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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1786**

State of Minnesota,
Respondent,

vs.

Paige Jean Lofberg,
Appellant.

**Filed December 24, 2018
Affirmed
Stauber, Judge***

Pennington County District Court
File No. 57-CR-16-988

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Seamus P. Duffy, Pennington County Attorney, Kristin J. Hanson, Assistant County Attorney, Thief River Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Peter M. Routhier, Special Assistant Public Defender, Faegre Baker Daniels LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Hooten, Judge; and
Stauber, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

STAUBER, Judge

In this appeal from a conviction of fifth-degree possession of a controlled substance, appellant argues that (1) her warrantless arrest was unsupported by probable cause to believe that she committed theft or shoplifting, and (2) the warrantless search of an eyeglass case in her purse was not a valid search incident to arrest. We affirm.

FACTS

At 7:45 a.m. on December 18, 2016, Thief River Falls police officers Williams and Tureson were dispatched to a Walmart store to investigate a report that someone was acting suspiciously and possibly preparing to steal items from the store. Tim Hilde, a Walmart theft-loss employee, reported that a woman was taking items out of packages and breaking them down to fit in her purse and pockets. She was also placing items in a laundry basket, in a backpack and luggage that she had removed from shelves and placed in a shopping cart. Initially, Hilde asked the officers to wait outside and said that he would maintain eye contact with the woman and notify the officers when she left the store.

At approximately 1:26 p.m., Hilde asked the officers to come inside and intercede because the woman had been in the store so long. When the officers went inside, Hilde led them to appellant Paige Jean Lofberg. Lofberg was in the automotive-services waiting area, and she was looking out the window as if waiting for a car to pull up to the rear of the store. Williams testified at the omnibus hearing that when he and Tureson confronted Lofberg, she had an open purse, in which they could see food items that had been taken out of the package.

While going through the items, Williams saw a glasses case and, not knowing whether it belonged to the store or Lofberg, he opened it and found a needle, a spoon, and a small amount of a substance that appeared to be methamphetamine. After removing additional store items from Lofberg's pockets, the officers arrested her. Lofberg had no money with her to pay for any of the items. Williams recovered 220 items worth \$1,738.70 in Lofberg's possession. The items were in her pockets and purse, in the laundry basket and in a backpack. Walmart calculated that only \$25 worth of items in Lofberg's possession were not in salable condition.

Williams testified on cross-examination:

Q. Now when [Hilde] called you to intercede, was it just based on the amount of time [Lofberg] had been in the store?

A. It was based on her—what he perceived as making preparations to leave the store or for somebody to pull up and pick her up. He stated that during the course of the—I'll say seven hours that she was in the store, she had moved her items to the front of the store, to the back of the store, to the front several different times while she's on the phone. He perceived that somebody is either going to pick her up from the front of the store or the rear of the store.

Lofberg was charged with fifth-degree possession of methamphetamine and attempted felony theft. The district court denied Lofberg's motion to suppress the methamphetamine and to dismiss the attempted felony-theft charge for lack of probable cause. The state dismissed the attempted felony-theft charge, and the parties submitted the case to the district court for decision on stipulated facts. Under Minn. R. Crim. P. 26.01, subd., 4, the court found Lofberg guilty of fifth-degree possession of methamphetamine. This appeal followed sentencing.

DECISION

When this court reviews a district court's pretrial order on a motion to suppress evidence, the district court's factual findings are reviewed for clear error. *State v. Eichers*, 853 N.W.2d 114, 118 (Minn. 2014). But we "independently review the facts to determine whether, as a matter of law, the [district] court erred in its ruling." *State v. Jackson*, 742 N.W.2d 163, 168 (Minn. 2007).

Probable Cause to Arrest

Lofberg argues that the search of her purse was illegal because the police lacked probable cause to arrest her. "The test of probable cause to arrest is whether the objective facts are such that under the circumstances, a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed." *In re Welfare of G.M.*, 560 N.W.2d 687, 695 (Minn. 1997).

