REL: January 10, 2020

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2019-2020

CR-18-0410

William Andrew Baty

v.

State of Alabama

Appeal from Jefferson Circuit Court
(CC-17-765)

McCOOL, Judge.

AFFIRMED BY UNPUBLISHED MEMORANDUM.

Windom, P.J., and Kellum and Cole, JJ., concur. Minor, J., dissents, with opinion.

MINOR, Judge, dissenting.

The Founding Fathers, through the Fourth Amendment to the United States Constitution, guaranteed that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause ...." U.S. Const. amend IV. By its decision today, this Court sanctions the State of Alabama drawing blood from a person based solely on a showing that the person operated a motor vehicle and was involved in an accident that caused death or serious physical injury. This holding renders the requirement of probable cause in the Fourth Amendment illusory. For the reasons below, I respectfully dissent.

On July 7, 2015, at 5:15 p.m., a vehicle driven by William Andrew Baty crossed the center line of a highway in Jefferson County. Baty's vehicle traveled approximately 80 yards before it encountered an oncoming vehicle. The driver of the first oncoming vehicle was able to avoid being struck by Baty's vehicle, but Baty's vehicle collided with the next oncoming vehicle, killing the driver, Khoeum Chen. Baty was rendered unconscious at the scene and was transported to

University of Alabama at Birmingham Hospital ("UAB") with severe injuries.

Two State troopers from the Alabama Law Enforcement Agency responded to the scene approximately one hour after the collision[1] and after Baty had already been transported to UAB. Based on the above-described information about the collision--including that it had occurred on a clear, dry afternoon for no apparent reason and that it did not appear that Baty had applied the brakes on his vehicle before the collision--one of the troopers directed the medical staff at UAB to obtain a sample of Baty's blood. Testing on that sample by the Alabama Department of Forensic Sciences ("DFS") indicated the presence of methamphetamine.

Baty pleaded guilty to reckless manslaughter, see § 13A-6-3(a)(1), Ala. Code 1975, for his involvement in Chen's death. Before his guilty plea, Baty had moved to suppress the results of the blood testing, arguing that the troopers did not have probable cause coupled with exigent circumstances to order the warrantless drawing of his blood, but the circuit

[1]One trooper testified that at the time of the accident, there were only five troopers on duty "for all of the Birmingham posts, which consist of Jefferson, Shelby, and St. Clair counties." (R. 14.)

court denied that motion. Baty reserved for appeal the circuit court's denial of his motion to suppress.

In affirming Baty's conviction, the Court concludes in Part I of its unpublished memorandum that, given the facts known to him, the State trooper who ordered the drawing of Baty's blood had probable cause to believe that Baty was under the influence of a controlled substance when the collision occurred. The test for determining "probable cause" is "whether the 'reasonably trustworthy information' known to the officer at the time of the blood draw objectively supported 'a strong suspicion' of such belief in 'a person of reasonable caution,' i.e., 'a reasonably prudent person.'" Woods v. State, 695 So. 2d 636, 640 (Ala. Crim. App. 1996).

The unpublished memorandum holds that there was probable cause based on the following information:

(1) The collision occurred on a clear, dry afternoon;

(2) Baty's vehicle drifted into oncoming traffic for at least 80 yards and did not return to its proper lane; and

(3) Baty failed to apply the brakes in his vehicle before the collision.

In Killingsworth v. State, 33 So. 3d 632 (Ala. Crim. App. 2009), the defendant, Killingsworth, was involved in an

automobile collision, and his blood was drawn pursuant to the responding officer's request. This Court found probable cause to support that request where the evidence indicated (1) that Killingsworth's vehicle had failed to stop at a stop sign and had then crashed into another vehicle and (2) that a bottle of gin was found on the arm rest of Killingsworth's vehicle. 33 So. 3d at 640-41. This Court noted that a sufficient "nexus" existed "between the accident and Killingsworth and the possibility he was under the influence of alcohol and/or a controlled substance at the time of the accident." 33 So. 3d at 641.

