People v. Jones

(2014) 231 Cal.App.4th 1257

Issue

If officers arrest a DUI suspect who refuses to take a breath test, may they order a forcible blood draw if they learn that he is on parole, searchable probation, or subject to supervision under California's new realignment system?

Facts

Shortly before midnight, Fairfield police officers were dispatched to an injury accident involving two cars. When they arrived they saw that the airbag on one of the cars, a Toyota, had been deployed and they learned from witnesses that the driver had fled on foot, last seen walking in the direction of Air Base Parkway. A few minutes later, officers spotted Bobby Jones walking on Air Base Parkway, about 400 yards from the scene of the crash. He was disheveled, smelled of alcohol, had bloodshot eyes and an unsteady gate. He told the officers that he was on probation, so officers ran a records check and learned that he was actually under supervised release pursuant to California's new realignment system and was therefore subject to a warrantless search. So they searched him and found airbag deployment powder on the front of his clothing and keys to a Toyota in his pants pocket. Having confirmed that the keys opened the abandoned Toyota back at a crash site, they *Mirandized* him and he admitted he had been the driver.

The officers then advised him of the requirement that he submit to a blood or breath test, and he said he would not take a blood test. So the officers took him to the police station for a breath test but, when they arrived, he "refused to provide a breath sample." So the officers drove him to nearby hospital where, against Jones's wishes, they had a phlebotomist draw a sample of Jones's blood. It tested at 0.25% and Jones was subsequently charged with, among other things, causing bodily injury while driving under the influence. Before trial, he filed a motion to suppress the test results, but the motion was denied. (He apparently did not contest the legality of the searches that resulted in the discovery of the airbag powder or the keys to the Toyota.) Jones then pled no contest and was sentenced to five years in prison.

Discussion

Under California's Criminal Justice Realignment Act of 2011, people who have been convicted of certain low-level felonies may be permitted serve their prison sentences in a local county jail. Then, upon release, they will be supervised for up to three years by a local probation officer. Even though the person is neither confined in a state prison nor supervised by a parole officer, his status is "akin to a state prison commitment; it is not a grant of probation or a conditional sentence."[12] As court explained in *Jones*, the Postrelease Community Supervision program (PRCS) "does not change any terms of a defendant's sentence, but merely modifies the agency that will supervise the defendant after release from prison." Significantly, convicts who are under PRCS supervision are automatically subject to the same search conditions as parolees; i.e., the convict, his residence and possessions "shall be subject to search at any time of the day or night, with or without a warrant, by an agent of the supervising county agency or by a peace officer."

The issue on appeal was whether this search condition impliedly authorizes officers to take a blood sample for testing in a DUI case, or whether a search warrant is required.

Jones argued that a warrant was necessary because the act of drawing blood from a person is a more significant intrusion than the usual type of search to which parolees are subject. The court disagreed, pointing out that "[t]he drawing of blood is sufficiently routine that it is one of the procedures to which every California driver implicitly consents as a condition of operating a motor vehicle in this state."[13] In addition, the court noted that purpose of a search condition is "to deter the commission of crimes and to protect the public," and that both of these purposes are served in cases where, as here, the postrelease convict has been arrested for DUI. Consequently, the court ruled that "Jones's mandatory PRCS search and seizure condition authorized the blood draw without the necessity of a warrant and offends no interest the Fourth Amendment is intended to protect."

Jones's conviction was therefore affirmed.

Comment

Four things should be noted about this issue. First, although the court's ruling technically applies only to convicts on PRCS, the court observed that its ruling should also apply to blood draws of parolees and probationers who are subject to a search condition; i.e., that a blood draw "falls within the scope of a search-and-seizure condition of parole, probation, or PRCS." Second, like parole and probation searches, a PRCS search will be ruled illegal if officers were unaware that the suspect was on postrelease supervision or if the search was "arbitrary, capricious, or harassing."[14] Third, as the result of the Supreme Court's ruling in *Missouri v. McNeely*,[15] a warrant would still be required to draw blood from a DUI arrestee who was not subject to a search condition. Fourth, it goes without saying (but we'll say it anyway) that such blood draws must be conducted by a medical professional in accordance with "accepted medical practices."[16] POV

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[12] *People v. Fandinola* (2013) 221 Cal.App.4th 1415, 1422.

[13] Citing Veh. Code § 23612(a)(1)(A).

[14] See *Samson v. California* (2006) 547 U.S. 843, 856; *People v. Schmitz* (2012) 55 Cal.4th 909, 916.

[15] (2013) __ U.S. __ 133 S.Ct. 1552. **NOTE**: The court in *Jones* also ruled that *McNeely* may not be applied retroactively.

[16] *Schmerber v. California* (1966) 384 U.S. 757, 772.