STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

SCOTT SMITH, a/k/a STANLEY SCOTT SMITH, a/k/a SIR SCOTT SMITH,

Defendant-Appellant.

UNPUBLISHED
September 22, 2005

No. 255375
Barry Circuit Court
LC No. 03-100398-FH

Before: Smolenski, P.J., and Murphy and Davis, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order denying his motion to suppress evidence from a warrantless search. We affirm.

This case arose when an "anonymous criminal informant" informed police that defendant was growing and dealing marijuana from his residence. Four police officers and a probation officer went to defendant's residence. Officers entered and repeatedly requested defendant to sign a consent form, which he eventually did, and the police then searched for and found several marijuana plants in his residence and growing on the surrounding property. Defendant was on probation at the time, and his probation order required him to submit to searches of his residence for controlled substances. No warrant was ever obtained, and defendant argues that the consent was coerced, so the search was unconstitutional. We disagree.

We review a trial court's findings of fact in a suppression hearing for clear error and will affirm those findings unless left with a definite and firm conviction that a mistake has been made. *People v Powell*, 235 Mich App 557, 560; 599 NW2d 499 (1999). However, the trial court's application of constitutional standards to the facts is afforded less deference. *People v Stevens*, 460 Mich 626, 631; 597 NW2d 53 (1999). The trial court's ultimate determination, therefore, is reviewed de novo. *People v Daoud*, 462 Mich 621, 629; 614 NW2d 152 (2000).

Generally, a warrantless search is unreasonable under the Fourth Amendment to the constitution. *People v Snider*, 239 Mich App 393, 407; 608 NW2d 502 (2000). However, probationers do not enjoy "the absolute liberty to which every citizen is entitled." *Griffin v Wisconsin*, 483 US 868, 874; 107 S Ct 3164; 97 L Ed 2d 709 (1987). In particular, probationers subject to search conditions have significantly reduced expectations of privacy, so they are subject to warrantless searches on the basis of "no more than reasonable suspicion." *United*

States v Knights, 534 US 112, 118-121; 122 S Ct 587; 151 L Ed 2d 497 (2001). "Just as other punishments for criminal convictions curtail an offender's freedoms, a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens," one of which is a clear search provision of which the probationer is unambiguously notified. *Id*. at 119. Thus, the probation condition is valid and the officers only required reasonable suspicion of criminal activity to justify their search.

Defendant argues there was no reasonable suspicion of criminal activity here because the officers had no reasonable belief that there were drugs in the home. Defendant bases this argument on one statement made during the preliminary examination by the testifying officer. The officer was asked by defense counsel on cross-examination, "Did the source tell you it was in the home?" The officer responded, "no." The officer also testified that the informant told him defendant was growing and selling marijuana from his residence. Additionally, defendant was cooperating with the informant in trying to arrange a drug buy, even though that buy did not ultimately go through. Finally, officers were aware of defendant's probation status for the same offense. Considering the totality of the circumstances, there was reasonable suspicion for the search.

Because the officers were authorized to conduct the search, they did not require defendant's consent, so we need not address defendant's arguments that his consent was coerced. We also need not address defendant's argument that the probation search was pretextual. The relevant Fourth Amendment inquiry is not the officers' subjective intent but whether the search was objectively reasonable on the basis of the totality of the circumstances. *Ohio v Robinette*, 519 US 33, 39; 117 S Ct 417; 136 L Ed 2d 347 (1996).

Defendant further argues that the search of the outbuildings and curtilage of his property was unlawful because the probation order only referred to defendant's residence, home, and person. Defendant cites *People v Mackey*, 121 Mich App 748; 329 NW2d 476 (1982) as support. *Mackey* is not binding precedent. *People v McGhee*, 255 Mich App 623, 632; 662 NW2d 777 (2003), citing MCR 7.215(I)(1). Moreover, we have held that "the Fourth Amendment is not violated by a search of the grounds or outbuildings within a residence's curtilage where a warrant authorizes a search of the residence," based on what all other jurisdictions have found since 1924. *Id*. at 633-634. The only area that might not have been covered by the "residence" described in the probation order is the physically disconnected, though nearby, parcel of raw land. Because this involved discovery of plants growing in a tilled and cultivated garden lot, they were presumably either in plain view or an open field. *People v Champion*, 452 Mich 92, 101-102; 549 NW2d 849 (1996); *People v Ring*, 267 Mich 657, 660-661; 255 NW 373 (1934). The evidence discovered fell into one exception to the warrant requirement or another. The trial court properly denied the motion to suppress evidence.

Affirmed.

/s/ Michael R. Smolenski
/s/ William B. Murphy
/s/ Alton T. Davis