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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1226**

State of Minnesota,
Appellant,

vs.

Cameron Faheem Bonds,
Respondent.

**Filed April 9, 2018
Reversed and remanded
Halbrooks, Judge**

Ramsey County District Court
File No. 62-CR-17-2955

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for appellant)

Gregory J. Egan, IV, Assistant Ramsey County Public Defender, St. Paul, Minnesota; and

Drake D. Metzger, Metzger & Nyberg, LLC, Minneapolis, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and
Reilly, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

The state challenges the district court's pretrial suppression of evidence of a gun,
arguing that the district court erred by determining that the police officer's actions violated

the Fourth Amendment because the officer had already secured the scene before he shined a flashlight into the vehicle and observed the gun. Because we conclude that the officer seized the gun under the plain-view exception to the exclusionary rule, we reverse and remand for trial.

FACTS

When St. Paul Police Officer John Corcoran responded to a call about a large fight outside of a St. Paul bar at approximately 1:00 a.m. on April 24, 2017, he saw 30 to 45 people arguing and yelling and observed a few physical altercations. While still in his squad car, Officer Corcoran noticed four males sitting in a parked vehicle directly across the street from the bar. When Officer Corcoran shined his squad-car spotlight into the vehicle to ensure that the occupants were not hurt, he observed marks on the passengers' faces and saw that the driver was bleeding from his head. Officer Corcoran pulled up and stopped behind the vehicle and approached it on foot in order to talk to the occupants. Officer Corcoran asked the driver if he wanted medical attention. The driver responded affirmatively, and Officer Corcoran requested medical services.

Officer Corcoran continued speaking with the occupants in a conversational tone but observed that they were becoming increasingly agitated. As a result, in order to prevent the situation from escalating, Officer Corcoran asked the individuals to exit the vehicle. The occupants cooperated and walked away, leaving all of the vehicle doors open. Officer Corcoran walked back to the vehicle in order to shut the doors. When Officer Corcoran reached the vehicle, he shined his flashlight into the passenger compartment and saw the frame of a handgun inside an open backpack on the front passenger seat. He seized the

gun and determined that it belonged to respondent Cameron Faheem Bonds, who had been the front seat passenger. Officer Corcoran then ran Bonds's name through the National Crime Information Center system, discovered that he had an outstanding felony warrant, and arrested him. The other three occupants were released.

The state charged Bonds with two counts of ineligible person in possession of a firearm under Minn. Stat. § 624.713, subd. 1(2) (2016). The state later amended its complaint to add one count of receiving stolen property under Minn. Stat. § 609.52, subd. 3(1) (2016). Bonds moved the district court to suppress the gun and any related evidence. The district court held an evidentiary hearing on the motion, and Officer Corcoran testified. The district court granted Bonds's motion to suppress the gun, concluding that Officer Corcoran engaged in an unlawful search.

In its order suppressing the gun, the district court first determined that Officer Corcoran's approach of the vehicle did not constitute a stop because the vehicle was already parked on the side of the road. The district court next determined that Officer Corcoran's request that the occupants exit the vehicle did not constitute a seizure based on the totality of the circumstances. In its ruling, the district court considered Officer Corcoran's conversational tone, his concern for the occupants' safety and offer of medical help, and that he asked them to exit the vehicle so that they would calm down. The district court then concluded that Officer Corcoran's use of a flashlight to look into the vehicle constituted an unlawful search. The state appeals the district court's order pursuant to Minn. R. Crim. P. 28.04, subd. 1(1).

DECISION

When reviewing a district court's pretrial order suppressing evidence, we review factual findings under a clearly erroneous standard and legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). We first consider the threshold question of whether the suppression of the evidence has a critical impact on the state's ability to prosecute the defendant. *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998); *State v. Baxter*, 686 N.W.2d 846, 850 (Minn. App. 2004). Critical impact is shown when "the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution." *State v. Kim*, 398 N.W.2d 544, 551 (Minn. 1987).

