2015 IL App (3d) 140656-U

Order filed August 3, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0656 Circuit No. 09-CH-6585
AERO SPECIALTY, INC., an Illinois Corporation,	)	
Defendant-Appellant.	)	Honorable Theodore J. Jarz, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice McDade and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court correctly found defendant had no reasonable expectation of privacy regarding refuse in plain view at the leased site where defendant conducted his sandblasting business in an open field area visible to adjacent land.

¶ 2 The People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General (the People), filed a complaint on behalf of the Illinois Environmental Protection Agency (IEPA) against defendant Aero Specialty, Inc. (Aero), a sandblasting company, alleging a violation of the open

dumping laws. Aero's defense asserted that the State's evidence was inadmissible because the government conducted an illegal search of their commercial sandblasting site. The court found that Aero's sandblasting operation was in plain view of any individuals viewing it from the adjacent trust property or nearby public parks. As a result, the court found Aero had no expectation of privacy in the area where the violations were documented by the government inspectors and determined the State's evidence was admissible. The trial court found the People proved their case and ordered Aero to pay a civil penalty in the amount of $5,000. We affirm.

¶ 3 BACKGROUND

¶ 4 On December 30, 2009, the People filed a "Complaint for Injunctive Relief and Other Civil Penalties" against Aero. The complaint alleged, in part, that Aero violated the provisions of the Illinois Environmental Protection Act (the Act) (415 ILCS 5/1 *et seq.* (West 2008)), involving "open dumping" of approximately 85 gallons of waste oil and grease and approximately 300 cubic yards of waste sandblast media, occurring sometime before August 29, 2007, and up until at least September 15, 2009. The complaint requested that the trial court: enjoin Aero from further violations of the Act, order Aero to abate the current violations, and assess an additional $10,000 per day fine against Aero for each day the violations continued. The People also asked the court to order Aero to pay all costs, attorney fees, and witness fees.

¶ 5 On July 8, 2013, Aero filed a Second Amended Affirmative Defense alleging Aero's sandblasting operation was neither "specifically regulated" by any statute or regulation nor licensed by any state or federal agency giving government officials statutory authority to conduct regular inspections or searches of its business property. In addition, Aero claimed that any purported violations related to the materials present on the sandblasting site resulted from evidence illegally gathered by government officials who entered the sandblasting site without permission or a valid search warrant. Thus, Aero claimed the photographs or other evidence

obtained during all inspections of their business operation could not be properly considered by the trial court as admissible evidence against Aero. Aero contended all evidence should be suppressed by the court as "fruits of the poisonous tree" after the initial illegal inspection on June 6, 2007.

¶ 6 The court held a hearing on both the People's complaint and Aero's affirmative defense on November 14, 2013. David Hartke, the senior waste analyst for the Will County Land Use Department, Resource Recovery and Energy Division, testified he was employed in this capacity by Will County from 1999 to the date of the hearing. His duties included inspecting non-hazardous waste sites, solid waste sites, and waste transfer stations, in addition to investigating complaints regarding open dumping and the burning of waste. Hartke explained that a "delegation agreement" existed between Will County and the IEPA, for which he received additional training, that allowed him to also conduct initial inspections for IEPA.

¶ 7 Hartke testified he was investigating a complaint on June 6, 2007, regarding an auto salvage yard located at 2600 Canal Street, Lockport, Illinois. The auto salvage yard was adjacent to the north of the Bridgeview trust property. While he was inspecting the auto salvage property, he observed a Drew's Landscaping truck full of landscaping waste pass by his location on Canal Street. Hartke testified he followed the landscaping truck for about a quarter mile down a gravel road and through an open gate that was not attended by a watchman or guard. Hartke said the gravel road was owned by the Illinois Department of Natural Resources and, prior to going through the gate, the road was part of a forest preserve. Once through the gate, the landscaping truck dumped its waste on the ground. Hartke explained he decided to follow the landscaping truck because there had been "pervasive dumping along Canal Street in the past."

¶ 8 Hartke approached the driver of the truck and informed him it was illegal to dump landscaping waste at that location. The driver indicated he thought he had permission to dump

landscaping waste there. Next, Hartke looked for a person responsible for this property and spoke to a man near a mobile home on the property. The man identified himself as Hank Miller, the caretaker of the Bridgeview trust property, which was owned by Billy Schopff. Hartke advised Miller he observed landscaping waste on the property and, while following the landscaping truck, Hartke said he saw "some other drums and such on this greater piece of property that appeared to be a problem." According to Hartke, Miller was cooperative when Hartke told him he was going to further inspect the property. Miller did not ask Hartke to leave the property.

