

# District 12

## Quick Tip No. 14

### Abandonment

People can “abandon” their property interest in an item, thereby making a warrantless search of that item reasonable. Property can be abandoned by (1) relinquishing possession, (2) disclaiming ownership, or (3) discarding the item in the trash.

#### Legal Supplement

**Generally:** *U.S. v. Basinski*, 226 F.3d 829, 837 (7<sup>th</sup> Cir. 2000)(There are three types of abandonment cases . . . fleeing defendant who relinquishes an object . . . so called garbage cases . . . [and] the defendant is usually caught red-handed with or near a container of contraband, whereupon he denies that the container or its contents are his.”), *U.S. v. Harrison*, 689 F.3d 301, 306-09 (3<sup>rd</sup> Cir. 2013)(“We note that abandonment for the purposes of Fourth Amendment differs from abandonment in property law . . .”), *U.S. v. Stevenson*, 396 F.3d 538 (4<sup>th</sup> Cir. 2005)(The proper test for abandonment is not whether all formal property rights have been relinquished, but whether the complaining party retains a reasonable expectation of privacy ...”), *U.S. v. Jackson*, 544 F.2d 407 (9<sup>th</sup> Cir. 1976)(Putting suitcase down and taking a few steps away from it not abandonment), *U.S. v. James*, 353 F.3d 366 (8<sup>th</sup> Cir. 2003)(“[A] person does not abandon his property merely because he gives it to someone else to store.”), *State v. Benjamin Frair*, Court of Criminal Appeals, S-2017-0266 (2018)(Unpublished)(5-0 Opinion/Hudson)(“In the present case, Appellee’s flight from police, leaving behind the Chevy truck and its contents, constituted abandonment of the vehicle. In so doing, Appellee lost any reasonable expectation of privacy either in the truck or its contents including the cellphone found inside. There is thus no possible Fourth Amendment violation from a search and seizure of the cellphone by authorities after collecting it at the crash site.” [citations omitted]), **Trash:** *California v. Greenwood*, 486 U.S. 35, 39 (1988)(“[H]aving deposited their garbage in an area particularly suited for public inspection and, in a manner of speaking, public consumption, for the express purpose of having strangers take it, respondents could have had no reasonable expectation of privacy in the incupatory items that they discarded.”), **Residence:** *U.S. v. Ferguson*, 33 Fed Appx. 849, 850 (9<sup>th</sup> Cir. 2002)(“[T]he district court’s determination that [the defendant] had abandoned his residence was not clearly erroneous.” *Note: The defendant said the residence was not his, that the contents of the residence belong to another, told police the address on his identification was his correct address, and drove away from the residence when released by the police.*), **Lost/Stolen:** *Gudema v. Nassau County*, 163 F.3d 717, 722 (2<sup>nd</sup> Cir. 1998)(“[A]lthough an owner retains some privacy interest in property that is merely lost or stolen, rather than intentionally abandoned, that interest is outweighed by the interest of law enforcement officials in identifying and returning such property to the owner.”), **Mistake:** *U.S. v. Harrison*, 689 F.3d 301, 309-12(3<sup>rd</sup> Cir. 2012)(“The law does not require that police officers always be factually correct; it does demand, however, that they always be reasonable...Given the combination of the rundown exterior, the ‘always open’ door, the trashed interior, and the extended observations over time, the police officers were reasonable in their mistaken belief that the house was abandoned.”), **Misconduct:** *U.S. v. McDonald*, 100 F.3d 1320, 1328 (7<sup>th</sup> Cir. 1996)(“An abandonment that results from police misconduct is not valid.”), but see *California v. Hodari D*, 499 U.S. 621 (1991), (“In sum, assuming that Pertoso’s pursuit in the present case constituted a ‘show of authority’ enjoining Hodari to halt, since Hodari did not comply with that injunction, he was not seized until he was tackled. The cocaine abandoned while he was running was, in this case, not the fruit of a seizure, and his motion to exclude evidence of it was properly denied.”).



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