The state can satisfy the critical-impact requirement by showing that the suppression of the evidence would result in dismissal of the charges. *See State v. Underdahl*, 767 N.W.2d 677, 684 (Minn. 2009) (holding that the critical-impact requirement was satisfied when the pretrial orders suppressed the breath test and required dismissal of certain charges); *State v. Trei*, 624 N.W.2d 595, 597 (Minn. App. 2001) (holding that "[d]ismissal of a complaint satisfies the critical impact requirement"), *review dismissed* (Minn. June 22, 2001). Because the district court dismissed the charges against Bonds after suppressing evidence of the gun, the critical-impact requirement has been satisfied. We therefore turn to the merits of the appeal.

The United States and Minnesota Constitutions guarantee the right of people to be secure against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "[A] warrantless seizure is presumptively unreasonable unless one of a few

specifically established and well-delineated exceptions applies.” *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012) (quotations omitted).

In order to be lawful, Officer Corcoran’s warrantless seizure of the gun must fall under an exception to the warrant requirement. One exception to the warrant requirement is the plain-view exception, which allows the police to seize an object without a warrant if (1) the police officer is lawfully in the position from which he views the object, (2) the officer has a lawful right of access to the object, and (3) the object’s incriminating nature is immediately apparent. *State v. Holland*, 865 N.W.2d 666, 671 (Minn. 2015). The state has the burden of proving that the search falls under an exception. *Milton*, 821 N.W.2d at 799. The state argues that the district court erred because Officer Corcoran was in a lawful position when he saw the gun.

Bonds asserts that the district court correctly determined that Officer Corcoran was not in a lawful position when he observed the gun. Bonds relies on the district court’s comparison of Officer Corcoran’s actions to the facts of a District of Columbia Court of Appeals case in which that court concluded that an officer “who opened the door and upon using a flashlight saw the gun in plain view” did not have a “right to be in the position to have that view.” *Tyler v. United States*, 302 A.2d 748, 751 (D.C. 1973) (quotation omitted).

But in comparing *Tyler* to the facts in this matter, the district court here noted that its reliance on *Tyler* was “not . . . on all fours.” We agree. Unlike the officer in *Tyler*, Officer Corcoran did not open the vehicle’s door. His purpose in being next to the vehicle was to close the doors that the occupants had left open. And in a subsequent hearing that

occurred after the suppression order was issued, the district court clarified that it did not explicitly address whether Officer Corcoran was in a lawful position when he saw the gun. Therefore, Bonds's assertion that the district court based its suppression holding on the determination that Officer Corcoran was in an unlawful position is unsupported by the record.

Instead, the district court concluded that Officer Corcoran "exceeded his constitutional scope in particular in using the flashlight to illuminate the contents of the backpack." The district court reasoned that Officer Corcoran "exceeded any necessity to secure the situation from the perspective of making sure [there was] no risk of injury to either himself or other officers" when he shined his flashlight into the vehicle and searched the backpack. The district court appears to be analyzing a different exception to the search-warrant requirement, the search-incident-to-arrest exception, which allows an officer to engage in a warrantless search if an arrestee is unsecured or the officer reasonably believes the vehicle contains evidence related to the crime of arrest. *See Arizona v. Gant*, 556 U.S. 332, 343, 129 S. Ct. 1710, 1719 (2009). Because Bonds was not in custody when Officer Corcoran walked up to the vehicle, we analyze the warrantless search under the plain-view exception and not the search-incident-to-arrest exception. Therefore, we must determine whether Officer Corcoran stood in a lawful position when he viewed the incriminating object.

Officer Corcoran testified that after the occupants exited the vehicle, he walked up to shut the nearest door, the front passenger door. As he approached, he shined his flashlight into the vehicle, observed an unzipped backpack that was open, and noticed the

frame of a handgun. Officer Corcoran testified that he did not put his hand inside the vehicle's door frame or put his head inside the vehicle's passenger compartment. He also testified that he did not touch the backpack before he observed the gun's frame. Officer Corcoran observed the gun by simply standing next to a vehicle parked on a public street. No other evidence in the record demonstrates that Officer Corcoran exceeded his lawful position. We therefore conclude, as a matter of law, that Officer Corcoran was in a lawful position when he walked up to the vehicle to shut the door and observed the gun inside of the open backpack.