A theft occurs when a person "intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of the property." Minn. Stat. § 609.52, subd. 2(a)(1) (2016). Shoplifting occurs when a "person has taken, or is taking, an article of value" from a merchant's place of business "without paying for it" and the "taking is done with the intent to wrongfully deprive the merchant of the property." Minn. Stat. § 629.366, subd. 1(a)(1)-(2) (2016). "Upon a charge being made by a merchant or merchant's employee, a peace officer may arrest a person without a warrant if the officer has reasonable cause for believing that the person has committed or attempted to commit [a shoplifting offense]." *Id.*, subd. 2 (2016); *see also State v. Childs*,

269 N.W.2d 25, 27 (Minn. 1978) (“Reasonable cause is . . . synonymous with probable cause.”). An attempt to commit a crime occurs when a person “does an act which is a substantial step toward, and more than preparation for, the commission of the crime.” Minn. Stat. § 609.17, subd. 1 (2016).

Lofberg argues that her arrest was based on mere suspicion because she did not try to leave Walmart with any unpaid-for merchandise and she did not attempt to flee from security personnel or the police. Although “[a]n officer may rely on his training and experience to draw inferences and make deductions that may well elude an untrained person,” mere suspicion does not establish probable cause for arrest. *State v. Skoof*, 351 N.W.2d 380, 381 (Minn. App. 1984) (quotation omitted). Lofberg’s argument goes to her intent. Neither the theft nor the shoplifting statute require a defendant to attempt to leave a store to prove intent to commit those offenses. Intent “is generally proved by inferences drawn from a person’s words or actions in light of all the surrounding circumstances.” *State v. Thompson*, 544 N.W.2d 8, 11 (Minn. 1996).

Probable cause for arrest is assessed based on the totality of the circumstances. *State v. Ortega*, 770 N.W.2d 145, 150 (Minn. 2009). The following circumstances were known to the officers when they arrested Lofberg: (1) Lofberg was in the Walmart store behaving suspiciously for almost six hours, and Hilde maintained eye contact with her; (2) Lofberg removed a backpack and luggage from shelves and used them to conceal items; (3) Lofberg also concealed items in her purse and pockets, as well as in a laundry basket; (4) Lofberg unpackaged some of the items that she concealed; and (5) Lofberg repeatedly moved between the front and rear of the store while talking on her phone in a manner that

made it appear that she was waiting for someone to come and pick her up. These circumstances are sufficient to establish probable cause to believe that Lofberg committed attempted theft or shoplifting.

In a pro se supplemental brief, Lofberg asserts that she was in the automotive-services area charging her cell phone and was not attempting to leave the store. The fact that there might have been an innocent explanation for her behavior does not negate the existence of probable cause. *State v. Hawkins*, 622 N.W.2d 576, 580 (Minn. App. 2001).

Search Incident to Arrest

The United States and Minnesota Constitutions guarantee individuals the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A warrantless search is reasonable only if it falls within an exception to the warrant requirement. *State v. Stavish*, 868 N.W.2d 670, 675 (Minn. 2015).

“A search incident to a lawful arrest is a well-recognized exception to the warrant requirement under the Fourth Amendment.” *State v. Bernard*, 859 N.W.2d 762, 766 (Minn. 2015), *aff’d sub. nom.*, *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016). An arrest is lawful if an officer has probable cause to believe that a person has committed a crime. *G.M.*, 560 N.W.2d at 695-96.

The arresting officer may then search (1) the arrestee’s person, and (2) the area within the arrestee’s immediate control. *State v. Bradley*, 908 N.W.2d 366, 369 (Minn. App. 2018).

Lofberg argues that the search of her purse was illegal because it was not within the area of her immediate control. But the justification for allowing a warrantless search of a

purse incident to arrest is that it is associated with the arrestee's person, not that it is in the area of immediate control. "A search of the arrestee's person encompasses personal property . . . immediately associated with the person of the arrestee. Generally, a shoulder purse is so closely associated with the person that it is identified with and included within the concept of one's person." *Bradley*, 908 N.W.2d at 370 (quotations and citation omitted). In *Bradley*, appellant was carrying her purse when detained by a store investigator who saw her attempt to shoplift food items by concealing them in her purse. This court held "that appellant's purse remained *immediately* associated with her person during the detention at the store and was subject to a subsequent search incident to her lawful arrest by the officer who knew or had reason to know she had possessed it when detained." *Id.* at 371 (emphasis added).

Although Lofberg was not carrying her purse when detained by the officers, Hilde watched her unpackage store items and put them in her purse. Hilde provided that information to the officers and maintained constant eye contact on Lofberg after she came to his attention. Applying *Bradley*, we conclude that the search of Lofberg's purse was a valid as a search incident to arrest.

Affirmed.