

No Reasonable Expectation of Privacy in Abandoned CD's

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A criminal defendant was convicted of possession of child pornography, based on CD's and other media he left after vacating an apartment. The Supreme Court of New Hampshire found he had no expectation of privacy in the abandoned media and that the search of the media was proper. *State v. Howe*, 159 N.H. 366, 373 (N.H. 2009).



The Defendant rented a room that he was asked to vacate after failure to pay rent. *Howe*, at 370. The property owners cleaned out the apartment after the date to vacate had past.

While cleaning out the apartment, the owners found in a bureau CD's, memory cards and a manila folder. *Id.* The folder contained printed images that were pornographic in nature, with some depicting children. *Id.*

The property owners called the police who took the abandoned material and searched the CD's. Additional child pornographic material was found and the Defendant was arrested.

Did the Defendant Have a Reasonable Expectation of Privacy in the CD's?

Short answer: No.

The Defendant claimed he did not abandon the media in the bureau, claiming, it was only "temporarily" abandoned while he was on vacation, thus a search warrant was required to search its contents. *Howe*, at 371-3.

The Supreme Court of New Hampshire disagreed. The Defendant had a deadline to vacate the apartment and the CD's were found 5 days after the move out date (a total of 12 days after being given a deadline). *Howe*, at 373. The New Hampshire Supreme Court noted that Federal Courts have found only 2 days necessary for abandonment. *Id.*

Since the Defendant had vacated the property, there was no privacy interest that would have required a search warrant to review the CD's. As such, the CD evidence was properly admitted. *Id.*

Bow Tie Thoughts

People lose (or forget) thumb drives and removable media all the time. A thumb drive, DVD or external hard drive might contain trade secrets, files protected by the doctor-patient privilege or electronically stored information of a personal nature. While *State v. Howe* is an extreme example of someone who deserved to go to jail, abandoned ESI may haunt individuals in ways they never expect.