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DISTRICT IV

March 10, 2016

To:

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Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2014AP1999-CR State v. Jennifer L. Copus (L. C. No. 2013CF1258)

Before Lundsten, Higginbotham and Sherman, JJ.

Jennifer Copus appeals a judgment of conviction for possession with intent to deliver counterfeit narcotics. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

A traffic stop was conducted based on a registration violation. Copus falsely identified herself to police. The officer noticed Copus's hands were shaking, and also noticed in plain view fresh track marks on Copus's arm, consistent with intravenous heroin use. Copus stated she was

a heroin user but now was on Suboxone. Copus consented to the search of the vehicle, but not her purse. Copus answered affirmatively when asked if she had needles in her purse.

Police searched the purse and discovered rubber “tie-offs” with black char marks, used syringes, a “cooker” containing residue and a used cotton ball. Another syringe was discovered in an eyeglass case. An officer asked Copus if the syringes had been used, and Copus answered yes. Police also found foil containing an off-white powder similar to the appearance of heroin. Copus stated, “It’s fake.” Copus also stated she was planning to sell the substance as heroin to earn money to support her habit.

The purse also contained a Wisconsin identification card under the name “Jennifer Copus.” After running Copus’ information through the databank, police discovered Copus was on a probation hold, and had a lengthy criminal history including forgery and drug charges. (R2:3)

An Information charged Copus with possession with intent to deliver a counterfeit narcotic; possession of drug paraphernalia; and obstructing an office, all as repeaters. The circuit court denied a suppression motion. Copus pleaded guilty to an amended charge of possession of counterfeit narcotics with intent to deliver. The repeater enhancer and all remaining counts were dismissed and read-in. The circuit court imposed a sentence consisting of eighteen months’ initial confinement and two years’ extended supervision. Copus now appeals.

There is no dispute that Copus’ vehicle was lawfully stopped. On appeal, Copus argues probable cause did not support the search of her purse. However, the circuit court identified a number of factors that supported its findings that the officer had probable cause to believe the purse contained contraband. These factors included Copus’ unusual nervousness, fresh track

marks associated with intravenous drug use, her admission that needles were in her purse, her admission that she was taking Suboxone, and the officer's experience that recovering addicts often relapse. The officer testified to her extensive experience investigating controlled substances, including interaction with drug users and over 100 drug deals. The officer testified heroin users often carry drug kits with them in their vehicles, and they usually use the drugs shortly after purchase. The kits are used to ingest narcotics and include cookers, cotton balls, surgical armbands and syringes. The officer also stated heroin users take Suboxone to block the urge to use heroin. The totality of these factors reasonably indicate the presence of a controlled substance and support the court's determination of probable cause supporting the search of the purse.

Copus insists that when these factors are scrutinized, "it is apparent the State justifies the search of the purse by stringing together weak indicators of drug possession. The factors allowed the officer to form a hunch, not probable cause." This argument does not comport with the totality of the circumstances test. Probable cause to search is a flexible, common-sense standard. The totality of the circumstances must be considered, and the facts must be viewed in the light of the knowledge and experience of the person conducting the search. *See State v. Lefler*, 2013 WI App 22, ¶¶7-8, 346 Wis. 2d 220, 827 N.W.2d 650. Under the totality of the evidence available to the officer in the present case, probable cause existed to believe Copus' purse was capable of concealing the object of the search. *See Wyoming v. Houghton*, 526 U.S. 295, 307 (1999). The circuit court properly denied the motion to suppress evidence.

Upon the foregoing,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals