IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Lori M. Smith, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20040967-CA F I L E D (February 24, 2006) 2006 UT App 69

Fourth District, Provo Department, 041400736
The Honorable Claudia Laycock

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

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Before Judges Bench, Billings, and Orme.

BILLINGS, Judge:

Defendant Lori Smith appeals the denial of her motion to suppress evidence related to charges of possession or use of methamphetamine and possession of drug paraphernalia. Defendant argues that she was not given a Miranda warning when she was in police custody and that she did not voluntarily consent to a search.

Utah courts look to four factors to evaluate whether an individual is in custody. See State v. Mirquet, 914 P.2d 1144, 1147 (Utah 1996); Salt Lake City v. Carner, 664 P.2d 1168, 1171 (Utah 1983).

Under the first factor, the trial court found that, although the questions eliciting the incriminating testimony that Defendant had methamphetamine in her purse took place in a patrol car, the site of interrogation did not indicate custody because (1) previously, Defendant had been told she could leave the interrogation site; and (2) Defendant, in the interest of keeping warm, chose to sit in the patrol car. Cf. State v. Martin, 543 N.W.2d 224, 227-28 (N.D. 1996) (holding that the mere fact that defendant was questioned in a patrol car did not constitute

custody). Prior to the questions by Officer Lunceford, Defendant was specifically told that she was "welcome to go at any time."

Regarding the second factor, we also agree with the trial court that although Defendant was asked to remain at the scene during the search of the vehicle, Officer Lunceford's initial investigation centered on the driver, who had an outstanding warrant, and moved to Defendant only moments before her incriminating statement.

As to the third factor, Defendant disputes the trial court's finding that no objective indicia of arrest were present at the time Officer Lunceford questioned her. The typical indicia of arrest include "readied handcuffs, locked doors, or drawn guns." Carner, 664 P.2d at 1171. Defendant does not argue that any of the typical indicia of arrest were present to indicate custody here. Utah courts have also held that even in the absence of typical indicia of arrest, an explicit accusation by an officer that an individual has committed a crime may be sufficient indicia of arrest to indicate custody. See State v. Mirquet, 844 P.2d 995, 1000 (Utah Ct. App. 1992), aff'd, 914 P.2d 1144 (Utah 1996). We do not think the questioning of Defendant about drug use rises to a level sufficient to establish custody under Mirquet.

Considering the final factor, Defendant concedes that Officer Lunceford's questioning was brief, but argues that the form of questioning was not investigatory, but accusatory. The facts here indicate that the length and form of Officer Lunceford's questioning was not accusatory. The entire encounter leading up to the questioning was relatively brief and was not focused on Defendant.

Viewing these factors in their totality, see Carner, 664 P.2d at 1171, a reasonable person in Defendant's position would not have believed that his or her freedom of action was curtailed to a degree associated with a formal arrest. We therefore affirm the trial court's ruling that Defendant was not in custody for the purposes of Miranda.

Defendant next argues that, although she gave Officer Lunceford consent to search her purse, this consent was not voluntary. Specifically, Defendant argues that even if there was no Miranda violation, her consent was still the product of coercion and duress. We disagree.

"The appropriate standard to determine voluntariness is the totality of the circumstances test, and the burden of proof is by preponderance of the evidence." State v. Hansen, 2002 UT 125, ¶56, 63 P.3d 650.

> [F]actors which may show a lack of duress or coercion include: (1) the absence of a claim of authority to search by the officers; (2) the absence of an exhibition of force by the officers; (3) a mere request to search; (4) cooperation by the owner of the [purse]; and (5) the absence of deception or trick on the part of the officer.

Id. (quotations and citation omitted).

Officer Lunceford did not expressly or impliedly claim any authority to search Defendant's purse. No force was used by Officer Lunceford, and he specifically made a request, rather than a demand, to search Defendant's purse. Defendant fully cooperated with Officer Lunceford in allowing him to search her purse. There is no evidence of deception or trick on the part of Officer Lunceford.

Affirmed.

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Judith M. Billings, Judge

WE CONCUR:

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Russell W. Bench,
Presiding Judge

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Gregory K. Orme, Judge