Here, no evidence "established a nexus between the accident and [Baty] and the possibility he was under the influence of alcohol and/or a controlled substance at the time of the accident."[2] Killingsworth, 33 So. 3d at 641 (emphasis

[2]Under the facts of this case, such evidence may have existed, for example, in the form of testimony from one or more of the local law-enforcement personnel, fire-department personnel, or medical personnel who assisted Baty at the scene or when he arrived at UAB. The State also could have sought to obtain the results of any blood testing that UAB performed on Baty for medical purposes. See, e.g., Carroll v. State, 701 So. 2d 47, 51 (Ala. Crim. App. 1996) ("This court has also consistently held that 'where the blood is seized only for medical purposes and not in furtherance of a criminal or accident investigation, the blood alcohol tests results are

added). See also People v. Pratt, [Ms. 5-17-0427, Dec. 19, 2018] ___ N.E.3d ___, ___ (Ill. Ct. App. 2018) (finding no probable cause under implied-consent statute where no evidence indicated that the defendant, who had been seriously injured in an accident, had driven "erratically before the collision," no evidence indicated "that he had red or glassy eyes," and no evidence indicated "that he smelled of alcohol or admitted to drinking"; although evidence did indicate that the defendant had slurred speech and difficulty walking, and the officer had found an open liquor bottle in the defendant's vehicle, no evidence indicated "when the liquor was consumed or how much of it was consumed by the defendant"); State v. Christianson, 627 N.W.2d 910 (Iowa 2001) (finding no probable cause under implied-consent statute where the facts known to the officer were that the defendant's car was on the wrong side of the road and the defendant had made no attempt to stop before colliding with another car at approximately 1:55 a.m.; although officer testified that "he detected a faint odor of

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admissible at trial.' Veasey v. State, 531 So. 2d 320, 322 (Ala. Cr. App.), cert. denied, 531 So. 2d 323 (Ala. 1988). See also Russo v. State, 610 So. 2d 1206 (Ala. Cr. App. 1992); Ex parte Radford, 557 So. 2d 1288, 1291 (Ala. 1990).").

alcohol in the defendant's car, ... he found no empty alcohol containers or other sign of alcohol involvement").

"To be reasonable under the Fourth Amendment, a search ordinarily must be based on individualized suspicion of wrongdoing." Chandler v. Miller, 520 U.S. 305, 313 (1997). Here, evidence indicated that Baty had crossed the center line of a highway and had caused a vehicular accident resulting in a death. But "[t]he mere fact that a defendant caused a vehicular accident resulting in death or great bodily injury while committing a traffic violation, without more, does not show a fair probability that a blood test would provide evidence that same person was under the influence of alcohol or drugs at the time of the crash." Stewart v. State, 442 P.3d 158, 165 (Okla. Crim. App. 2019) (Hudson, J., concurring specially). With no nexus between the circumstances of the accident and a suspicion that Baty was under the influence, there was no probable cause to order that UAB draw Baty's blood for drug and alcohol testing.

To be clear, this Court does not expressly hold that probable cause automatically exists based merely on a driver's commission of one or more traffic offenses while being

involved in an accident that causes death or a serious physical injury.[3] But that holding is necessarily implied--indeed, inescapable--based on the facts before this Court. This decision is inconsistent with Alabama law and with the United States Constitution.

I would reverse the circuit court's order denying Baty's motion to suppress. I respectfully dissent.

[3]Several states have held unconstitutional statutes that automatically find probable cause based merely on a driver's commission of one or more traffic offenses while involved in an accident that causes death or a serious physical injury. See State v. Declerck, 49 Kan. App. 2d 908, 918-19, 317 P.3d 794, 802 (2014) (in holding unconstitutional K.S.A. 2012 Supp. 8-1001(b), which provided that a "traffic offense violation" constituted probable cause to require drug and alcohol testing, the Kansas Court of Appeals noted that "every other state to consider this question, such as Alaska, Arizona, Georgia, Illinois, Indiana, Maine, Mississippi, and Pennsylvania, has found statutes similar to K.S.A. 2012 Supp. 8-1001(b) unconstitutional").