

State Prosecution Support Division



JUNE 27, 2018

FYI: MOBLEY v. STATE

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The Court of Appeals Holds That There Is No Reasonable Expectation of Privacy with Respect to the Data Captured by a Vehicle's Airbag Control Module, but Nevertheless Cautions Law Enforcement to Err on the Side of Caution by Obtaining a Search Warrant Before Retrieving Such Information.

In Mobley v. State, A18A0500 (June 27, 2018), appellant was convicted of reckless driving, two counts of homicide by vehicle in the first degree (alleging that he caused the deaths of the two victims through the act of reckless driving), and speeding (alleging that he drove a vehicle at a speed of 97 miles per hour in a 45-mile-per-hour zone). The evidence, briefly stated, showed that appellant's vehicle collided with the victim's vehicle at approximately 1:00 pm. Witnesses to the collision told the sergeant at the scene that the victims' vehicle had "pulled out" in front of the vehicle driven by appellant. None of the witnesses provided the sergeant with any information about the speeds of the vehicles. The speed limit at the location of the collision was 45 miles per hour, and based on the evidence on the roadway, it appeared to the sergeant that the vehicle speed at the time of the collision was 45 to 50 miles per hour.

At the sergeant's request, an investigator downloaded the data from the airbag control module ("ACM") in appellant's and the victims' vehicles at the collision scene. The data captured by the ACM included the status of several aspects of the vehicle at or immediately preceding airbag deployment, including speed, engine speed, brake status, throttle position, engine revolutions, driver's seat belt status and brake switch status, as well as time from maximum deceleration to impact, time from vehicle impact to airbag deployment, and diagnostic information on the vehicle's systems. The next day, an officer applied for and obtained a warrant to search and seize the ACMs, which devices were in the vehicles at an impound facility. Based on the ACM data, the State brought the charges against appellant.

Appellant moved to suppress evidence that was obtained from the ACM in his vehicle which showed that he was traveling at a speed of 97 miles per hour five seconds before airbag deployment. In its order denying the motion, the trial court found that it did not have to reach the issue of whether a search warrant was required to access the data from the ACM appellant's vehicle because a search warrant was obtained the day after the data was accessed and the data in the ACM would have inevitably been discovered "when the ACMs were properly removed from the vehicle pursuant to the search warrant[.]"

Appellant argued that the trial court erred in denying his motion to suppress because he had a subjective expectation of privacy in the data obtained from

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the ACM in his vehicle. Specifically, citing *Riley v. California*, ___ U.S. ___ (134 Sct 2473,189 LE2d 430) (2014), he argued that an ACM is analogous to a cell phone with regard to the Fourth Amendment right to privacy. Therefore, he contended, his Fourth Amendment rights were violated when law enforcement obtained the data without a search warrant. The Court disagreed.

The Court initially noted that whether a search warrant is required to retrieve the data from a vehicle's ACM is an issue of first impression in Georgia. The Court also noted that other jurisdictions have reached opposite conclusions on the issue. But, under the circumstances here, appellant did not have a reasonable expectation of privacy in the data from his vehicle's ACM. While an outside observer cannot ascertain the information regarding the use and functioning of a vehicle with the same level of precision as that captured by the ACM, there are outward manifestations of the functioning of some of the vehicle's systems when a vehicle is operated on public roads. For example, a member of the public can observe a vehicle's approximate speed; observe whether a vehicle's brakes are being employed by seeing the vehicle slow down or stop or the brake lights come on, by hearing the sounds of sudden braking; and observe whether the driver is wearing a seatbelt. There is no reasonable expectation of privacy in such information because an individual knowingly exposes such information to the public.

Furthermore, the evidence indicated that the ACM in appellant's vehicle did not record information on a long-term basis. Rather, the evidence showed that the purpose of the ACM is to capture information regarding collisions or airbag deployments, that the ACM generally only starts recording information when an event, such as a collision, "triggers" it to record, that the ACM continuously overwrites "nondeployable" events, and that the ACM only saves data permanently when a collision has caused the vehicle's airbags to deploy. The collision in this case was a "deployment event" for both vehicles. The only data shown to have been saved permanently by appellant's ACM was the data collected just before, and at the time of the airbag deployment.

Moreover, the Court found, the types of information contained in appellant's ACM are distinguishable from the types of personal information contained in a cell phone and protected by the Fourth Amendment as discussed in *Riley*. Information regarding the mechanical functioning of the vehicle and its systems is qualitatively different from photographs, financial information, and other such personal data that may be found on a cell phone. Thus, the Court found, appellant did not have a reasonable expectation of privacy with respect to the data captured by his vehicle's ACM, and the retrieval of the data was therefore not a search or seizure protected by the Fourth Amendment.

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In so holding, however, the Court cautioned that its decision was a narrow one based on the particular facts of the case. Thus, the Court noted, the breadth of information captured by, and obtained from an ACM can vary over time, and amongst vehicle manufacturers. For example, an ACM could retain global positioning system information, possibly implicating the Fourth Amendment. Accordingly, the Court stated, “we reiterate the strong preference for searches to be conducted pursuant to a warrant, see *Jones v. State*, 337 Ga. App. 545, 548 (1) (788 SE2d 132) (2016), and caution law enforcement officers faced with an investigative need to obtain data from a vehicle's ACM to err on the side of caution by obtaining a search warrant before retrieving that information.”