

Bribing Witnesses with Text Messages, Cell Phones and Fake Email Accounts

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Sometimes there are fact patterns that surprise you how far we have come with technology and the foolishness of people.



In *People v. McClinnis*, the Defendant was convicted of attempted witness bribery. The Defendant attempted to keep witnesses from testifying against the Defendant's nephew, in the nephew's trial for robbery and kidnapping. *People v. McClinnis*, 2009 Cal. App. Unpub. LEXIS 9046 (California Unpublished Opinions 2009).

The basis of the Defendant's appeal was based on alleged "outrageous governmental conduct" by a police investigating officer.

The Court upheld the conviction.

The Bribe

One of the victims in the robbery and kidnapping case received the following letter with a cell phone number to call:

"The purpose of this letter and its contents is to compensate you for your initial loss that occurred as a result of the robbery. I believe you have at least 1 Thousand reasons to be compensated for your pain and suffering. However, I feel that because you are the true victim in this crime, you deserve much more compensation for your pain and suffering. While it's obvious that the defendants don't have the ability to adequately compensate you, I do have the ability to do so on their behalf."

"Obviously this correspondence and agreement has to be kept confidential and not disclosed or shared with the District Attorney or Police. . . . Remember the District Attorney works for the

people (you & me) and you have every right to tell the DA you don't want to testify and he can't force or threaten you to." *Mclnnis*, at *2-3.

The letter ended with "there are at least 25 thousand reasons why you would like to immediately settle the case in a civil manner instead of being a witness in a criminal court." *Mclnnis*, at *3.

The victim turned over the letter to the authorities who launched an investigation.

Other letters were sent to the two victims offering \$50,000 to settle the criminal suit against the Defendant's nephew. *Mclnnis*, at *5 (which should send ethics lawyers into orbit).

The investigating police officer left multiple phone messages with the number on the letter. A text message was sent to the investigating officer saying, "Leave me a message with your questions. I am going to send the money, I swear." *Mclnnis*, at *6.

Tracking Down a Cell Phone



The police investigation in tracking down the Defendant's cell phone was a case study of how far we have come with technology.

The police officer was able to trace the exact sale date of the cell phone, the cell phone carrier (Virgin Mobile), the fake purchase name (Joe Gift), the store it was purchased from (Radio Shack), and that it was activated at a FedEx Kinko's near the store where the Defendant purchased the phone. *Mclnnis*, at *6-7.

Virgin Mobile indicated the specific time, down to the minute, the cell phone number had been activated, including the fake name used for the Yahoo! email address. *Mclnnis*, at *7.

The police officer used "Yahoo! Emergency Disclosure Request Form" to determine the identity of the Yahoo! subscriber. *Mclnnis*, at *7.

The investigation showed the IP address where the account was activated was a FedEx Kinko's in Los Gatos, California. *Mclnnis*, at *7. From there, the police were able to review

the store security cameras and identify the Defendant later in Court. *Mclnnis*, at *7.

"Outrageous Conduct"

The "outrageous conduct" was the police officer overstating the threat against the victims on "Yahoo! Emergency Disclosure Request Form." While the officer exaggerated the danger, the Court found this was not shocking conduct that rose to the level of "outrageous conduct." *Mclnnis*, at *21-21.

What is Interesting about This Case...

Tracking down a suspect by IP addresses, fake email names and security video sounds like something out of "24." These electronic finger prints are all markers of electronically stored information. Just as civil litigation is dealing with "forms of production," criminal law have also adopted to the Digital Age.