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Fourth Circuit Case Summaries: February 6 and 20, 2020

Search warrants for blood and vehicle "black box" were (1) supported by probable cause and (2) were sufficiently particular; any errors fell within *Leon* good faith

U.S. v. Blakeney, 949 F.3d 851 (Feb. 6, 2020). In this Maryland case, the defendant drove across a median and crashed into oncoming traffic, killing his passenger. The impact of the collision tore the defendant's car in two, with the front-end and engine completely separated from rest of the car. The defendant was found sitting in the driver's seat with a blank stare. He resisted emergency medical services as first responders tried to remove him from the car. One emergency medical worker reported to a law enforcement officer that the defendant seemed to be under the influence of alcohol and PCP. Investigators smelled a strong odor of alcohol on the passenger side of the defendant's car. An investigator called the magistrate to obtain a telephonic search warrant for the defendant's blood. Hospital testing revealed the defendant had a blood-alcohol content of 0.07. A few weeks later, investigators applied for a warrant to search the "black box" of the defendant's vehicle—the event data recorder, which recorded the operation and condition of the car at the time of the wreck and immediately before. The data obtained showed that the defendant was travelling at least 79 miles per hour within five seconds before the crash. The speed limit was 45 miles per hour.

The defendant was charged with vehicular homicide while impaired and other offenses. He moved to suppress both search warrants, arguing that they lacked probable cause. He also alleged that the magistrate was misled by statements in the affidavit for the first warrant that the defendant smelled like alcohol and possibly PCP (when in fact an odor of alcohol, only, was detected in the defendant's car, not on his person). He also faulted the warrants for a lack of particularity, based on an alleged failure of the magistrate to identify a specific offense tied to the evidence being sought. The district court denied the motions. As to the blood warrant, the trial judge found that even if the magistrate was misled, the description of the accident, the "significant driver error" involved, the odor of alcohol, and the defendant's aggressive behavior on the scene established probable cause. The trial judge further found that it was "plain" from the context of the conversation between the magistrate and officer that the evidence sought pertained to a driving while impaired offense. As to the "black box" warrant, the trial judge similarly found that the warrant was supported by probable cause and sufficiently identified the offense:

> . . . [T]he description of the severity of the accident and the significance of the driver error involved took the warrant application 'out of the realm of just a garden-variety car accident' and 'into probable cause to believe that an offense had been committed.'. . [I]t was clear from the warrant that the 'crime at issue [was] death by car.' Slip op. at 8.

The defendant was convicted at trial and appealed.

(1) The Fourth Circuit agreed with the district court that the defendant's "gross driver error," combined with the odor of alcohol from the car and the defendant's actions towards first responders on the scene supported probable cause for the blood warrant. Together, these facts showed more than a mere traffic collision.

> At bottom, Blakeney's argument is that '[c]ar 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, for this accident. But this misapprehends the probable cause standard, which requires only the kind of 'fair probability on which reasonable and prudent people, not legal technicians, would rely, and does *not* require an affiant to rule out all innocent explanation for suspicious facts before seeking a warrant. *Id*. at 13 (citations omitted) (emphasis in original).

Relying on the largely same reasoning, the Fourth Circuit also agreed with the trial court that the black box warrant was also supported by probable cause. Alternatively, even if these warrants lacked probable cause, "neither . . . could be said to be so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable," and *Leon* good faith precluded application of the exclusionary rule here. *See U.S. v. Leon*, 468 U.S. 897 (1984). *Id*. at 14.

(2) The court also rejected the particularity challenge to the warrants. "[W]hat particularity demands in this context is that the executing officer reasonably can ascertain and identify from the warrant the place to be searched and the items to be seized." *Id*. at 15. The warrants here did describe the crimes to a reasonably certain degree—the blood warrant application noted the investigation of "a possible DUI-related" crime, and the black box warrant application noted investigation of "a vehicular homicide." Further, nothing requires a search warrant to name a specific offense. In the court's words:

> It is true, as Blakeney points out, that where a warrant does not otherwise describe the evidence to be seized, that gap can be filled, at least sometimes, if the warrant instead specifies the relevant offense. . . But where a warrant directly describes with specificity 'the goods to be seized,' there is no additional requirement that it also set out a particular criminal offense. *Id*. at 17-18.

The court concluded in the alternative that even if the warrants lacked particularity, the officers were again entitled to good-faith reliance on them. The convictions were therefore unanimously affirmed. [*Author's Note*: North Carolina does not recognize the *Leon* good-faith exception to the exclusionary rule for violations of the state constitution.]

Reversible error for trial court to order special conditions of supervised release restricting computer access without explanation

U.S. v. Arbaugh, ___ F.3d ___, 2020 WL 826450 (Feb. 20, 2020). The defendant was convicted in the Eastern District of Virginia of engaging in illicit sexual conduct with a minor abroad. On appeal, he challenged the substantive and procedural reasonableness of his 276-month sentence, as well as certain conditions of supervised release relating to use of a computer. The convictions stemmed from time the defendant spent in Haiti as a church missionary. The Fourth Circuit unanimously affirmed the

reasonableness of the sentence against various challenges but found that the district court erred in imposing restrictions on the defendant's computer use during the lifetime term of supervised release.

The computer restrictions authorized probation officers to randomly inspect the defendant's electronic devices, allowed removal of those devices from his home for "more thorough inspection," prohibited the defendant from using any data encryption, and required the defendant to purchase and use monitoring software on his devices upon request from his probation officer. The defendant's crime did not involve the use of computers. The trial judge did not explain the reasons for these conditions at sentencing. Circuit precedent holds that the "failure to explain the reasons for any special condition to which the defendant would be subject upon release for life [is] not harmless error." Slip op. at 19 (citation omitted). That the defendant would be a registered sex offender upon his release was not enough to justify these conditions on its own. "[W]e are constrained to find that the district court committed reversible procedural error by failing to explain why it imposed the four computer-related special conditions. As such, 'we cannot determine the reasonableness of the challenged special conditions.'" *Id*. at 20. The sentence was affirmed except as to these conditions; the conditions of release were vacated and the case remanded for the trial court to decide "whether to impose those conditions, and, if so, to provide an individualized assessment of its reasons for doing so in Arbaugh's case." *Id*.