United States v. Blakeney

(4th Cir. 2020) 949 F.3d 851

Issues

(1) Did a search warrant affidavit for a blood draw establish probable cause to believe that a DUI suspect was impaired? (2) Did the affidavit establish probable cause to search the Event Data Recorder in the suspect's car?

Facts

Blakeney was the driver of a that car spun out of control and crashed into an oncoming car in Maryland, just outside of the District of Columbia. (The investigation was handled by the United State Park Police (USPP)). The court described the crash scene as "catastrophic" and explained that the front end of Blakeney's car, including its engine, and "had completely separated from the rest of the vehicle." The lone passenger in Blakeney's car was pronounced dead at the scene. Blakeney and the driver of the other car were injured.

The first USPP officer on the scene noted that Blakeney was in the driver's seat when he arrived, and that he was "staring blankly." Another USPP officer detected an odor of alcohol from the passenger compartment, and EMS personnel reported that Blakeney had "become combative" when they tried to treat him, and that he appeared to be under the influence of alcohol.

After the investigating officer arrived at the scene and had conducted a preliminary investigation, he sought a telephonic warrant for a DUI blood draw. The facts he recited to the issuing judge were summarized by the court as follows: "Blakeney had been removed from the driver's seat of his car with a heavy odor of alcohol, and that he "had been combative and had to be restrained in order for EMS personnel to address his injuries"; the car he was driving had "crossed over the raised, curb, center median and struck [the oncoming car] causing a motor vehicle crash, with injuries." The court issued the warrant, and a sample of Blakeney's blood tested at .07%.

Blakeney's car was towed to a police impound lot. About three weeks later, the investigating officer obtained a warrant to search the vehicle's Event Data Recorder (EDR).[1] In his affidavit for the warrant, the officer explained that the data complied by the EDR was "needed by the crash reconstructionist to determine the underlying cause of the crash," and that the EDR is "capable of recording and storing several parameters existing while the vehicle is in motion, at the time of the crash and five seconds prior to the crash," and it provided "diagnostic codes present at the time of the crash, headlight status, engine RPMs, vehicle speed, brake status and throttle position." The judge signed the warrant and, based on the data, the crash reconstructionist testified that Blakeney was traveling at least 79 m.p.h. in the five seconds before his vehicle struck the oncoming

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[1] **NOTE**: California Vehicle Code section 9951(b) defines an EDR as a device "installed by the manufacturer of the vehicle [that]: (1) Records how fast and in which direction the motor vehicle is traveling. (2) Records a history of where the motor vehicle travels. (3) Records steering performance. (4) Records brake performance, including, but not limited to, whether brakes were applied before an accident. (5) Records the driver's seatbelt status. (6) Has the ability to transmit information concerning an accident in which the motor vehicle has been involved to a central communications system when an accident occurs." Also see *People v. Ferguson* (2011) 194 Cal.App.4th 1070, 1086, fn.4.

vehicle, and that his car's automatic braking system had slowed the car down to 68 m.p.h. at the moment of impact.

After he was charged with vehicular homicide and reckless driving, Blakeney filed a motion to suppress the blood test results and the data obtained from the EDR on grounds that the affidavit for the warrant failed to establish probable cause. He also argued that the EDR data was irrelevant because it described "nothing more than a car accident" and had provided "no information about its cause." The motions were denied, and Blakeney was found guilty. He was sentenced to three years in prison.

Discussion

On appeal, Blakeney renewed his argument that the search warrant affidavits failed to establish probable cause to believe he was impaired. Specifically, he contended that probable cause required "more than the simple fact of a car accident" since "car accidents—whether minor or severe—occur for all kinds of reasons unrelated to alcohol-induced negligence, and that the warrant application here failed to rule out alternative explanations, such as mechanical failure." That is true, said the court, but that "the severity of the accident," "the significance of the driver error involved" and Blakeney's combativeness "took the warrant application out of the realm of just a garden-variety car accident and into probable cause to believe that [a criminal] offense had been committed." Said the court, "Jumping the median isn't a small thing. It's not just weaving over the solid line. Jumping the median and crashing headlong into someone else is a factor that may contribute to probable cause."[2]

Blakeney also argued that the odor of alcohol from the passenger compartment was irrelevant "because the smell of alcohol was associated with the car rather than his person," that the odor was detected only after he had been removed from the scene by ambulance, and that the odor "was at least as likely to signify that his passenger had been drinking as it was to indicate his own intoxication." In rejecting this argument, the court said that "[a]n officer who smells alcohol in the passenger compartment of a now-crashed car in which two people have been driving reasonably may infer that either or *both* individuals were drinking at the time of the crash."

For these reasons, the court ruled that both search warrant affidavits had established probable cause to believe the Blakeney was driving while under the influence of alcohol, and it affirmed his conviction.

Comment

Pursuant to California Vehicle Code section 9951(c), data stored in an EDR may not be downloaded or otherwise retrieved unless officers had obtained (1) a search warrant or other court order, or (2) the registered owner consented. Officers may, however, seize the recorder and seek a warrant to search it if they reasonably believed that (1) evidence stored in the EDR's memory constituted evidence of a crime, and (2) they reasonably believed the evidence might be destroyed if they waited for a warrant to seize it.[3] POV
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[2] Edited.

[3] See *United States v. Place* (1983) 462 U.S. 696, 701. Also see *People v. Tran* (2019) 42 Cal.App.5th 1, 34 [exigent circumstances permitted the seizure of a dash cam because the driver had removed it from the vehicle while the accident was under investigation].