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**FLORIDA CASE LAW UPDATE 15-04**

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**Case:** Hataway v. State, 40 F.L.W. D169a (Fla. 4th DCA)

**Date:** July 22, 2015

**Subject:** Defendant's act of tossing evidence onto the road, in the daytime, in view of police officers, did not support a charge of tampering with evidence

**FACTS:** While the case does not recite the facts of Hataway's arrest in detail, it does state that he was arrested after tossing "evidence" onto the side of a private road, during daylight hours, in view of law enforcement. The record indicates that the evidence was easily retrieved by the officers. He was charged with and convicted of Tampering with Evidence, in violation of Section 918.13(1)(a), Florida Statutes, a third degree felony. The defendant appealed, arguing that he should have been granted a judgment of acquittal on the Tampering charge.

**RULING:** The Fourth District Court of Appeal agreed with the defendant, ruling that the facts as they existed in this case did not satisfy the elements of 918.13(1)(a). Conviction reversed.

**DISCUSSION:** The appellate court begins its analysis by noting that in order to support a violation of the charged statute, it is generally necessary that a person both know that an investigation by law enforcement is ongoing or is about to be instituted, and that person then alters, destroys, conceals, or removes any item with the purpose of making it unavailable to the investigation. The court states that the applicability of the Tampering statute must be evaluated on a case by case basis. "Tossing evidence away in the presence of a law enforcement officer does not, as a matter of law, constitute a violation of the statute. Depending upon the circumstances, such an act could amount to tampering or concealing evidence." *State v. Jennings*, 666 So.2d 131 (Fla. 1995). As such, each tampering case must be decided on its facts. *Obas v. State*, 935 So.2d 38 (Fla. 4th DCA 2006). The court held that in this case, there was nothing to indicate that Hataway intended to alter or destroy the evidence, rather than just removing it from his person, and the tossed evidence was easily found and recovered by law enforcement. Accordingly, the elements of the offense were not present. "The offense of tampering is committed only when the defendant takes some action that is designed to actually alter or destroy the evidence rather than just removing it from his or her person." *Costanzo v. State*, 152 So.3d 737 (Fla. 4th DCA 2014.)

**COMMENTS:** The court did note, however, that when a suspect drops or throws items so that they could not be retrieved, or in cases such as swallowing evidence, a different result is warranted. See *Obas* at 39.

John E. Kemner  
Regional Legal Advisor  
Florida Department of Law Enforcement  
Jacksonville 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.**