

IN THE SUPREME COURT OF FLORIDA

ANTOINE MCCLLOUD, :
 :
 Petitioner, :
 :
 vs. : Case No. SC17-2011
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____ :

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

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TOPICAL INDEX TO BRIEF

	<u>PAGE NO.</u>
<u>STATEMENT OF THE CASE AND FACTS</u>	1
<u>SUMMARY OF THE ARGUMENT</u>	3
<u>ARGUMENT</u>	4
<u>ISSUE</u>	4
THE SECOND DISTRICT COURT OF APPEAL CERTIFIED CONFLICT WITH THE OPINION IN <u>MCCRAY V. STATE</u> , 171 SO. 3D 831 (FLA. 1ST DCA 2015). ADDITIONALLY, EXPRESS AND DIRECT CONFLICT EXISTS WITH <u>MCCRAY</u> ON THE SAME POINT OF LAW.	3
<u>CONCLUSION</u>	7
<u>CERTIFICATE OF SERVICE</u>	7

TABLE OF CITATIONS

	<u>PAGE NO.</u>
<u>Cases</u>	
<u>Longwell v. State</u> , 123 So.3d 1187, 1198 (Fla. 1st DCA 2013)	1, 5
<u>McCloud v. State</u> , 224 So. 3d 842, 845-46 (Fla. 2d DCA 2017)	2, 5, 6
<u>McCray v. State</u> , 171 So. 3d 831 (Fla. 1st DCA 2015)	i, 2, 3, 4
<u>Thompson v. State</u> , 153 So.3d 996, 997 (Fla. 1st DCA 2015)	1, 5
<u>Statutes</u>	
Section 914.22(1)(e), Florida Statutes (2015)	1, 2, 4, 5, 6
<u>Constitutional Provisions</u>	
Article V, Section 3(b)(3), Florida Constitution	3
Article V, Section 3(b)(3), Florida Constitution	3

STATEMENT OF THE CASE AND FACTS

The Petitioner, Antoine McCloud was charged with witness tampering and other offenses. Defense counsel moved for a judgment of acquittal on the charge of witness tampering arguing that McCray v. State, 171 So. 3d 831 (Fla. 1st DCA 2015), required acquittal because there was no evidence that the victim was attempting to contact law enforcement at the time that Petitioner grabbed the victim's cell phone and threw it to the ground. The motion for judgment of acquittal was denied by the trial court. Petitioner was convicted as charged of tampering with a witness.

Petitioner argued to the Second District Court of Appeal that the motion for judgment of acquittal should have been granted based upon McCray v. State, 171 So. 3d 831 (Fla. 1st DCA 2015), because there was no proof of an attempt to contact law enforcement at the time of the offense.

Petitioner's conviction was affirmed by the Second District Court of Appeal which certified conflict with McCray on August 11, 2017. The Second District explained:

Based on our plain reading of section 914.22(1)(e), we disagree with the First District's interpretation of the statute in McCray, Thompson, and Longwell. Section 914.22(1)(e) does not require the State to show that a witness, victim, or informant "was attempting to contact law enforcement during the time of the incident." McCray, 171 So.3d at 832 (emphasis added). Such a requirement would add another element to a crime that is otherwise clearly defined. See § 914.22(1)(e); Fla. Std. Jury Instr. (Crim) 21.10 (listing the three elements that the State must prove beyond a reasonable doubt to convict a person of

witness tampering).

Rather, we find that the statute requires the State to prove that the accused knowingly took some action with the intent to hinder, delay, or prevent the witness from communicating information to law enforcement "relating to [not during] the commission or possible commission of an offense."² § 914.22(1)(e) (emphasis added).

McCloud v. State, 224 So. 3d 842, 845-46 (Fla. 2d DCA 2017).

A petition for belated discretionary review was filed in Case SC17-1750 on September 27, 2017. The petition for belated discretionary review was granted by an order issued on November 17, 2017, directing that all subsequent filings be under Case SC17-2011. On November 20, 2017, Petitioner was granted an extension of time to file his jurisdictional brief by December 5, 2017.

SUMMARY OF THE ARGUMENT

The Second District Court of Appeal certified conflict between the opinion at issue in this case and the opinion in McCray v. State, 171 So. 3d 831 (Fla. 1st DCA 2015). Additionally express and direct conflict exists between the two opinions on the on the same point of law. This Court should take jurisdiction to resolve the conflict between the opinions.

