STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1000

State of Minnesota,
Appellant,

vs.

Ronald Eugene O'Neal,
Respondent.

Filed December 14, 2010
Reversed and remanded
Stauber, Judge

Hennepin County District Court
File No. 27CR102283

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County Attorney, Minneapolis, Minnesota (for appellant)

Daniel C. Guerrero, Meshbesher & Spence, Minneapolis, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and Stoneburner, Judge.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

In this prosecution pretrial appeal, the state argues that the district court clearly erred in granting respondent's motion to suppress because the search of respondent's vehicle was lawful under the plain view exception. Because the district court failed to

make credibility findings on the issue of whether the contraband was in plain view, we reverse and remand.

FACTS

On January 15, 2010, respondent Ronald O'Neal was charged with second-degree controlled substance crime for allegedly possessing 10 grams of heroin in his motor vehicle. O'Neal moved to suppress the evidence. Following a Rasmussen hearing, the district court granted O'Neal's motion. The court concluded that because O'Neal had walked away from his vehicle by the time he was stopped by police, O'Neal "had no access to his vehicle nor was there any reasonable basis to believe that the vehicle contained relevant evidence" related to the traffic offense of failing to wear a seatbelt. The court further concluded that "[e]ven if one officer saw what he suspected to be illegal narcotics in the vehicle, no exigent circumstances existed to justify a warrantless search." This appeal followed.

D E C I S I O N

"In a pretrial appeal, the state must demonstrate (1) the [district] court 'clearly and unequivocally erred' in its judgment, and (2) the error will have a 'critical impact' on the outcome of the trial unless reversed." *State v. Aubid*, 591 N.W.2d 472, 477 (Minn. 1999) (quoting *State v. Joon Kyu Kim*, 398 N.W.2d 544, 547 (Minn. 1987)). Critical impact can be shown not only "where the lack of the suppressed evidence completely destroys the state's case, but also in those cases where the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution." *Joon Kyu Kim*, 398 N.W.2d at 551. O'Neal does not dispute that the critical impact requirement is met.

"When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing–or not suppressing–the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). This court reviews the district court's findings of fact to determine whether they are clearly erroneous. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). The reviewing court defers to the district court on credibility assessments and will reverse only if the court committed clear error. *See State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (stating that district court findings are not reversed unless clearly erroneous, and great deference is given to court's determinations regarding credibility of witnesses), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993).

Both the federal and state constitutions guarantee individuals the right to be secure against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Therefore, warrantless searches and seizures are presumptively unreasonable, subject to a few exceptions. *State v. Othoudt*, 482 N.W.2d 218, 221-22 (Minn. 1992). One is the plain-view exception, which "permits a police officer 'to seize what clearly is incriminating evidence or contraband when it is discovered in a place where the officer has a right to be.'" *State v. Griffin*, 336 N.W.2d 519, 522 (Minn. 1983) (quoting *Washington v. Chrisman*, 455 U.S. 1, 5-6, 102, S. Ct. 812, 816 (1982)).

The state argues that the district court erred by granting O'Neal's motion to suppress because the plain view exception provided the officers with a lawful basis to search O'Neal's car. O'Neal concedes that if the district court believed the arresting officers' testimony, the evidence need not be suppressed under the plain view exception.

But O'Neal argues that by granting his motion to suppress, the district court implicitly believed his testimony that the contraband was not in the officer's plain view and, therefore, the search was unlawful.

At the hearing, one of the officers testified that he walked a distance over to O'Neal's parked car, and upon peering through the driver's side window, he "observed a cellophane baggy that appeared to be containing narcotics in between the. . . .sitting on top of the seat between the cushions and the center console." We agree that, if this officer's testimony was found to be credible, the search was lawful under the plain view exception. But the record reflects that O'Neal testified that the contraband was under a pillow on the driver's seat and out of the plain view of the officer. If believed, this testimony supports a conclusion that the search was unlawful. The district court failed to make credibility findings and, despite O'Neal's argument to the contrary, the court's order does not provide a basis to infer a credibility finding. Accordingly, we reverse and remand for credibility findings on the issue of whether the contraband was in plain view.

Reversed and remanded.