IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Mark LeFevre, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20060974-CA F I L E D (March 13, 2008) 2008 UT App 87

Fourth District, Provo Department, 051404084
The Honorable Lynn W. Davis

Attorneys: Margaret P. Lindsay, Orem, for Appellant
Mark L. Shurtleff and Joanne C. Slotnik, Salt Lake City, for Appellee

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Before Judges Billings, Davis, and McHugh.

BILLINGS, Judge:

Defendant Mark LeFevre appeals the trial court's denial of his motion to suppress evidence obtained during a "level two" detention, arguing that the detention was illegal. We affirm.

There is no dispute that the seizure at issue was a level two stop, which means it "involves an investigative detention that is usually characterized as brief and non-intrusive." State v. Hansen, 2002 UT 125, ¶ 35, 63 P.3d 650. Thus, the sole issue before us is whether the trial court properly concluded the level two stop was supported by reasonable suspicion. This issue presents a question of law which we review for correctness. See State v. Brake, 2004 UT 95, ¶ 15, 103 P.3d 699.

In this case, Officer John Barson, a Provo City police officer, was in a parking lot acting as a "cover officer" for several other officers who were investigating an unrelated incident. Officer Barson had ten years of experience and training in drug recognition. He observed and articulated behavioral anomalies in Defendant that suggested that Defendant might be under the influence of methamphetamine: Defendant's

"soldier[-]style clipped walking manner," jerky head movements, and repeated clenching and unclenching of his hands. Officer Barson also observed a light bulb protruding from Defendant's pants pocket and then saw Defendant cover it with his shirttail. Officer Barson knew that light bulbs are commonly used as pipes to ingest methamphetamine. Furthermore, Officer Barson had previously met Defendant and knew that he had used methamphetamine in the past.[1]

Defendant argues this collection of facts amounts to nothing more than an "inchoate and unparticularized suspicion or 'hunch,'" Terry v. Ohio, 392 U.S. 1, 27 (1968). Defendant further asserts that his conduct could be consistent with an innocent individual who was nervous around police. "However, '[a] determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct.'" State v. Markland, 2005 UT 26, ¶ 10, 112 P.3d 507 (quoting United States v. Arvizu, 534 U.S. 266, 277 (2002)). Furthermore, "[c]ourts must also '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.'" Id. ¶ 11 (quoting United States v. Williams, 271 F.3d 1262, 1268 (10th Cir. 2001)).

Defendant compares his case to State v. Trujillo, 739 P.2d 85 (Utah Ct. App. 1987), where we concluded a search was unreasonable when the officer stated that the situation looked suspicious, but could not offer "specific objective facts" that distinguished that particular individual from any others. Id. at 90. The officer relied only on the lateness of the hour and the high-crime rate of the area. Id. at 89. By contrast, in this case, Officer Barson articulated specific objective facts that made Defendant stand out from the average passerby. Thus, we agree with the trial court that Officer Barson's collective observations about Defendant's conduct prior to the stop support reasonable suspicion of criminal conduct. Accordingly, we affirm

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1. The trial court noted, and we agree, that

> [D]efendant's history of drug use would not be an appropriate sole basis for an officer to conduct a [l]evel [two] encounter. However, that fact, when viewed in connection with the totality of the circumstances presented here, reasonably heightened Officer Barson's suspicion and became part of the circumstances that justified investigation of the defendant. The defendant's history is an ancillary, supporting fact.

the trial court's denial of Defendant's motion to suppress evidence.

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Judith M. Billings, Judge

WE CONCUR:

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge