Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

FILED
Apr 24 2009, 9:47 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

TAFFANEE L. KEYS
Marion County Public Defender
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

TIFFANY N. ROMINE
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DARYL HURT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0809-CR-550
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Ruth D. Reichard, Senior Judge
Cause No. 49G05-0803-FC-050333

April 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Daryl Hurt appeals from his convictions for Escape, as a Class C felony, and two counts of Resisting Law Enforcement, each as a Class A misdemeanor, following a bench trial. Hurt raises a single issue for our review, which we restate as whether the trial court abused its discretion when it admitted evidence obtained by law enforcement officers as a result of the pursuit, stop, and arrest of Hurt.

We affirm.

FACTS AND PROCEDURAL HISTORY

On March 1, 2008, between 10:00 p.m. and 11:00 p.m., Avert Security Special Deputy[1] Chad Butts was patrolling the privately owned Town and Terrace Cooperative properties in Marion County. As Special Deputy Butts patrolled near the center of the community, he saw Hurt. Special Deputy Butts recognized Hurt because four months earlier Special Deputy Butts had arrested Hurt for trespassing inside of a home in the Town and Terrace community. When Special Deputy Butts arrested Hurt for the first trespass, Special Deputy Butts expressly told Hurt that Hurt "was no longer allowed on the property." Transcript at 20.

When Hurt saw Special Deputy Butts on March 1, Hurt turned and ran. Special Deputy Butts, who was wearing his uniform, caught up to Hurt and ordered him to stop. Instead of following the special deputy's command, Hurt fled into one of the houses in the community. That house was rented by Phyllis Harris. Harris informed Special Deputy Butts that Hurt was living with her. Harris then consented to let the special

[1] Avert Security is a private security firm that has an agreement with the Marion County Sheriff's Department. That agreement permits special deputies to arrest individuals who are violating Indiana law on property protected by Avert.

deputy and an assisting officer enter the home to apprehend Hurt. After finding Hurt in a bedroom closet, Special Deputy Butts placed Hurt under arrest for resisting law enforcement and for criminal trespass. The special deputy also confirmed that Hurt's name was on the "trespass list" maintained by the Indianapolis Metropolitan Police Department for the Town and Terrace community. Id. at 48.

A transporting officer arrived to escort Hurt to jail. As that officer attempted to place Hurt in the officer's vehicle, Hurt knocked the officer back, freed himself, and fled. The officers commanded Hurt to stop—he refused—and then called dispatch. Other officers were able to apprehend Hurt. The officers then placed Hurt in leg restraints because he was kicking them as they tried to arrest him. Despite the leg restraints, Hurt again tried to run away (he did not get too far). See id. at 63.

On March 3, the State charged Hurt with escape, as a Class C felony; criminal trespass, as a Class A misdemeanor; and two counts of resisting law enforcement, each as a Class A misdemeanor, one for fleeing after being ordered to stop and one for forcibly resisting arrest. On July 21, 2008, Hurt filed a motion to suppress "[a]ny evidence obtained by any law enforcement officers as a result of the pursuit, stop and arrest of defendant on March 1, 2008." Appellant's App. at 45. The trial court ordered that it would hear Hurt's arguments during his bench trial. At his trial on August 8, Hurt renewed his objection to the State's evidence. The trial court overruled Hurt's objections and admitted the officers' testimony regarding "what happened [once] the pursuit of the defendant began." See Transcript at 19. The court also admitted into evidence, at Hurt's request, a copy of the trespass list as of May 20, which did not list Hurt's name with

respect to the Town and Terrace community. The court then found Hurt not guilty of criminal trespass but guilty of the other charges. The court sentenced Hurt to an aggregate term of four years. This appeal ensued.

DISCUSSION AND DECISION

Hurt contends that the State's evidence, namely, the testimony of the officers, was obtained in violation of his right to be free from unreasonable searches and seizures under the Fourth Amendment of the U.S. Constitution.[2] Hurt is appealing from the trial court's admission of that evidence following a completed trial. A trial court is afforded broad discretion in ruling on the admissibility of evidence, and we will reverse such a ruling only upon a showing of an abuse of discretion. Washington v. State, 784 N.E.2d 84, 587 (Ind. Ct. App. 2003). An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. Id. We will not reweigh the evidence, and we consider conflicting evidence in the light most favorable to the trial court's ruling. Cole v. State, 878 N.E.2d 882, 885 (Ind. Ct. App. 2007).

