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**FLORIDA CASE LAW UPDATE 16-02**

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**Case:** Strawder v. State, 41 Fla. L. Weekly D161a (Fla. 3d DCA)

**Date:** January 13, 2016

**Subject:** **Warrantless search of box that revealed a gun and cocaine did not violate Fourth Amendment because when the defendant placed the box in another's garbage can and left the vicinity, he abandoned a reasonable expectation of privacy in the box**

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**FACTS:** A police officer who was responding to a residential fire advised Strawder and his companion to evacuate their nearby home for safety. At that time, the officer observed Strawder holding a black box. Later, police received a call that there were two suspicious males in the area of the fire and that one man placed an item in a garbage can in front of a house and left the immediate area. The police officer who previously made contact with Strawder noticed that Strawder no longer had the black box. The officer then followed up on the report of suspicious behavior and looked in a wooden receptacle with garbage cans, located several doors down from the fire. A search of one garbage can revealed the black box. The owner of the house where the garbage receptacle was located stated that the black box was not his and gave officers permission to retrieve it. As officers photographed the black box, Strawder stayed in the area, walking back and forth, but didn't say anything to the officers. After officers removed the black box, Strawder approached them and said the box belonged to him, that it contained cash and jewelry and that he placed it in the garbage can to protect it from the fire. The officers asked Strawder to open the box to prove ownership, but he declined to open it. The officers offered Strawder a property receipt, but he also declined that. The officers informed Strawder that he could come to the station to claim the box, but in the days that followed Strawder did not claim the box. The police applied for a search warrant to open the box, but it was denied on the basis that they could not connect the box to any crime.

Five days after retrieving the black box, police x-rayed the box and could see the outline of a gun. The police then opened the box and found a firearm, two magazines, powder cocaine, crack cocaine, U.S. currency, Strawder's ID, and other personal items. Strawder was arrested and charged with possession of a firearm by convicted felon and possession of cocaine. Strawder moved to suppress the black box's contents, but the trial court denied his motion. Strawder appealed the denial of his motion.

**RULING:** The Third District Court of Appeal upheld the denial of Strawder's motion to suppress, stating that Strawder abandoned his expectation of privacy in the contents of the black box when he placed it in the garbage can on another person's property and then left the immediate vicinity of the garbage can. Accordingly, the court stated that there was no constitutional violation by the police when they conducted a warrantless search of the black box.

**DISCUSSION:** The court stated that courts make two considerations when evaluating whether someone abandoned property in the context of the Fourth Amendment: "(1) whether the defendant voluntarily relinquished or discarded the property; and (2) whether the property was relinquished or discarded in an area where the defendant had no claim to privacy." The court was persuaded by the fact that Strawder's actions were inconsistent with someone who is exercising their expectation of privacy in an item, especially because Strawder voluntarily placed the item in another's garbage can and then left the area. The court essentially noted that Strawder's actions voluntarily put his items at risk. The court stated that if someone took those actions and left the vicinity, even if only for a few minutes, he/she can expect a variety of possible outcomes that are inconsistent with Fourth Amendment privacy interests such as the garbage collector coming by, rummaging by animals, or someone else taking the item out of the garbage such as a scavenger, a child, or the garbage can owner.

Laura B. Coln  
Regional Legal Advisor  
Florida Department of Law Enforcement  
Orlando Regional Operations Center

**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.**