STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SHARON PITTIGLIO,

Defendant-Appellee.

UNPUBLISHED
December 1, 1998

No. 208857
Charlevoix Circuit Court
LC No. 97-023009 FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL LAURIE,

Defendant-Appellee.

No. 208859
Charlevoix Circuit Court
LC No. 97-023109 FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL DAVID PITTIGLIO,

Defendant-Appellee.

No. 208860
Charlevoix Circuit Court
LC No. 97-023209 FH

Before: Talbot, P.J., and McDonald and Neff, JJ.
PER CURIAM.

In these consolidated cases, plaintiff appeals by leave granted a trial court order granting defendants' motions to suppress marijuana discovered during a search of their home. We reverse and remand for further proceedings.

I

Acting on a tip that marijuana might be growing inside defendants' house, Officer Charles Vondra, a deputy sheriff with the Straits Area Narcotics Enforcement Team, parked his car in an unmowed area to the west of defendants' home and began to approach the residence on foot. Vondra walked along a rough, uncut field that was labeled with a "for sale" sign.[1] Vondra stopped some distance from defendants' house,[2] at all times remaining off the mowed area of the lawn.

Vondra saw plants that he suspected were marijuana in both the home's southwest and northwest windows.[3] After confirming his suspicion by using binoculars, Vondra obtained a search warrant and searched the residence. Each defendant was charged with possessing marijuana, MCL 333. 7403(2)(d); MSA 14.15(7403)(2)(d), and manufacturing marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii). Defendants moved to suppress the marijuana, arguing that the warrant had been based on an unconstitutional search. The trial court initially denied the motions but, after defendants filed motions for reconsideration, reversed its earlier ruling and granted defendants' motions to suppress. This Court granted plaintiff's applications for leave to appeal, and consolidated the cases.

II

Plaintiff argues that the trial court erred in suppressing the marijuana seized during the execution of the search warrant. This Court reviews a trial court's ruling on a motion to suppress evidence for clear error. *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 Lombardo*, 216 Mich App 500, 504; 549 NW2d 596 (1996).

Under the Fourth Amendment, a search occurs when an individual has a reasonable expectation of privacy in the area examined. *People v Clark*, 133 Mich App 619, 625; 350 NW2d 754 (1983), citing *Katz v United States*, 389 US 347, 88 S Ct 507, 19 L Ed 2d 576 (1967). After considering the totality of the circumstances, we find that defendants did not have a reasonable expectation of privacy in the marijuana plants placed in the windowsill. Accordingly, no search in the constitutional sense occurred when Officer Vondra viewed the plants.

A

At the outset, we address the question of whether Vondra was standing within the curtilage of defendants' home when he observed the marijuana plants. In *United States v Dunn*, 480 US 294, 301; 107 S Ct 1134; 94 L Ed 2d 326 (1987), the United States Supreme Court established four factors to be considered when determining the extent of a home's curtilage:

> [T]he proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by. We do not suggest that combining these factors produces a finely tuned formula that, when mechanically applied, yields a "correct" answer to all extent-of-curtilage questions. Rather, these factors are useful analytical tools only to the degree that, in any given case, they bear upon the centrally relevant consideration--whether the area in question is so intimately tied to the home itself that it should be placed under the home's "umbrella" of Fourth Amendment protection. [*Id*. (citations and footnote omitted).]

In applying these factors to the present case, we find, as did the trial court, that the area from which Vondra made his observations was not part of the curtilage of defendants' home. Vondra stood somewhere between twenty-five and ninety feet from the house. Although defendants' home had no fence or other enclosure surrounding it, it did have a mowed lawn. Vondra did not intrude onto this mowed area, but rather, observed the plants while standing in a rough, overgrown field containing weeds and sumac. We find that such an area was not "being used for intimate activities of the home," and that defendants had not taken steps to protect the area from passersby. Accordingly, Vondra was not in the curtilage of defendants' home when he made the observations at issue.

B

We now turn to the question of whether Vondra was permitted to stand in this open field area to gain a vantage point to view the marijuana plants in the windowsills of defendants' home.[4] It is well settled that a police officer's intrusion on an open field, such as the area in which Vondra stood, is not an "unreasonable search" proscribed by the Fourth Amendment. *Dunn*, *supra* at 303-304. Indeed, an officer may, without a warrant, enter a person's property to view a building which enjoys Fourth Amendment protection, so long as the observations are made from an open field. *Id;* see also *People v McKendrick*, 188 Mich App 128, 143; 468 NW2d 903 (1991).

In the present case, Vondra viewed defendant's house from an open field located outside the home's curtilage. Vondra's actions – crossing the open field, standing outside the home's curtilage, and viewing the house – were constitutionally permissible.

C

The location of the marijuana plants themselves now becomes critical, for "what a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." *Katz, supra,* 389 US at 351.

In the present case, the marijuana plants were on a windowsill, and it appears that the curtain was drawn, thus preventing a view of the interior of the house itself. The record further indicates that defendants knew that the field adjacent to the west side of their house was for sale, and it was reasonable that someone would walk the property, either with or without the assistance of a real estate

agent. By placing the contraband in the windowsill under these circumstances, defendants enjoyed no reasonable expectation of privacy. See *People v Smola*, 174 Mich App 220, 435 NW2d 8 (1988) (defendant had no reasonable expectation that a six-foot wooden fence would shield the marijuana in his back yard from observations "by tall passersby, from occupants of aircraft traveling through overhead public airspace, or, indeed, from a police officer standing on the bumper of his automobile on the adjacent public thoroughfare"); *People v Clark*, 133 Mich App 619, 627; 350 NW2d 754 (1983) ("Defendant could not reasonably expect that passers-by would shut their eyes to what was clearly visible from the sidewalk or from across the street. . . [W]hat is visible by the general public is visible without a warrant by the police as well.").[5]

III

Under the specific and unique facts presented here, we conclude that Vondra's actions did not constitute a search in the constitutional sense. The trial court clearly erred in holding otherwise. Accordingly, we reverse and remand this case for further proceedings consistent with this opinion.

Reversed and remanded. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Gary R. McDonald
/s/ Janet T. Neff

[1] At the motion to suppress hearing, defendant Michael Laurie testified that he owned the adjacent field and had put it up for sale.

[2] There is some disagreement as to Vondra's exact distance from defendants' house. Defendant Sharon Pittiglio states that Vondra was as close as twenty-two feet from the house. Vondra, in contrast, testified that he stood approximately thirty yards away.

[3] Although Vondra did not know it at the time, the southwest window was part of defendant Michael Pittiglio's bedroom, and the northwest window was part of defendant Sharon Pittiglio and Michael Laurie's bedroom.

[4] We note that this case differs from the "open fields" doctrine insofar as Vondra was not searching the field itself, but rather, was standing in the open field and looking at a residence. See generally *Oliver v United States*, 466 US 170; 104 S Ct 1735; 80 L Ed 2d 214 (1984).

[5] Vondra's use of binoculars does not change this result. See generally *People v Clark*, 133 Mich App 619; 350 NW2d 754 (1983). The binoculars merely served to enhance the officer's view of something that was already visible to the naked eye.