

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EARL LYNN PAXTON,

Defendant-Appellant.

UNPUBLISHED

March 7, 2000

No. 217644

Washtenaw Circuit Court

LC No. 95-005389-FH

Before: Whitbeck, P.J., and Hoekstra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for manufacturing 200 or more plants of marijuana, contrary to MCL 333.7401(2)(d)(i); MSA 14.15(7401)(2)(d)(i). Defendant was sentenced to two years' probation. We affirm.

Defendant first argues that the trial court erred when it denied his motion to quash the information and when it denied his motion to suppress evidence by finding that the officers' warrantless search of defendant's residential property was legal under the open fields exception to the warrant requirement. Defendant claims that the marijuana plants were within the curtilage of his home, and therefore the warrantless search was illegal. We disagree. The trial court denied defendant's motions on the legal ground that the area of defendant's rural residential property where officers searched was not within the curtilage of his home; thus, the open fields doctrine provided an exception to the warrant requirement. This Court reviews conclusions of law de novo. *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998).

The Fourth Amendment protects individuals from warrantless searches of the curtilage of an individual's home; however, it does not protect individuals from warrantless searches of open fields. *Oliver v United States*, 466 US 170, 180-181; 104 S Ct 1735; 80 L Ed 2d 214 (1984); *People v Ring*, 267 Mich 657, 660; 255 NW 373 (1934); *People v Rotar*, 137 Mich App 540, 546; 357 NW2d 885 (1984). Curtilage has been described as the outside areas of a home "so intimately tied to the home itself" that an individual reasonably could expect persons to treat those areas as part of the home. *United States v Dunn*, 480 US 294, 300-301; 107 S Ct 1134; 94 L Ed 2d 326 (1987).

Here, defendant argues that the proximity of the area claimed to be the curtilage to the home should weigh in his favor because the trailers where the marijuana was located were only 150 feet away from his home. We are not persuaded. Within the 150 feet between defendant's residence and the trailers is a steep, twenty- to thirty-foot hill and, as the trial court noted and observed firsthand while visiting the site, "[a]lthough the trailers may have been located only some 150 feet from the house in a direct line, in order to easily access the area in question, one must walk a circular route from the farm house to the western fence line and then easterly to the trailers. Further, the area can only be seen by walking past the pole barn to the rim of the hillside and looking almost straight down."

Defendant also suggests that the area where the officers searched was being used for intimate activities of the home (i.e. gardening), noting testimony that the officers observed a garden hose running from a pump up the hill near defendant's residence toward the area. We disagree with defendant that cultivating marijuana in a ravine in an area between a house and a pond, albeit in an area not readily observable from outside defendant's twelve acres and where such acreage is fenced, should lead this Court to conclude that the nature of the uses to which the area is put was intimately associated with the activities of the home. Based on the facts of this case, we conclude that the trial court did not err in finding that the warrantless search was within the open fields exception to the search warrant requirement. Therefore, because the evidence was properly obtained, the trial court did not err in denying defendant's motions.

Defendant also argues that his statements to the officers obtained immediately after the law enforcement officers searched defendant's property should have been suppressed under the doctrine of fruit of the poisonous tree. A trial court's denial of a motion to suppress evidence is reviewed for clear error. *People v Coscarelli*, 196 Mich App 724, 728; 493 NW2d 525 (1992).

In general, if evidence is unconstitutionally seized, that evidence must be excluded from trial. *People v Jordan*, 187 Mich App 582, 588; 468 NW2d 294 (1991). All evidence is to be excluded if the connection between the illegal police conduct and the discovery and seizure of the evidence is not so attenuated as to dissipate the taint. *Wong Sun v United States*, 371 US 471, 488; 83 S Ct 407; 9 L Ed 2d 441 (1963); *Jordan, supra*. However, because the officers' warrantless search in this case falls within the open fields exception to the warrant requirement, defendant's subsequent statements to the officers are not tainted "fruit of a poisonous tree." Therefore, defendant's statements to the officers were properly admitted at trial.

Finally, defendant argues that the trial court erred when it denied his motion for a new trial or a judgment of acquittal where the prosecution neither produced the "bird watcher" witness who called in the tip to the law enforcement officers nor provided reasonable assistance in locating her. Defendant claims that the trial court erred when it did not find or definitively decide whether the prosecutor exercised reasonable assistance in locating this person. Defendant's argument is without merit. We review a trial court's denial of a motion for new trial for an abuse of discretion. *People v Gadomski*, 232 Mich App 24, 27-28; 592 NW2d 75 (1998).

Here, the court agreed to reconsider defendant's motion seeking a court order to require the prosecution to produce the witness who provided the tip, and when denying this motion, the trial court stated:

[T]he record established previously . . . was that the police officers have testified that they don't know who the person is other than her name. They don't have any more information than [defense counsel] does as to how to get ahold of her. And therefore, the prosecutor couldn't even if they [sic] wanted to couldn't provide you the information that you want."

The prosecution has no duty to produce an unknown witness. *People v Burwick*, 450 Mich 281, 287; 537 NW2d 813 (1995). Accordingly, the trial court did not err in denying defendant's motion requesting that the court order the prosecution to produce the witness. Further, the trial court did not abuse its discretion when it denied defendant's motion for a new trial or judgment of acquittal based on the prosecution's failure to locate or produce the witness. See *Burwick, supra* at 289.

Affirmed.

/s/ William C. Whitbeck

/s/ Joel P. Hoekstra

/s/ Donald S. Owens