¶ 9 Hartke testified it was his general practice to determine property ownership after the fact if it was not determined beforehand. Hartke said he later learned that Aero leased a small portion of the Bridgeview trust property for Aero's sandblasting operation. Hartke guessed Aero's sandblasting operation began approximately 100 to 200 yards inside the open gate where the landscaping truck entered the property. However, there were no markers within the Bridgeview trust property indicating the boundaries of Aero's leased portion.

¶ 10 After talking to Miller, Hartke said he next traveled to the north portion of the Bridgeview trust property, not leased by Aero, where he observed woodworking waste and other drums dumped on the property. Hartke then drove to the south end of the Bridgeview trust property where he saw a four foot tall concrete wall with a large opening wide enough for truck traffic. Hartke told the court he could easily see over the concrete wall.

¶ 11 At this point, the defense renewed its continuing objection to any evidence regarding items viewed inside this concrete wall. The court reserved its ruling on that continuing objection until the evidence was concluded.

¶ 12 While outside of the large opening in this concrete wall, Hartke said he observed two 55-gallon open drums surrounded by dark staining on the ground. Hartke observed that the drums

contained some "green opaque liquid inside." Hartke then drove through the opening of the concrete wall, "which went down to a lower grade area." At that location, he met a man who gave Hartke a business card bearing the name of Richard Newman and "Aero Specialty."[1] Hartke introduced himself to this man, who was also very cooperative. The man advised Hartke that Aero was a sandblasting and industrial painting company, and explained how its operations worked.

¶ 13 While at this location inside the concrete wall, Hartke could see one-half dozen, metal, five-gallon buckets that were dented and rusted "[w]ithin an open burn area." These buckets had some solids and liquids within them that were "rusty browns and opaque colors that are similar to like a used oil mixed with water." There were also aerosol cans, copper wire, a broken wooden pallet, and scrap metal on the ground, some of which appeared to be charred. There was a dark staining on the ground in this area as well.

¶ 14 Additionally, Hartke observed two additional "open top" 55-gallon drums that were full of refuse located inside the concrete-walled area. Hartke explained to the man that Aero needed to properly dispose of those items and remove them from the property because they were open and were being stored in a manner where the materials could "enter the environment through either spilling or evaporation." Hartke said the substance in the open buckets appeared to be oil mixed with water and other unidentified opaque whitish-colored liquids. The person who handed Newman's business card to Hartke told Hartke that the open 55-gallon drums outside of the concrete-walled area were "parts cleaner buckets."

¶ 15 Hartke prepared a written memo regarding his observations on June 6, 2007, marked as Plaintiff's Exhibit A, which included 21 photographs of the conditions of the property. Hartke

[1] Based on the record, it is unclear whether this man was actually Richard Newman or another employee of Aero. However, Hartke testified he thought he was speaking to Newman.

identified these photographs during the trial and told the court only three photographs, People's Exhibits 15, 16, and 17, were taken inside the concrete wall. People's Exhibits 18 and 19 were photographs of the drums located outside of the concrete wall. Hartke forwarded his written memo regarding his June 6, 2007, inspection of Aero to the IEPA.

¶ 16 Next, James Haennicke testified he was employed as an inspector for IEPA and made an unannounced visit to Aero's property on August 29, 2007, due to a complaint IEPA recently received from a Will County employee. On both August 29 and later on September 11, 2007, Haennicke was present and personally inspected Aero's business property, located at 2500 Canal Street, Lockport, Illinois.[2] Haennicke said he entered the Bridgeview trust property from Columbia Street in Joliet via a "nondescript road with no real markings on it" that led back to the property. Haennicke stated he did not have to pass through a gate to enter the property location.

