

FLORIDA CASE LAW UPDATE 17-03

**Case:** State v. Worsham, 42 Fla. L. Weekly D711c (Fla. 4<sup>th</sup> DCA)

**Date:** April 4, 2017

**Subject:** Reasonable Expectation of Privacy in Vehicle's Event Data Recorder

**FACTS:** Worsham was arrested for DUI manslaughter and vehicular homicide after a vehicle crash that killed his passenger. Law enforcement downloaded data from the impounded vehicle's event data recorder (EDR), also referred to as the "black box." Approximately 96% of vehicles manufactured since 2013 are equipped with EDRs, which record "crash data." EDRs are typically programmed to record vehicle and occupant information and continue in a loop, overwriting information until a vehicle collision. EDRs record information for a limited period of time before, during, and after a crash. Information documented by the EDR includes many aspects of the vehicle's performance and use, including braking, steering, and the severity and duration of a crash. After the download from Worsham's vehicle, police applied for a search warrant, but the judge denied the warrant because the search had already occurred. Worsham moved to suppress the data retrieved from the EDR, arguing that police needed consent or a search warrant to effect a legal search of the EDR. The State argued that Worsham had no privacy interest in the downloaded data. The trial court agreed with Worsham and granted the motion to suppress.

**RULING:** The Fourth District Court of Appeal agreed with the trial court's order suppressing the EDR data. The court concluded that Worsham had a reasonable expectation of privacy in the information obtained from the EDR and therefore when police downloaded the information without consent or a warrant, in the absence of exigent circumstances, it violated Worsham's Fourth Amendment rights.

**DISCUSSION:** This is the first appellate case in Florida to consider whether a warrant is required to search an impounded vehicle's EDR. The court analogized the EDR to other electronic storage devices, such as cell phones. The court noted that because modern technology allows the storage of large quantities on small, portable devices, it has become an emerging trend to require a warrant to search these devices. The court (citing other cases) referred to the type of information that is stored on cell phones as "private and secret personal information" and having a "very personal and vast nature of...information." The court stated that although EDRs don't yet store the same quantity of information as cell phones, nor are they of the same personal nature, the recorders contain more than what owner-drivers voluntarily convey to the public. The court also noted that it is fairly difficult to extract the data from the EDR (by requiring a data retrieval kit and a manufacturer-specific cable), which it found very persuasive to the argument that vehicle owner-drivers have an expectation of privacy in the EDR's data. The court stated that extracting and interpreting the information is not the same as looking at the tires or brakes on a car while it is on a lift; because the data is difficult to extract and interpret, there is a reasonable expectation of privacy in that information. The court stated, "Just as cell phones evolved to contain more and more personal information, as the electronic systems in cars have gotten more complex, the data recorders are able to record more information. The difficulty in extracting such information buttresses an expectation of privacy." In sum, the court rationalized that because 1) EDR data is difficult to access, and 2) its information is more than what is normally exposed to the public, Worsham had a reasonable expectation of privacy in the EDR and police should have secured a search warrant before searching it.

**COMMENTS:** Although this case involves EDR data, the same legal rationale can be applied to the extraction of vehicle infotainment system data, which agencies are increasingly using to find information about drivers. Such systems can include sensitive personal information beyond EDRs and more like what is found on cell phones. Accordingly, law enforcement should consider using consent or search warrants on a case-by-case basis, as the same Fourth Amendment considerations likely apply to vehicle infotainment systems as to EDRs.

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**Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.**