



EIGHTH CIRCUIT UPHOLDS SEARCH OF ABANDONED CELL PHONE

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Law Enforcement Risk Management Group, 700 N. Carr Rd. #595, Plainfield, IN 46168

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On January 2, 2018, the Eighth Circuit Court of Appeals decided *the United States v. Crumbleⁱ*, in which the court examined whether a cell phone abandoned in a car after a shootout between criminals was “abandoned” for Fourth Amendment purposes. The relevant facts of *Crumble*, taken directly from the case, are as follows:

On October 21, 2014, at approximately 1:28 p.m., police received reports of shots being fired between two vehicles in St. Paul, Minnesota. Dispatch informed responding officers that one of the vehicles—a tan Buick—had crashed into a house and its two male occupants had fled on foot. Officers arrived at the scene to find the wrecked Buick with bullet holes along its passenger side and a shot-out rear window. They noticed the Buick’s key in its ignition and a handgun on the driver’s side floorboard. A witness informed the officers that after the crash the other vehicle’s shooter continued to fire at the Buick. The witness stated that the Buick’s two occupants fled the scene on foot heading west, describing one as a black male, in his early 20s, wearing a white t-shirt. Another witness also reported seeing an approximately 25-year-old black male in a white t-shirt running westward from the Buick. Officers found a man matching this description hiding behind a shed a block and a half away. That man was appellant Prentiss Crumble.

Officers took Crumble into custody and drove him to the scene of the wrecked Buick—where he denied any knowledge of the shooting or the Buick. When an officer searched the Buick later that day, he found a cell phone on the driver’s seat, which he secured into evidence. The following day, the officer applied for a search warrant to search the cell phone for “information as to the second occupant in the Buick or further information related to the crime.” A county judge issued a warrant to search “[a]ll electronic data (including but not limited to contacts, calendars, call records, voice messages, text messages, photo and video files) stored in” the phone. In the subsequent search, the officer found a video of Crumble inside a vehicle wearing a white t-shirt and brandishing a handgun similar to that recovered from the Buick. The video was recorded shortly before the shooting on October 21, 2014 at 1:15 p.m.

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Crumble was charged with being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(e).ⁱⁱ

Crumble filed a motion to suppress and argued that the phone was not abandoned because he fled to escape the people who were shooting at him, rather than with intent to abandon the phone and car. The district court denied the motion and held that the facts were sufficient to show that Crumble had abandoned the phone. Crumble pleaded guilty with the right to appeal the denial of the motion to suppress.

The issue before the court was whether Crumble possessed a reasonable expectation of the privacy in the cell phone that he left in the car when he fled from the vehicle, hid and later denied any knowledge of the car in which the phone was located.

The court first examined the law regarding abandoned property and the Fourth Amendment. The court stated

It is well-established that a defendant does not have a reasonable expectation of privacy in abandoned property. See United States v. Tugwell, 125 F.3d 600, 602 (8th Cir. 1997). Thus, if Crumble abandoned the cell phone, he forfeited his expectation of privacy and cannot raise a Fourth Amendment challenge to the subsequent search. See id. ("A warrantless search of abandoned property does not implicate the Fourth Amendment, for any expectation of privacy in the item searched is forfeited upon its abandonment."). **The issue is not abandonment in the strict property right sense, but rather, whether the defendant in leaving the property has relinquished [his] reasonable expectation of privacy " Id. (internal quotation marks omitted). **A finding of abandonment depends on the totality of the circumstances, with "two important factors [being] denial of ownership and physical relinquishment of the property."** Id. (internal quotation marks omitted). **Courts consider only "the objective facts available to the investigating officers, not . . . the owner's subjective intent."** United States v. Nowak, 825 F.3d 946, 948 (8th Cir. 2016) (per curiam)ⁱⁱⁱ**

The court then examined the relevant facts of Crumble's case in light of the rules above. First, the court noted that after the crash, Crumble fled from the vehicle and left the keys in the ignition. The back window was shot out, and he left his cell phone and gun in the car. This provided easy access to the vehicle and its contents. Second, Crumble denied knowledge of the shooting and the car when he was later located by police. A day later, Crumble admitted that he was in the Buick. While Crumble then claimed that he was not hiding from the police, but rather, fleeing from whoever was shooting at him, his personal or subjective intent does not matter; what matters is whether the officers had an objectively reasonable belief that he abandoned the vehicle and its contents, including the phone. The court found that, under the facts of this case, it was reasonable for officers to believe that Crumble abandoned his cell phone.

Crumble's also argued that the court should deny the application of the abandonment doctrine as applied to cell phones. Crumble cited the Supreme Court case of *Riley v. California*^{iv}, in which the Court held that the search incident to arrest exception did not apply to cell phones because they contain the "privacies of life."^v However, the court of appeals noted that *Riley* specifically addressed searches

incident to arrest and left open the possibility that there could be other justifications for a warrantless search. The court noted that other jurisdictions have applied the abandonment doctrine to cell phones, and the Eighth Circuit decided to follow suit.

As such the court affirmed the denial of the motion to suppress. There was therefore no need for the court to examine whether the search warrant for the phone was sufficiently supported by probable cause.

ⁱ No. 16-4308 (8th Cir. Decided January 2, 2018)

ⁱⁱ Id. at 1-2

ⁱⁱⁱ Id. at 3-4

^{iv} 134 S. Ct. 2473 (2014)

^v Id. at 2494-95

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