In Terry v. Ohio, 392 U.S. 1, 30 (1968), the United States Supreme Court held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when, based on a totality of the circumstances, the officer has a reasonable, articulable suspicion that criminal activity is afoot. Hardister v. State, 849 N.E.2d 563, 570 (Ind. 2006). A Terry stop is a lesser intrusion on the person than an arrest and may include a request to see identification and inquiry necessary to confirm or dispel the officer's suspicions. Id. (citing Hiibel v. Sixth Judicial Dist. Court of Nev., 542 U.S. 177,

[2] Hurt suggests that the State also violated his rights under Article I, Section 11 of the Indiana Constitution. But Hurt does not present any legal analysis under the Indiana Constitution. He has therefore waived that argument. See Spranger v. State, 650 N.E.2d 1117, 1126 (Ind. 1995).

185-89 (2004)). Reasonable suspicion entails some minimal level of objective justification for making a stop, something more than an unparticularized suspicion or hunch, but less than the level of suspicion required for probable cause. Wilson v. State, 670 N.E.2d 27, 29 (Ind. Ct. App. 1996) (citing United States v. Sokolow, 490 U.S. 1, 7 (1989)). Even if the stop is justified, a reasonable suspicion only allows the officer to temporarily freeze the situation for inquiry and does not give him all the rights attendant to an arrest. Burkett v. State, 736 N.E.2d 304, 306 (Ind. Ct. App. 2000). To evaluate the validity of a stop, the totality of the circumstances must be considered. Id. Although the standard of review of a trial court's decision to admit evidence is whether there was an abuse of discretion, the determination of reasonable suspicion is reviewed de novo. Id.

Here, Hurt argues that Special Deputy Butts did not have a reasonable suspicion to stop him. Specifically, Hurt asserts that the special deputy "had no reason to suspect Mr. Hurt was engaging in criminal activity or about to engage in criminal activity" for each of the following reasons: (1) Hurt was not near the home at which Special Deputy Butts had previously arrested Hurt; (2) Hurt's name was not on the trespass list; and (3) Hurt had a legal right to be near the home in which he was, according to Harris, living. See Appellant's Brief at 9-10. But without reconsidering the evidence, we cannot agree with Hurt's conclusion that Special Deputy Butts violated Hurt's Fourth Amendment rights.

We initially note that Hurt was on private, not public, property during the instances in question. On similar facts, we have noted:

> Contrary to the rights an individual has to remain free from intrusion in public spaces, those same rights do not carry over to private property. Intruding upon private property constitutes criminal trespass when one

> who, not having a contractual interest in the property, enters the property of another after having been denied entry. Ind. Code § 35-43-2-2(a)(1). . . .
>
> * * *
>
> Because this was private property and the officers were acting as agents of the property owner, the Fourth Amendment was not implicated in the stop. . . .

Scott v. State, 855 N.E.2d 1068, 1073-74 (Ind. Ct. App. 2006). Hurt argues that Scott is inapposite because, there and unlike here, the private-property owners had posted several no-trespassing signs. But Hurt misses the point. The Fourth Amendment protects privacy interests, and those protections do not extend to one who is on another's property without permission. See id.

Nonetheless, Hurt asserts that he was on the property with permission from Harris, and the trial court acquitted Hurt of the criminal trespass charge. But those subsequently determined facts do not imply that Special Deputy Butts lacked reasonable suspicion at the time he first saw Hurt on the Town and Terrace property. To the contrary, Special Deputy Butts recognized Hurt from a prior arrest for criminal trespass in the same community, and, at the time of that previous arrest, Special Deputy Butts had expressly informed Hurt that Hurt was not to return to the community. Those facts alone established an objective justification for Special Deputy Butts to stop Hurt on March 1 for the limited purpose of inquiring into Hurt's presence in the community.

However, Special Deputy Butts was unable to conduct such a limited inquiry because, when Hurt first saw the special deputy, Hurt fled and ignored the special deputy's orders to stop. When someone flees from an officer and ignores that officer's orders to cease, the protections of the Fourth Amendment only become effective once the

officer actually detains the fleeing individual. California v. Hodari D., 499 U.S. 621, 627-29 (1991). Therefore, the trial court could not have erred under the Fourth Amendment in the admission of any evidence of Hurt's conduct prior to his actual detention by the officers.

Neither did the court err in admitting into evidence testimony regarding Hurt's behavior once he was detained. It is clear under Indiana law that Hurt had no right to flee once the officer ordered him to stop, "even if a police officer does not have reasonable suspicion to stop a defendant." I.C. § 35-44-3-3(a)(3); Cole v. State, 878 N.E.2d 882, 886 (Ind. Ct. App. 2007). Thus, even if Special Deputy Butts had lacked a reasonable and articulable suspicion at the outset of his March 1 encounter with Hurt, Hurt's fleeing and failure to stop when ordered was a criminal act that created probable cause for Special Deputy Butts to arrest him. See Cole, 878 N.E.2d at 887-89. Accordingly, the trial court did not err in admitting the State's evidence, and we affirm Hurt's convictions.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.