¶ 17 Haennicke described the Aero property as "an open area within a huge property allegedly owned by somebody else, and there is just a ramp going down into a foundation that the company operates out of." Haennicke did not observe any barriers or signs for the Bridgeview trust property or, separately, for Aero's business. He also described the concrete foundation area as a walled foundation without a roof.[3]

¶ 18 Upon his arrival, Haennicke said there was an unnamed representative from Aero present who told Haennicke the name of Aero's owner. This first inspection occurred from 10:30 a.m. to 11:00 a.m. on August 29, 2007, and Haennicke took photographs of his observations. Haennicke observed the open dumping of paint and solvents with some staining on the ground. Haennicke

[2] Aero's owner later testified this address was incorrect and the location of the sandblasting operation was actually at 3500 Canal Street, Lockport, Illinois.

[3] Haennicke's report from his 2007 inspections, Exhibit B, stated Aero was leasing a 10-acre parcel of land within the 55.4 acre parcel owned in trust by William Schopff. This report described the concrete wall as being 150' X 400.'

described an area within the foundation as having open containers and an approximate 300 cubic yard pile of sandblast media, stored in a pile on the ground, with some staining to the adjacent soil that appeared to be used oil.

¶ 19 According to Haennicke, because of the way in which they were stored, these materials could enter the environment if precipitation caused the containers to overfill and spill onto the ground and leak into the concrete. Additionally, the materials could enter the air through evaporation.

¶ 20 After the inspection, Haennicke telephoned Aero's owner, Richard Newman. He also met with Newman at the sandblasting location on September 11, 2007. On that date, Newman escorted Haennicke around the sandblasting site and explained the business operations. During this tour of the site, Newman also described various efforts and "achievements" the business made to correct various issues Haennicke brought to Newman's attention during their recent telephone conversation. For example, Newman stated he consolidated smaller containers of solvents and paints into two 55-gallon, covered drums stored within the concrete foundation area. Newman also cleaned up the oil contamination and overspray on the ground by taking the stained dirt and putting it into drums.

¶ 21 In turn, during the second inspection, Haennicke advised Newman that the 300 cubic yard pile of sandblast materials on the property were considered "open dumping," because it had been accumulating at the site for approximately three years. Haennicke also told Newman he needed to test a sample of the sandblast material to determine whether it was hazardous waste. Shortly thereafter, Haennicke sent notice to Newman regarding the violations that were observed during the 2007 inspections. Newman did not respond to this notice.

¶ 22 In 2008, Aero submitted a disposal receipt to IEPA showing that Aero shipped 85 gallons of waste solvents from its site for disposal. Additionally, also in 2008, Aero sent IEPA the

results of the testing of the sandblast material, showing it was determined to be non-hazardous waste.

¶ 23 Haennicke conducted a follow-up inspection of Aero on September 15, 2009, to document corrective measures implemented by Aero to become compliant with the applicable regulations. At that time, Haennicke testified two 55-gallon drums with approximately 85 gallons of waste remained at the site, but they were covered. Additionally, the 300 plus cubic yards of sandblast material was still stored in a pile on the ground and exposed to the environment. Two years later, Haennicke conducted another follow-up inspection on April 19, 2011.

¶ 24 Haennicke testified that the open dumping regulations allowed a business to stockpile waste, generated as part of its own operations, for up to one year. After that, it becomes a violation of the open dumping provisions. Since Aero's waste pile remained on the site for well over a year, Aero violated the open dumping regulations.

¶ 25 Haennicke explained that some types of facilities or operations require permits to be issued by IEPA, such as waste disposal facilities, which are inspected on a regular basis to determine compliance with their permits. However, a sandblasting operation does not require a permit and there are no specific IEPA regulations overseeing this type of operation.

¶ 26 The People rested their case. Thereafter, the court denied defendant's motion for directed finding.

¶ 27 The defense presented Aero's president and sole stockholder, Richard Newman, as a witness. Newman testified he had been working in the sandblasting industry since 1989 and that Aero was a sandblasting and painting business. For example, Newman said his company did sandblasting on castings for steel mills and on tanks and other types of equipment to clean them and get rid of material that is on them. Newman said his business generally used regular or silica

sand or "Black Beauty Glass Grid" in his sandblasters. After sandblasting some of the items for customers, Newman said clients would ask Aero to also prime the items for painting.

¶ 28 From 2007 to the present, Newman said there were no licensing requirements for him to conduct his sandblasting operation. According to Newman, in the last four years, customers were only allowed on the sandblasting property if they were delivering items to be cleaned. Newman said the Aero sandblasting area is not open to the general public. Newman testified Aero's business office, where Newman kept his records and documentation, was on Columbia Street, about one mile from the sandblasting operation site.

