

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 :
 : CASE NOS. 2014-1984 & 2014-2064
 :
 PLAINTIFF-APPELLEE, :
 :
 : ON DISCRETIONARY APPEAL AND
 :
 V. :
 : CERTIFIED CONFLICT FROM THE
 :
 : SCIOTO COUNTY COURT OF APPEALS,
 :
 CHELSEY BARRY, :
 : FOURTH APPELLATE DISTRICT,
 :
 : CASE No. 13CA3569
 :
 :
 DEFENDANT-APPELLANT. :

**JOINT MOTION TO REVERSE AND VACATE PURSUANT TO
STATE V. STRALEY, 139 Ohio St.3d 339, 2014-Ohio-2139, 11 N.E.3d 1175**

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**JOINT MOTION TO REVERSE AND VACATE PURSUANT TO
STATE V. STRALEY, 139 Ohio St.3d 339, 2014-Ohio-2139, 11 N.E.3d 1175**

I. Procedural position

This case is before this Court on a discretionary appeal and certified conflict. Oral argument is set for October 13, 2015. The conflict case is *State v. Cavalier*, 2d Dist.

Montgomery No. 24651, 2012-Ohio-1976.

II. Discussion

The parties jointly file this Motion to ask this Court to reverse the decision of the court of appeals and vacate Ms. Barry's conviction for tampering with evidence. The parties ask this Court to take those actions in light of *State v. Straley*, 139 Ohio St.3d 339, 2014-Ohio-2139, 11 N.E.3d 1175. The parties file this Motion because, after briefing was completed in this Court, the Fourth District expressly limited its prior holding in this case. *State v. Crocker*, 4th Dist. Scioto No. 14CA3640, 2015-Ohio-2528, ¶¶ 32-36.

In changing its decision, the Fourth District relied on *Straley*, which this Court issued after briefing and oral argument was completed in that court, but before that court issued its decision in this case. *Crocker* at ¶ 34. In *Crocker*, the Fourth District also expressly held that it was adopting the reasoning of the Second District's decision in *Cavalier*:

[O]ur decision in *Barry* did not have the benefit of the Supreme Court's more recent decision in *Straley*[.]”

* * *

Based upon *Straley* and *Cavalier*, 2d Dist. Montgomery No. 24651, 2012-Ohio-1976, we narrow our decision in *Barry*, 4th Dist. Scioto No. 13CA3569, 2014-Ohio-4452, to restrict the “unmistakable crime” cases to situations in which the pertinent conduct, e.g., murder, arson, rape, and gross sexual imposition, involves crimes with persons likely to complain or where discovery and investigation is almost certain to occur due to the death of or severe injury to the victim.

Crocker at ¶ 34, 36

In its brief in this Court, the State, took the good-faith position that *Straley* did not control this case. But in light of the Fourth District’s decision in *Crocker*, both parties now agree that Ms. Barry’s conviction for tampering with evidence should be vacated pursuant to *Straley*. Both parties also agree that Ms. Barry’s conviction for trafficking drugs should remain in place because it is not at issue in this appeal.

III. Conclusion

The parties jointly ask this Court to reverse the court of appeals based on *Straley* and to vacate Ms. Barry’s conviction for tampering with evidence. The parties agree that Ms. Barry remains convicted of trafficking with evidence.

Respectfully submitted,

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