

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES RAYMOND PEMBERTON,

Defendant-Appellant.

UNPUBLISHED

April 3, 2003

No. 238522

Charlevoix Circuit Court

LC No. 00-053109-FH

Before: Kelly, P.J. and White and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of manufacture of a controlled substance (marijuana), MCL 333.7401(2)(d)(iii), and possession of a controlled substance (marijuana), MCL 333.7403(2)(d). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Facts and Procedural History

Charlevoix County Sheriff Deputy James Pettis and Michigan State Police Sergeant William Sybesma went to defendant's home to attempt to speak with defendant on what is termed a "knock and talk" mission. See, *People v Frohriep*, 247 Mich App 692; 637 NW2d 562 (2001), lv den 466 Mich 888 (2002). The officers' intention was to see if defendant would voluntarily respond to an allegation that he was growing marijuana. The allegation was apparently made by an acquaintance who was arrested for drunk driving.

While Pettis entered defendant's enclosed front porch, Sybesma stood near the southern end of the home. No one answered the knock. Pettis testified that because it was a sunny day, they went to the rear of the home to see if anyone was outside. The two officers then located a small trail on the southern end of the property and, allegedly thinking that the occupant may have walked into the woods, the two proceeded along the path for approximately twenty yards. Pettis stated that they then returned to the rear of the trailer where he knocked on the back door. He again received no reply.

Thereafter, the officers returned to the car by walking around the northern end of the home because it was the shortest path back to their car. While proceeding to the car, Pettis saw a small hose running out a window toward the ground. His eyes followed the hose and he saw a marijuana plant growing in a black plastic pot in an area near some brush and a lawn statue.

The plant was approximately ten feet from the trailer. The officers seized the plant and took pictures of the home and surrounding area. Pettis maintained that he was not looking for contraband. Although Sybesma admitted that he thought they might find marijuana plants along the trail or in the yard, he would not characterize their observations as “searching”.

After hearing testimony and the parties’ arguments, the trial court concluded that the officers were justified in their decision to attempt to speak with defendant about the information they had received, that they could have reasonably believed that defendant was in the back yard of the home given the weather and that they were acting reasonably when they decided to take the most direct route back to their police car after knocking on defendant’s back door. The court found that defendant did not have a reasonable expectation of privacy in the open area at the back of his home, citing the lack of signs indicating “Keep Out” or “No Trespassing.” The court also indicated that it would still have found the officers’ actions reasonable even if they were involved in a “technical trespass.” The court did not find credible Pettis’ testimony that he was not looking for marijuana when the officers were proceeding down the path but this did not affect its decision.

II. Analysis

Defendant argues the trial court erred in denying his motion to suppress the marijuana found by police officers. We disagree. In a suppression hearing, this Court reviews a trial court's factual findings for clear error and will affirm unless left with a definite and firm conviction that a mistake was made. *People v Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002). However, we consider de novo the trial court's ultimate ruling on defendant's motion to suppress. *Id.*

The plain-view exception to the warrant requirement allows seizure of objects falling within the plain view of an officer who has a right to be in the position to have that view. *Horton v California*, 496 US 128, 134-137; 110 S Ct 2301; 110 L Ed 2d 112 (1990); *People v Tisi*, 384 Mich 214, 218; 180 NW2d 801 (1970); *People v Jordan*, 187 Mich App 582, 588; 468 NW2d 294 (1991). Two conditions must be satisfied. First, there must be prior justification for the officer’s intrusion into an otherwise protected area. *Coolidge v New Hampshire*, 403 US 443, 466; 91 S Ct 2022, 2038; 29 L Ed 2d 564 (1971); *People v Blackburne*, 150 Mich App 156, 165; 387 NW2d 850 (1986). Second, the evidence must be obviously incriminatory or contraband. *People v Champion*, 452 Mich 92, 101; 549 NW2d 849 (1996). *Blackburne, supra*. Contrary to defendant’s position on appeal, the discovery of the evidence need not be inadvertent. *Champion, supra*, 452 Mich 101 n 6. Nor are exigent circumstances required. *Id.*

Although this case presents a close question, after review of the record we conclude that the trial court’s factual findings were supported by the evidence and were not clearly erroneous. The officers entered the front of defendant’s property for a legitimate purpose; i.e., to speak with him about the information they had received. *Frohriep, supra*, 247 Mich App 697-698. The officers’ decision to move to the rear of the home after receiving no response at the front, because they thought that defendant may have been outside in the yard, was reasonable. The public was not barred from approaching this area of defendant’s house, nor were the officers placed on notice of an intent to exclude entry through the use of “No Trespassing” signs or similar devices. MCL 750.552; *People v Nash*, 418 Mich 196, 206; 341 NW2d 439 (1983); *People v Shankle*, 227 Mich App 690, 693-694; 577 NW2d 471 (1998).

In addition, the fact that the officers discovered the plant while traversing the most direct route from the north side of defendant's home to their car, does not render their discovery more intrusive. In essence, the officers discovered the plant in a place where a public visitor to the property would have felt justified in being present. Thus, we affirm the trial court's decision to refuse to suppress the evidence. See *People v Houze*, 425 Mich 82, 92 n 1; 387 NW2d 807 (1986), citing with approval *State v Seagull*, 26 Wash App 58; 613 P 2d 528 (1980).

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Joel P. Hoekstra