Nor does Officer Corcoran's use of his flashlight affect this conclusion. "In numerous cases [the supreme court has] upheld against fourth amendment challenge[s] the practice of police officers routinely shining flashlights into automobiles, the only exception being when the officers unlawfully acquire their position vis-a-vis the vehicles, as when they unlawfully stop cars." *State v. Alesso*, 328 N.W.2d 685, 687 (Minn. 1982); *see also State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980) (discussing that "courts have consistently upheld the use of a flashlight by a police officer to look through a window into an automobile," so long as the officer's position was lawfully obtained).

Bonds argues that an officer must have probable cause to believe that the use of his flashlight would result in the discovery of evidence of criminal activity in addition to being in a lawfully obtained position. This argument is not supported by caselaw. *See Vohnoutka*, 292 N.W.2d at 757 (concluding that officer's use of flashlight was lawful when the officer's routine practice was to walk up to a vehicle to see whether another passenger was present).

Officer Corcoran's seizure of the gun also satisfies the second and third factors of the plain-view exception—that he had lawful access to the gun and that its incriminating nature was immediately apparent. *Milton*, 821 N.W.2d at 799. For an object's incriminating nature to be immediately apparent, the officer must have probable cause to believe that the item is contraband. *Id.* at 801. An officer has probable cause if “the facts available to the officer would warrant a [person] of reasonable caution in the belief that certain items may be contraband or stolen property or useful as evidence of crime.” *Id.* (alteration in original) (quotation omitted). But an officer may not seize an object under the plain-view exception “if the [officer] lack[s] probable cause to believe that an object in plain view is contraband without conducting some further search of the object.” *Id.* (quotation omitted).

We must consider whether Officer Corcoran had probable cause to believe that the gun was contraband when he observed it inside of the backpack. Minn. Stat. § 624.714, subd. 1a (2016), provides that a person commits a gross misdemeanor if they possess a pistol in a motor vehicle or a public place without a permit to carry. The statute is characterized as “a general prohibition on the possession of firearms in public because [a]nyone having a firearm in a public place may be prosecuted if he has no permit.” *State v. Timberlake*, 744 N.W.2d 390, 394 (Minn. 2008) (alteration in original) (quotations omitted). The state satisfies its burden of proving Minn. Stat. § 624.714, subd. 1a's elements by proving a person possessed a pistol in a public place. *State v. Williams*, 794 N.W.2d 867, 872 (Minn. 2011). Under the statute, the possession of the permit operates as an affirmative defense. *Id.* In *Williams*, the supreme court determined an officer had

probable cause when the officer, conducting an investigatory stop related to an armed-robbery report, saw the end of a pistol sticking out of the defendant's pocket, the defendant admitted that he possessed a pistol, and the officer removed the pistol from the defendant's pocket and confirmed that it was a loaded revolver. *Id.* at 873. Under the specific facts and circumstances of *Williams*, the supreme court did not require the officer to first determine whether the defendant possessed a permit to carry before the officer had probable cause to believe that the defendant unlawfully possessed a firearm. *Id.* at 872-73, 875.

Here, Officer Corcoran testified that he immediately identified the object as a gun based on its shape. Although Officer Corcoran testified that he did not suspect that Bonds was involved in any criminal activity before noticing the gun, he discovered the gun inside the passenger area of a vehicle at approximately 1:00 a.m. when the vehicle occupants appeared to have been involved in a large bar fight. Under these circumstances, “a person of ordinary care and prudence, viewing the totality of the circumstances objectively, would entertain an honest and strong suspicion” that Bonds unlawfully possessed the firearm. *Id.* at 873. Therefore, because Officer Corcoran had probable cause to believe that the gun was being possessed illegally, the gun's incriminating nature was immediately apparent. In addition, as previously addressed, Officer Corcoran had lawful access to the gun. Because we conclude that Officer Corcoran's warrantless search satisfied the plain-view exception, the district court erred by suppressing the evidence of the gun.

Reversed and remanded.