¶ 29 On June 6, 2007, Newman said he was not present when Hartke entered his property, and he did not give Hartke prior permission to enter the Aero property on that date. However, Newman's foreman, Armando Lozo, and two other workers were on the property on June 6, 2007, and Lozo, who did not speak "real good English," spoke to Hartke that day. Newman said his employees did not tell Newman that Hartke conducted an inspection on June 6, 2007, but they did say somebody was at the site taking photos. Newman said he did not call the police because he "didn't know who was there."

¶ 30 Newman said he normally drove on the gravel road through the park district to get from his business office to the sandblasting site. According to Newman, there were gates located at both ends of the Bridgeview trust property. Specifically, the gate at the north boundary of the Bridgeview trust property had "about six locks on it so that the park district, the telephone company and the ones that worked there, Bill Schopf[f], and his man and my men could get in and out of the gate." The property immediately north of Aero's leased property belonged to the Bridgeview trust, which was bordered on the north by Dellwood Park District property.

¶ 31 Newman said he was not aware of any landscape business that was dumping landscaping waste on the Bridgeview trust property in June of 2007. According to Newman, in June of 2007,

Aero employees did not use the road that entered the Bridgeview trust property from the north, although Newman knew that another tenant, Bill Schopff, owner of Bill's Excavating, used that north road to enter his business located on the Bridgeview trust property. Newman said the north gate was usually locked and had "no trespassing" signs posted by the gate.

¶ 32 Newman said that in 1995 he built the road that now provides access to the Bridgeview trust property from the south. He built the road to accommodate Aero's sandblasting business. Newman said he placed a gate across the road he built and posted a 12 x 6 inch "no trespassing" sign near the south gate in 2007. Newman said the gate was used by his men to get in and out and "for shipping stuff," and they always kept that gate locked.

¶ 33 According to Newman, he built a fence on the south boundary of the Bridgeview trust property. There was no fencing on the west side of the Bridgeview trust property, but there was a little canal running along that boundary. The Illinois and Michigan Canal ran along the unfenced east side of the property.

¶ 34 Newman said he was working at the sandblasting site on September 11, 2007, when Haennicke made an unexpected visit to the Aero property by gaining access from the north gate, which was over a mile away from the portion of the property leased by Aero. Newman said a person could not see the Aero property if they stood at the north gate of the Bridgeview trust property. Newman had not given Haennicke prior permission to be on the property. Newman said, once Haennicke arrived on Aero's property, Newman told Haennicke he should not be on the property. Haennicke responded by advising Newman he had the right to be on the property and shared a "bunch of photographs" with Newman. Consequently, Newman testified he felt he had no choice but to show Haennicke around the property.

¶ 35 Newman next described the concrete foundation for his sandblasting operations within the Bridgeview trust property as being 160 feet by 410 feet long. The inside of the foundation

was dug out and was 14 feet tall, but the wall appeared to be 6 feet tall from the outside. Newman said this foundation had a solid concrete floor, but no roof.

¶ 36 Haennicke told Newman he had to properly dispose of the 85 gallons of spent grease and oil that was at the site in two 55-gallon drums as observed during the September 11, 2007, inspection. Subsequently, Newman called an environmental company to remove the drums and produced the shipment tickets for the removal of the drums to Haennicke when he inspected the property in 2009. According to Newman, in 2009, Haennicke observed two different 55-gallon drums storing new waste on the property and they were not the same drums Haennicke observed in 2007.

¶ 37 After the defense rested its case, no further evidence was presented. The court allowed the parties to file written arguments including any authority they wished to present.

¶ 38 The court entered a written decision on April 4, 2014, which combined its ruling on Aero's affirmative defense requesting suppression of illegally obtained evidence with its final decision. In its decision, the court made the following factual findings. Hartke was lawfully on a roadway subject to the jurisdiction of the Department of Natural Resources and adjacent to the I & M Canal, a designated State Park. While standing on the gravel road, Hartke observed the two open 55-gallon drums in open view. After approaching the two 55-gallon drums, Hartke could view other barrels and containers in open view.

¶ 39 The court noted that Aero did not present any photographs corroborating the claims that the gates, locks, and posted "no trespassing" signs existed on the Bridgeview property. Similarly, the court noted the aerial photos of the property did not document the presence of the gates, locks, or signage.

