IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Gregory Jenkins, Defendant and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20060977-CA F I L E D (November 14, 2008) 2008 UT App 412

Fourth District, Provo Department, 051403345
The Honorable Lynn W. Davis

Attorneys: Margaret P. Lindsay, Orem, for Appellant
Mark L. Shurtleff and Jeffrey S. Gray, Salt Lake City, for Appellee

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Before Judges Bench, Billings, and McHugh.

BILLINGS, Judge:

Defendant Gregory Jenkins appeals his convictions for possession of methamphetamine in a drug-free zone, a second degree felony, see Utah Code Ann. §§ 58-37-8(2)(a)(i), (4)(a)(i) (Supp. 2008), and possession of drug paraphernalia in a drug-free zone, a class A misdemeanor, see id. §§ 58-37a-5(1), 58-37-8(4)(a)(i). Defendant argues on appeal that the trial court erred when it denied his motion to suppress the evidence obtained during an allegedly illegal seizure. We affirm.

The Fourth Amendment to the United States Constitution protects citizens from unreasonable searches and seizures. See U.S. Const. amend. IV. Defendant asserts that his Fourth Amendment rights were violated when Detective Bebee detained him without reasonable suspicion. Therefore, Defendant argues, the evidence seized during his detention should have been suppressed.

The Fourth Amendment allows a police officer to stop and briefly detain a person for investigative purposes if the "officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot." Terry v. Ohio, 392 U.S. 1, 30 (1968). "The officer, of course, must be able to articulate more than an inchoate and unparticularized suspicion or hunch. The Fourth Amendment requires some minimal level of objective justification for making the stop." United States v. Sokolow, 490 U.S. 1, 7 (1989)

(citation and internal quotation marks omitted). A stop is objectively justified if the officer can identify "specific and articulable facts which, taken together with rational inferences from those facts," support a reasonable suspicion that criminal activity may be afoot. Terry, 392 U.S. at 21.

When determining the validity of a stop, the court "must view the articulable facts in their totality and avoid the temptation to divide the facts and evaluate them in isolation." State v. Warren, 2003 UT 36, ¶ 14, 78 P.3d 590. Moreover, the facts must "be judged against an objective standard: would the facts available to the officer at the moment of the seizure . . . 'warrant a man of reasonable caution in the belief' that the [seizure] was appropriate?" Terry, 392 U.S. at 21-22. This objective standard includes consideration of "the factual inferences drawn by the law enforcement officer," United States v. Arvizu, 534 U.S. 266, 277 (2002), based on his or her experience and specialized training--inferences "that might well elude an untrained person," id. at 273 (internal quotation marks omitted). We "'judge the officer's conduct in light of common sense and ordinary human experience and . . . accord deference to an officer's ability to distinguish between innocent and suspicious actions.'" State v. Markland, 2005 UT 26, ¶ 11, 112 P.3d 507 (omission in original) (quoting United States v. Williams, 271 F.3d 1262, 1268 (10th Cir. 2001)). And we do not require an officer to "rule out the possibility of innocent conduct." Arvizu, 534 U.S. at 277. Essentially, we allow police officers to formulate "certain common-sense conclusions about human behavior." United States v. Cortez, 449 U.S. 411, 418 (1981).

Applying the totality of the facts in this case, including Detective Bebee's experience and training to draw certain "rational inferences from those facts," see Terry, 392 U.S. at 21, we conclude that Detective Bebee had reasonable suspicion to justify an investigatory stop of Defendant. Defendant was in the immediate vicinity of "a major incident" involving a suicidal male with a gun who had blocked off a portion of a street. Police officers had surrounded the area, "negotiators were present," and "a SWAT team . . . was on standby." When Detective Bebee pulled into a nearby 7-Eleven parking lot in his unmarked truck, he observed Defendant crouched down at the back corner of the 7-Eleven, looking towards the commotion and the responding officers. As Detective Bebee drove his truck through the parking lot between the 7-Eleven and an adjacent building, Defendant--still crouching down--approached Detective Bebee's truck and walked alongside the moving truck, "using [it] as a shield to block him from view of [the police officers positioned] to the east." Detective Bebee also noticed that as Defendant walked alongside the truck, he appeared nervous and continued to eye the incident and the responding police officers. When Detective Bebee stopped his truck to question Defendant, Defendant ran from

the scene and disappeared into an adjacent parking lot just west of the 7-Eleven parking lot.

These suspicious facts, combined with Defendant's unprovoked flight from the perimeter of a major crime scene, support Detective Bebee's reasonable suspicion that justified him stopping Defendant. In Illinois v. Wardlow, 528 U.S. 119 (2000), the Supreme Court determined that two officers were justified in stopping a defendant who was in an area known for heavy narcotics trafficking and who fled the scene upon seeing the officers approach. See id. at 121. The Court concluded that the defendant's "presence in an area of heavy narcotics trafficking" and his "unprovoked flight upon noticing the police" were sufficient to establish reasonable suspicion warranting an investigatory stop. Id. at 124.

Similarly, Defendant actively tried to evade detection by the police officers responding to the nearby incident involving an armed man, and Defendant was clearly interested in the incident. Moreover, Detective Bebee noticed that Defendant was visibly nervous--a fact not present in Wardlow. We acknowledge that unlike Wardlow, Defendant did not know that Detective Bebee was a police officer because Detective Bebee was wearing plain clothes and driving an unmarked car. However, Defendant's attention was fixed on the incident and the police officers positioned at the perimeter of the incident. Clearly, Defendant was attempting to hide from the other police officers' view.

The facts in this case are more than sufficient to "'warrant a [person] of reasonable caution in the belief' that [an investigatory detention] was appropriate." Terry v. Ohio, 392 U.S. 1, 22 (1968) (citation omitted). As observed by Detective Bebee, the facts raised a suspicion that Defendant may have been "a part of the incident" or was going to create a problem for the other officers who had responded to the incident.

Accordingly, we affirm.

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Judith M. Billings, Judge

WE CONCUR:

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Russell W. Bench, Judge

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Carolyn B. McHugh, Judge