IN THE UTAH COURT OF APPEALS

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Orem City, Plaintiff and Appellee, v. Trindalynn Olson, Defendant and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20070047-CA F I L E D (March 13, 2008) 2008 UT App 85

Fourth District, Orem Department, 051201426
The Honorable John Backlund

Attorneys: Gregory V. Stewart, Orem, for Appellant
Michael G. Barker, Orem, for Appellee

Before Judges Bench, Billings, and Orme.

BENCH, Judge:

Defendant Trindalynn Olson appeals the trial court's denial of her motion to suppress evidence that police seized in a warrantless search of her parked car. After the trial court denied her motion, Defendant entered a conditional guilty plea and reserved her right to appeal the trial court's denial.

Even though both parties argue the applicability of the plain view doctrine, that concept is not particularly helpful to our analysis. See United States v. Martin, 806 F.2d 204, 206-07 (8th Cir. 1986) (holding that it was inappropriate for the trial court to subject a federal agent's conduct of looking through the window of a car to Fourth Amendment scrutiny). The plain view doctrine is used to justify an officer's seizure of contraband or evidence subsequent to the officer's legal intrusion into the constitutionally protected area in which the seized item is found. See id.; Coolidge v. New Hampshire, 403 U.S. 443, 466 (1970). Because the officers' viewing of the shoes from outside the parked car did not implicate Defendant's Fourth Amendment rights, there is no need to justify that conduct under the Fourth Amendment's warrant requirement.

Although the officers did not implicate the warrant requirement with their viewing of the shoes, they did so when they opened the car door and removed the shoes. "Under Utah law,

a warrantless automobile search requires probable cause and exigent circumstances . . . ." State v. Brake, 2004 UT 95, ¶ 25, 103 P.3d 699.

Shoes lying in a car would typically not give law enforcement officers probable cause to seize the shoes as contraband or evidence of a crime. However, the trial court here found that the following factors justified the officers' probable cause determination: Defendant's suspicious behavior in the store; an employee's statement that Defendant's bags appeared bulkier when she left than when she entered the store; the unexplained missing shoes; and another employee's sighting of similar shoes in the parked car Defendant had been seen in. We agree with the trial court that the totality of these factors gave the officers probable cause to believe that the shoes were "associate[d] . . . with criminal activity." State v. Holmes, 774 P.2d 506, 510 (Utah Ct. App. 1989) (internal quotation marks omitted).

Given that probable cause existed and the fact that the shoes were in a readily mobile car, no warrant was required. The fact that the keys to the car were in the ignition indicated the operable condition of the car. The officers determined that, had they left to obtain a warrant, Defendant could have easily moved the car. That determination was justified under the circumstances. See State v. Limb, 581 P.2d 142, 144 (Utah 1978) (holding that exigent circumstances were properly found in part because, "had the officers left to obtain a warrant," the evidence in the car may not have been found again). We therefore conclude that, under the automobile exception to the warrant requirement, the officers' seizure of the shoes was constitutionally permissible.

Affirmed.

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Russell W. Bench, Judge

WE CONCUR:

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Judith M. Billings, Judge

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Gregory K. Orme, Judge