¶ 40 The court found that Hartke's further entry into the area within the concrete wall was carried out "with the cooperation and consent of individuals present." The court also found that

the area of land where Aero conducted its sandblasting operation appeared to be " 'urban wilderness,' dilapidated remnants from prior industrial uses more recently dedicated to public park rehabilitation lacking defined boundaries or markings separating public and private areas." The gravel road adjacent to the historical canal was an area of a public park where the public is likely to wander and explore. Further, "[n]o photographic evidence or testimony depicts effective or meaningful effort by [Aero] to restrict access to the [leased] premises," and the "exposed nature of the facility" contradicted defendant's claim of a reasonable expectation of privacy. Therefore, the court found, under these circumstances and the controlling case law, no "search" actually occurred and the evidence arising out of each inspection was admissible since a search warrant is not necessary unless there is a reasonable expectation of privacy in the area subject to the inspection.

¶ 41 The court found the People proved their complaint by demonstrating that violations of open dumping of waste, as defined by the Act, occurred between August 29, 2007 and September 15, 2009. The court did not order injunctive relief, but entered an order on April 4, 2014, requiring Aero to pay a civil penalty in the amount of $5,000.

¶ 42 On July 29, 2014, the court denied defendant's motion to reconsider and defendant filed a timely notice of appeal. The State has not filed a cross appeal challenging the absence of injunctive relief.

¶ 43 ANALYSIS

¶ 44 On appeal, Aero argues the trial court erred by finding two uncovered 55-gallon drums were in open view on June 6, August 29, and September 11, 2007, and denying Aero's affirmative defense regarding illegal searches. Alternatively, Aero contends the Act did not allow IEPA representatives to conduct the 2007 warrantless inspections of its business property because its business was not a "pervasively regulated business." The People submit the Will

County and IEPA officials did not act in violation of the fourth amendment, and the exclusionary rule was not applicable, because Aero had no reasonable expectation of privacy in its operation conducted in an open field. Further, the People contend the fourth amendment does not apply outside of the context of a criminal prosecution.

¶ 45 First, we turn to the issue of whether Hartke violated Newman's expectation of privacy by viewing the condition of Aero's leased outdoor sandblasting site on June 6, 2007 after following a landscaping truck on to the Bridgeview trust property. The case law provides that questions of both law and fact are at issue when reviewing a trial court's decision concerning whether an illegal search occurred and warrants suppression of the evidence gathered during the search. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004).

¶ 46 The trial court is given deference regarding its findings of historical fact and such findings will be upheld on review unless they are against the manifest weight of the evidence. *Id.; People v. Gherna*, 203 Ill. 2d 165, 175 (2003). However, this court must apply those historical facts to the issues at bar and review *de novo* the ultimate legal question of whether the evidence should be suppressed. *Pitman*, 211 Ill. 2d at 512.

¶ 47 It is well established that, to claim the protection of the fourth amendment, a defendant must demonstrate that he had a reasonable expectation of privacy in the place searched. *Pitman*, 211 Ill. 2d at 514. The Supreme Court has held that the expectation of privacy under the fourth amendment does not extend to "open fields." See *United States v. Dunn*, 480 U.S. 294, 303-04 (1987); *Oliver v. United States*, 466 U.S. 170, 179-80 (1984). Specifically, the *Dunn* court held " 'the government's intrusion upon the open fields is not one of those 'unreasonable searches' proscribed by the text of the Fourth Amendment.' " *Dunn*, 480 U.S. at 303-04 (quoting *Oliver*, 466 U.S. at 177). " '[T]he term 'open fields' may include any unoccupied or undeveloped area

outside of the curtilage [of a home]. An open field need be neither 'open' nor a 'field' as those terms are used in common speech.' " *Dunn*, 480 U.S. at 304 (quoting *Oliver*, 466 U.S. at 180).

¶ 48 In *Dunn*, the court held that no constitutional violation occurred when police officers crossed over a respondent's ranch-style perimeter fence, and over several similarly constructed interior fences, prior to stopping at the locked front gate of the barn. *Dunn*, 480 U.S. at 304. Similarly, our supreme court has held that "no trespassing" signs do not bar the public from viewing open fields in rural areas. *Pitman*, 211 Ill. 2d at 517.

