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IN THE
COURT OF APPEALS OF INDIANA

TOMMIE HATCHETT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0903-CR-217
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven R. Eichholtz, Judge
Cause No. 49G23-0708-FD-165458

September 17, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Following a bench trial, Tommie Hatchett was convicted of Possession of Cocaine[1] as a class D felony and Possession of Marijuana[2] as a class A misdemeanor. On appeal, Hatchett presents one issue for our review: Did the trial court properly admit evidence procured during a search incident to Hatchett's arrest for gambling and trespassing?

We affirm.

The record reveals that on August 10, 2007, Detective James Smith and several other officers with the Indianapolis Metropolitan Police Department were in an unmarked van on patrol in the Brightwood neighborhood investigating a narcotics complaint. The area was generally known to Detective Smith to be a high-crime area. As the officers drove near a residence in the 2800 block of Dearborn Street, Detective Smith observed several men on a small slab porch of a residence and Hatchett standing nearby. From the street it could be readily observed that the house was vacant, and there was a no-trespassing sign posted on the front of the residence that the officers could easily see. There was also a no-trespassing sign posted on the side of the house, and no fence enclosed the yard. From his experience, Detective Smith knew that abandoned homes were often sites for criminal activity.

As the officers drove by, Detective Smith observed that three of the men on the porch were bent over and making a motion he knew to be associated with gambling. At the time, Hatchett was standing off of the porch, approximately one foot away, watching the men making the gambling motion. From what Detective Smith could see, it was possible that

[1] Ind. Code Ann. § 35-48-4-6 (West, PREMISE through Public Laws approved and effective through 4/20/2009).

[2] I.C. § 35-48-4-11 (West, PREMISE through Public Laws approved and effective through 4/20/2009).

Hatchett could participate in the gambling. As the officers prepared to exit the van to investigate, two of the individuals fled on foot. Hatchett, too, started to walk away. The officers exited the van wearing their tactical vests that were clearly marked with "Police" on the front and back. The officers also verbally identified themselves by shouting "Police!" *Transcript* at 48.

Hatchett returned to the porch slab when called back by one of the officers. Detective Smith recognized Hatchett from having arrested him within the last year on a narcotics charge. As the officers approached the porch, they observed $102 in cash and dice. Hatchett told the officers that he did not live at the home and refused to divulge whether he knew someone who did. The officers eventually determined that none of the men still present were associated with the home. The officer placed each of the men under arrest for trespassing and gambling. During a search incident to Hatchett's arrest, officers discovered .45 grams of cocaine and 1.64 grams of marijuana in the zipper area of Hatchett's pants.

On August 11, 2007, the State charged Hatchett with class D felony possession of cocaine and class A misdemeanor possession of marijuana. On August 20, 2007, the trial court granted the State's request to amend the information to upgrade the charge of cocaine possession to a class B felony. On November 14, 2007, Hatchett filed a motion to suppress the evidence discovered upon his arrest. After a hearing on January 7, 2008, the trial court denied Hatchett's motion to suppress. A bench trial was held on December 19, 2008, at the conclusion of which the trial court found Hatchett guilty of possession of cocaine as a class D

felony and of the marijuana charge. The trial court subsequently sentenced Hatchett to concurrent one-year sentences on each conviction.

Hatchett argues that the trial court abused its discretion in admitting evidence procured during the search of his person. Specifically, Hatchett argues that the police lacked probable cause to arrest him for either trespassing or gambling, and thus, the search incident to his arrest was illegal and the evidence seized therefrom was inadmissible.

Trial courts have broad discretion regarding the admission of evidence. *Kelley v. State*, 825 N.E.2d 420 (Ind. Ct. App. 2005). We will reverse a trial court's ruling on the admission of evidence only for an abuse of discretion, that is, when the court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id*. We examine the evidence favorable to the trial court's ruling along with any uncontradicted evidence. *Matson v. State*, 844 N.E.2d 566 (Ind. Ct. App. 2006), *trans. denied*. We neither reweigh evidence nor judge witness credibility. *Id*.

As set forth above, Hatchett argues that his arrest for gambling and trespass was not based on probable cause for either offense, and thus, the evidence of the marijuana and cocaine recovered from his person during the search incident to his arrest should not have been admitted. The Fourth Amendment generally prohibits warrantless searches. *See U.S. v. Robinson*, 414 U.S. 218 (1973). A search incident to a lawful arrest, however, is a traditional exception to the warrant requirement. *Id*. In order for a search incident to arrest to be valid, the arrest itself must be lawful. *Williams v. State*, 898 N.E.2d 400 (Ind. Ct. App. 2008), *trans. denied*. For the arrest to be lawful, it must be supported by probable cause. *VanPelt v.*

State, 760 N.E.2d 218 (Ind. Ct. App. 2001), *trans. denied*. During a search incident to arrest, officers may search the arrested person and the area within his immediate control. *Williams v. State*, 898 N.E.2d 400.

Probable cause to arrest exists where the officer has knowledge of facts and circumstances that would warrant a man of reasonable caution to believe that a suspect has committed the criminal act in question. *VanPelt v. State*, 760 N.E.2d 218. A police officer's subjective belief as to whether he has probable cause to arrest a defendant has no legal effect. *Id*. Rather, the police officer's actual knowledge of objective facts and circumstances is determinative. *Id*.

Here, the officers clearly had probable cause to arrest Hatchett for criminal trespass. An act of criminal trespass is committed when a person who does not have a contractual interest in the property enters the real property of another after having been denied entry. *See* Ind. Code Ann. § 35-43-2-2(a)(1) (West, PREMISE through Public Laws approved and effective through 4/20/2009). A person has been denied entry by means of "posting or exhibiting notice at the main entrance in a manner that is either prescribed by law or likely to come to the attention of the public." I.C.§ 35-43-2-2(b)(2).

Hatchett does not deny that he was present on the property and does not dispute that he did not have a contractual interest in the property. Rather, Hatchett argues that he was not effectively denied entry onto the porch and the surrounding yard of the residence because the no trespassing signs were posted on the residence itself and not on the perimeter of the

property.[3] We find Hatchett's argument unpersuasive. As the officers drove by, they observed Hatchett standing in the yard, approximately one foot away from the concrete slab that served as the front porch to the residence. No-trespassing signs were posted on the front and side of the residence in a manner likely to come to the attention of the public. Based on these objective facts, which were known the officers, we conclude they had probable cause to arrest Hatchett for criminal trespass.[4]

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.

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[3] In support of his argument, Hatchett directs us to *Blakney v. State*, 819 N.E.2d 542 (Ind. Ct. App. 2004). *Blakney*, however, is inapposite to this case insofar as the court was addressing whether sufficient evidence supported the defendant's conviction for criminal trespass, not whether police officers had probable cause to arrest. The standard under which the *Blakney* court evaluated the facts before it is completely different than the analysis before us in this case. We are not here concerned with whether the evidence would have been sufficient to support a conviction for criminal trespass as Hatchett was not charged with that crime. Moreover, we note that the facts of *Blakney* are easily distinguishable from the case at hand.

[4] Having concluded the officers had probable cause to arrest Hatchett for criminal trespass, and thus, that the search incident to arrest was valid, we need not address Hatchett's argument that the officers lacked probable cause to arrest him for gambling.