

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOSHUA ADAM SPENCER,

Defendant-Appellee.

UNPUBLISHED

May 3, 2012

No. 304422

Leelanau Circuit Court

LC No. 10-001713-FH

Before: HOEKSTRA, P.J., and SAWYER and SAAD, JJ.

HOEKSTRA, J., (*concurring*).

Because I find that the police conduct, as described by the majority, did not constitute constitutionally impermissible conduct, I join with the majority in reversing.

The issue before us in this case is whether the police officers were lawfully on the premises when they knocked on the pole barn after receiving no response at the residence. The pole barn was approximately 150 to 175 feet away from the home, was not connected to the home by a fence, and had a dirt path leading to its entrance. Accordingly, I conclude that the pole barn was outside the curtilage of the house, and therefore, defendant did not have a reasonable expectation of privacy in regard to the pole barn. See *People v Powell*, 477 Mich 860; 721 NW2d 180 (2006); *US v Dunn*, 480 US 294, 301-304; 107 S Ct 1134; 94 L Ed 2d 326 (1987). Because defendant did not have a reasonable expectation of privacy in regard to the pole barn, the police officers were lawfully on the premises and the evidence consequently discovered pursuant to a consent search should not have been suppressed by the trial court.

/s/ Joel P. Hoekstra