¶ 49 In this case, the leased Aero property was a smaller portion of property owned by the Bridgeview trust. It is undisputed the east and west boundaries of the Bridgeview trust property consist of a public park and canal. It is also undisputed that Hartke followed a landscaping truck that freely traveled on a road owned by the Department of Natural Resources and passed through an open gate at the north end of the Bridgeview property with the landscaping truck. In this case, the trial court found Hartke was legally present on Bridgeview trust property where he observed the landscape truck deposit its waste. The court also found Hartke's testimony credible with respect to Hartke's ability to observe two open 55-gallon drums on Aero's leased land and in plain view from the location where he spoke to the property's caretaker on the Bridgeview trust property.

¶ 50 In addition, the court noted no photographic evidence or testimony was presented depicting an "effective or meaningful effort by [Aero] to restrict access to the premises," and none could be seen in the aerial photograph of the property. The court described the open nature of the Bridgeview trust property itself and its proximity immediately adjacent to public park property, and concluded the Bridgeview trust property and the area leased by Aero had the characteristics of an "urban wilderness."

¶ 51 We give deference to the trial court's findings of facts and conclude the trial court's findings were not against the manifest weight of the evidence. See *Pitman*, 211 Ill. 2d at 512. Based on the record, we conclude this property where Hartke made his first observations, before traveling into the sandblasting site within the concrete wall, was an "open field" for purposes of the fourth amendment and consistent with the condition of an urban wilderness.

¶ 52 Next, we must determine whether Aero possessed a reasonable expectation of privacy in the sandblasting site which Hartke entered and made his second set of observations on June 6, 2007.

¶ 53 Giving deference to the trial court's findings of fact, we must apply the factors established by case law to determine whether Aero had a reasonable expectation of privacy in the sandblasting site as a matter of law. See *Pitman*, 211 Ill. 2d at 520-21. These factors include: "(1) ownership of the property searched; (2) whether the defendant was legitimately present in the area searched; (3) whether defendant has a possessory interest in the area or property seized; (4) prior use of the area searched or property seized; (5) the ability to control or exclude others from the use of the property; and (6) whether the defendant himself had a subjective expectation of privacy in the property." *Pitman*, 211 Ill. 2d at 520-21.

¶ 54 Clearly, Aero had a possessory interest in and the right to be on the leased premises. Therefore, we focus on the fifth and sixth factors listed above. Aero could not exclude the public from the Bridgeview trust property that enveloped the sandblasting site. The case law provides that "[t]he occupant of a commercial building must take the *additional* step of affirmatively barring the public from the area because a business operator has a reasonable expectation of privacy only in those areas from which the public has been excluded." (Emphasis in original.) *Janis*, 139 Ill. 2d at 317-18 (quoting *Dunn*, 480 U.S. at 316). Here, Aero did not erect privacy fencing or other barriers to block members of the public from viewing the leased Aero property

while standing on the Bridgeview trust property. Moreover, once present at the sandblasting site that was open to the public, the government officials were allowed to move about the sandblasting site with the cooperation of Aero employees and Newman, the owner of the commercial business.

¶ 55 We reject the State's contention that this particular sandblasting operation qualified as a closely-regulated activity, allowing IEPA officials to enter and search the property against the owner's wishes and without a search warrant. However, a search warrant is not required where the property owner allows entry on to the premises where items can be seen in plain view.

¶ 56 In this case, the trial court found Hartke's inspection of the Bridgeview trust property and his subsequent act of driving through the opening in the concrete wall at the sandblasting site took place "with the cooperation and consent of individuals present." These findings of fact are not contrary to the manifest weight of the evidence. Due to the consent of Aero's personnel, a search warrant was not required on June 6, 2007 and the subsequent visits to the property did not become part of the fruit of the poisonous tree as Aero contends.

¶ 57 However, this court would be remiss if we did not note that the issues in this case could easily have been avoided if IEPA simply obtained a search warrant, out of an abundance of caution, since sandblasting was not a highly regulated operation, before Haennicke returned to the property in August.

¶ 58 Nonetheless, based on the unusual facts of this case involving an outdoor sandblasting operation that could easily be viewed from the adjacent property, we conclude the evidence obtained by Hartke on June 6, 2007 and the additional evidence obtained by Haennicke during his inspections on August 29 and September 11, 2007, did not violate Newman's fourth amendment rights or require the suppression of this evidence. We affirm the trial court's ruling.

¶ 59 CONCLUSION

¶ 60 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 61 Affirmed.