ARGUMENT
ISSUE

THE SECOND DISTRICT COURT OF APPEAL CERTIFIED
CONFLICT WITH THE OPINION IN MCCRAY V. STATE,
171 SO. 3D 831 (FLA. 1ST DCA 2015).
ADDITIONALLY, EXPRESS AND DIRECT CONFLICT
EXISTS WITH MCCRAY ON THE SAME POINT OF LAW.

This Court has jurisdiction due to the certified conflict with McCray v. State, 171 So. 3d 831 (Fla. 1st DCA 2015), pursuant to Article V, Section 3(b)(4) of the Florida Constitution. Additionally, jurisdiction exists pursuant to Article V, Section 3(b)(3) of the Florida Constitution due to express and direct conflict with McCray. This Court should accept jurisdiction to resolve the conflict since the First District Court of Appeal and Second District Court of Appeal have interpreted 914.22(1)(e), by opinions which are polar opposites of each other.

Section 914.22(1)(e), Florida Statutes (2015), reads:

(1) A person who knowingly uses intimidation or physical force, or threatens another person, or attempts to do so, or engages in misleading conduct toward another person, or offers pecuniary benefit or gain to another person, with intent to cause or induce any person to:

....

(e) Hinder, delay, or prevent the communication to a law enforcement officer or judge of information relating to the commission or possible commission of an offense or a violation of a condition of probation, parole, or release pending a judicial proceeding;

§ 914.22(1)(e), Fla. Stat. (2015)

In McCray this was interpreted by the First

District:

Thus, it is necessary to present evidence that the victim was attempting to contact law enforcement during the time of the incident to support a conviction under this statute. Thompson v. State, 153 So.3d 996, 997 (Fla. 1st DCA 2015).

A review of the record reveals that the State presented no evidence to establish that Addison was attempting to contact law enforcement during the altercation with McCray. In fact, Addison testified that she was "trying to call somebody," not that she was trying to call law enforcement. She also testified that she never gave McCray any indication that she was attempting to call law enforcement or 911 during the altercation. Because there was no evidence that Addison was attempting to contact law enforcement, the trial court erred in denying McCray's motion for judgment of acquittal. See Longwell v. State, 123 So.3d 1187, 1198 (Fla. 1st DCA 2013). We, therefore, REVERSE the conviction for tampering with a victim or witness.

McCray v. State, 171 So. 3d 831, 832-33 (Fla. 1st DCA 2015).

The Second District reached the exact opposite conclusion in this case:

Based on our plain reading of section 914.22(1)(e), we disagree with the First District's interpretation of the statute in McCray, Thompson, and Longwell. Section 914.22(1)(e) does not require the State to show that a witness, victim, or informant **"was attempting to contact law enforcement during the time of the incident."** McCray, 171 So.3d at 832 (emphasis added). Such a requirement would add another element to a crime that is otherwise clearly defined. See § 914.22(1)(e); Fla. Std. Jury Instr. (Crim) 21.10 (listing the three elements that the State must prove beyond a reasonable doubt to convict a person of witness tampering). Rather, we find that the statute requires the State to prove that the

accused knowingly took some action with the intent to hinder, delay, or prevent the witness from communicating information to law enforcement "relating to [not during] the commission or possible commission of an offense."² § 914.22(1)(e) (emphasis added).

McCloud v. State, 224 So. 3d 842, 845-46 (Fla. 2d DCA 2017).

This Court has jurisdiction because of the certified conflict between the opinion in McCray and the opinion below of the Second District Court of Appeal in McCloud. Additionally, express and direct conflict exists between the two opinions which reach opposite conclusions on the same point of law. This Court should exercise jurisdiction because resolution of the conflict on the meaning of the identical portion of the statute is necessary. Trial courts and the district courts of appeal should be given a single uniform statutory interpretation instead of the two diametrically opposed interpretations of the statute which currently exist.

CONCLUSION

Based upon the foregoing argument, authorities, and reasoning, the Court is respectfully requested to exercise discretionary jurisdiction over this case.

CERTIFICATE OF SERVICE

I certify that a copy has been e-mailed to the Office of the Attorney General at CrimappTPA@myfloridalegal.com, on this 30th day of November, 2017.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,



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