedroom in the house in which defendant resided and defendant had access to and control of the property.

Affirmed.

/s/ Stephen J. Markman
/s/ Michael R. Smolenski
/s/ George S. Buth